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ANALYSIS OF THE INDEPENDENCE OF CONSTITUTIONAL COURT JUDGES IN SOME JUDICIAL REVIEW CASES

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Abstract:

The independence of Constitutional Court Judges is part of the judge's professional code of ethics which must always be maintained and implemented as a form of effort to make the Constitutional Court an institution of judicial power, which is free from intervention and independent in upholding law and justice. In the context of its formation, the Constitutional Court also plays a role in maintaining the supremacy of the Constitution as regulated in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia which determines that "the Constitutional Court has the authority to adjudicate at the first and final level whose decision is final to review the law. against the Constitution...". In the implementation of judicial reviews carried out by the Constitutional Court in the recent period, there have been several Judicial review decisions which have caused polemics and controversies regarding the independence of Constitutional Court Judges. Among them are Constitutional Court Decision No.90/PUU-XXI/2023 and Constitutional Court Decision No.103/PUU-XX/2022. From the explanation above, the author conducted this research with the aim of an analytical study of the independence of Constitutional Court judges in several Judicial Review cases. The research method used in this research is research with a juridical-normative approach, which is research that focuses on normative legal knowledge, apart from that it also tries to examine the rules that apply in society..

KATA KUNCI: Independence; Judicial review; Constitutional Court

I. Introduction

The institution of judicial power is a free, independent and independent power institution.

As a judicial institution in the Indonesian state administration, the court has a very strategic function and position in reviewing, adjudicating and resolving disputes that arise between citizens and between the community and institutions, both government and non-government.¹

The Constitutional Court (MK) is one of the highest judicial institutions in Indonesia. The presence of the Constitutional Court aims to act as the guardian of the constitution, one of the authorities given to the Constitutional Court is to carry out legal review of the 1945 Constitution or implement a judicial review mechanism.

In carrying out its authority, the Constitutional Court must of course maintain independence in examining and deciding cases. This includes deciding on requests for judicial review submitted by the applicants.

Constitutional Court Decision No. 103/PUU-XX/2022 concerning the Process for Dismissal of Constitutional Court Judges and Constitutional Court Decision No. 90/PUU-XXI/2023

concerning Additional Experience in Office from Election Electability in the Minimum Age Requirements for Presidential/Vice Presidential Candidates has caused controversy in society which questions the independent attitude of the Constitutional Court judges. Allegations of violations of the code of ethics for Constitutional Court judges and conflicts of interest in the proceedings led to the assignment of the Constitutional Court Honorary Council (MKMK) to handle the involvement of Constitutional Court judges in these two cases.

Philosophically, the strength of the Constitutional Court (MK) decision lies in the principles of popular sovereignty and constitutional supremacy. The principle of popular sovereignty shows that power in the state comes from the people, and the Constitutional Court must pay attention to the people's voices in exercising its authority.²

This research aims to analyze the independence of Constitutional Court judges in several judicial review cases. It is hoped that with the presence of this article, the Constitutional Court as an institution formed to protect the Constitution as the ground norm of this

¹ M. Natsir Asnawi, *Hermenutika Putusan Hakim* (Yogyakarta: UII Press, 2014). hlm. 18

² Mexsasai Indra, Geofani Milthree Saragih, and Mohamad Hidayat Muhtar, "Strength of

Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia," *Jurnal Konstitusi* 20, no. 2 (2023): 279–99, <https://doi.org/10.31078/jk2026>.

nation will return to its dignity and electability as an independent state institution.

II. Legal Materials and Methods

This research is normative legal research, where in this research the researcher will study and examine various literary sources, for example, books, journals, papers, regulations, and other scientific works that are related to the research object that the researcher is studying. Meanwhile, the nature of this research is descriptive, where the author will describe a problem in a certain area or at a certain time and try to reveal the existing facts completely. The research specifications used in the research use several approaches, namely the statutory approach, the conceptual approach, the historical conceptual approach, and the case approach. In this research, the analysis carried out is qualitative analysis, which is a research procedure that produces descriptive data, namely what is stated in writing.³ Next, the author concludes deductively, namely concluding things that are general to specific things. Getting a conclusion begins by looking at real factors and ends with drawing a conclusion which is also

a fact where the two facts are bridged by theories.⁴

III. Result and Discussion

The independence of judicial power is guaranteed by Article 24 paragraph (1) of the 1945 Constitution which states that judicial power is independent power to administer justice to uphold law and justice. This concept of independent power is then derived into several principles of judicial power, namely independence, independence and impartiality.

In this case, related to the existence of the Constitutional Court as one of the institutions of judicial power, efforts are being made to support the independence of Constitutional Judges, realized by the implementation of Constitutional Court Regulation Number 09/PMK/2006 concerning the Enforcement of the Declaration of the Code of Ethics and Behavior of Constitutional Judges.

Apart from that, the application of the principle of independence of Constitutional Court judges is carried out as follows:⁵

1. Constitutional judges must carry out judicial functions independently on the basis of an assessment of the facts, rejecting external influence in the form of

³ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo, 2003).

⁴ Aslim Rasyad, *Metode Ilmiah: Persiapan Bagi Peneli* (Pekanbaru: UNRI Press, n.d.).

⁵ Priandita Koswara and Megawati, "Analisis Prinsip Independensi Hakim Konstitusi Di Indonesia," *Ahmad Dahlan Legal Perspective* 3, no. 1 (2023): 47–62, <https://doi.org/https://doi.org/10.12928/adlp.v3i1.7902>.

persuasion, enticement, pressure, threats and interference, whether direct or indirect, from anyone or for any reason in accordance with thorough mastery of the law;

2. Constitutional judges must act independently from pressure from society, the mass media and the parties in a dispute they must adjudicate;
3. Constitutional judges must maintain independence from the influence of executive, legislative and other state institutions;
4. In carrying out judicial duties, constitutional judges must be independent from the influence of colleagues in decision making;
5. Constitutional judges must encourage, uphold and increase guarantees of independence in carrying out judicial duties both individually and institutionally;
6. Constitutional judges must maintain and demonstrate an independent image and promote high standards of behavior in order to strengthen public confidence in the court.

The Constitutional Court, as an independent judicial institution, plays an important role in upholding justice and the principles of the rule of law based on authority and obligations as stipulated in the 1945 Constitution.⁶ One of the authorities possessed by the

Constitutional Court is to review laws against the 1945 Constitution or judicial review of laws against the Constitution. This is done in order to implement a checks and balances mechanism between state institutions. It is undeniable that laws formed jointly by the DPR and the President are political products that cannot be separated from political interests or elements. So an independent institution is needed to act to correct if there is a conflict between the law and the 1945 Constitution as the ground norm of the Indonesian nation.

As a manifestation of the implementation of its judicial review authority, the Constitutional Court, from its founding in 2003 to 2024, has received 1,830 judicial review cases, with the following details:

Table 1
Recapitulation of Law Review Cases
by the Constitutional Court

Year	Case Judicial Review	Number Of Decisions
2003	24	4
2004	27	35
2005	25	28
2006	27	29
2007	30	26
2008	36	35
2009	78	51
2010	81	61

⁶ Tim Penyusun Hukum Acara Mahkamah Konstitusi, *Hukum Acara Mahkamah Konstitusi*

(Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010). hlm. 10-11.

2011	86	94
2012	118	97
2013	109	110
2014	140	131
2015	140	157
2016	111	96
2017	102	131
2018	102	114
2019	85	92
2020	109	89
2021	71	99
2022	121	124
2023	168	136
2024	40	60
Jumlah	1830	1799

Source: *Constitutional Court*

From table 1 above, it is recorded that of the 1830 cases submitted to the MK, 1799 of them have been decided by the MK, with details of 317 cases being granted, 692 cases being rejected, 550 cases not being accepted, 198 cases being withdrawn, 28 cases being dismissed and The Constitutional Court does not have the authority to judge 14 cases. Of the number of cases submitted to the Constitutional Court, the focus of the study in this article is the Constitutional Court Decision No. 103/PUU-XX/2022 concerning the Process for Dismissal of Constitutional Court Judges and Constitutional Court Decision No. 90/PUU-XXI/2023 concerning Additional Experience in Office from Election Electability in the Minimum Age Requirements for Presidential/Vice Presidential Candidates.

A. Study of the Independence of Constitutional Court Judges in Constitutional Court Decision No. 103/PUU-XX/2022

Court Decision number 103/PUU-XX/2022 is a Constitutional Court decision regarding the judicial review of Article 23 and Article 87 letter b of the Constitutional Court Law. The request for judicial review was submitted by Zico Lepnard Djagardo Simanjuntak who works as an advocate.

The issue regarding the application for a judicial review of case number began when Constitutional Justice Aswanto was removed by the People's Representative Council (DPR) and replaced by the Secretary General of the Constitutional Court at that time, Guntur Hamzah. The reason for Aswanto's dismissal was conveyed by the Chairman of Commission III of the DPR RI, Bambang Wuryanto, as purely political because he did not have a commitment to the DPR by annulling DPR products, even though Aswanto was a constitutional judge representing the DPR. One of the DPR products that was annulled by Aswanto was the Job Creation Law which was declared conditionally unconstitutional. The removal carried out by the DPR had a very big impact on the Indonesian constitutional system, because the DPR was not subject to constitutional provisions or procedural provisions contained in Article 23 and Article 87 letter b of the Constitutional Court Law.

This creates a bad precedent in the future because the institutions that nominate constitutional judges, namely the Supreme Court, the President and the DPR, can at any time replace the constitutional judges they consider to be their "representatives". This certainly has the potential to erode the independence of judges.

The Petitioner in this case views the DPR's actions as unconstitutional and constitutional complaint legal action was not carried out. If there is a constitutional complaint mechanism that is implemented then the actions of the DPR as a high state institution can be declared as unconstitutional.

Efforts to degrade the value of independence and the practice of political intervention in the Constitutional Court are clearly demonstrated by the legislative body. Why not, through a plenary meeting forum some time ago, the DPR haphazardly dismissed Constitutional Justice Aswanto without a complete argumentative basis. The steps taken by the People's Representative Council towards the Constitutional Court increasingly show an attitude of authoritarianism and defiance of the law, because the DPR violates the provisions of Article 24 paragraph (1) of the 1945 Constitution (UUD 1945) which guarantees the existence of independent institutions of judicial power. The

meaning of independence must of course be interpreted as free from political interests from all branches of power, both executive and legislative. With the DPR's arbitrary practices, it is clear that the 1945 Constitution is no longer used as a reference in taking action.⁷

This action by a high state institution such as the DPR clearly violates the legal norms regulated in this nation's ground norms, especially Article 1 paragraph (3) and Article 24 paragraph (1) of the 1945 Constitution, regarding the independence of judges in the Constitutional Court whose position can be intervened in when issuing decisions. which is not in line with the interests of the DPR.

This is also in line with the existence of Article 23 of Law Number 7 of 2020 concerning the Constitutional Court which regulates the process of dismissing Constitutional Court judges. In its chairmanship, the process for dismissing Constitutional Court judges is regulated by both constitutional judges who are honorably dismissed and constitutional judges who are dishonorably dismissed. However, the dismissal of Constitutional judge Aswanto did not meet the qualifications of these two provisions. Materially, Aswanto is not being dismissed with or without honor. Meanwhile, the formal sequence is also problematic because it does not go through the correct

⁷ Ashari Ashari and Riska Ari Amalia, "Konstitusionalitas Pemberhentian Hakim Mahkamah Konstitusi Oleh Dewan Perwakilan

Rakyat," *Jurnal Ilmiah Global Education* 4, no. 1 (2023): 50–56, <https://doi.org/10.55681/jige.v4i1.539>.

mechanis⁸. Formally, Aswanto's dismissal did not comply with the procedures because his term of office as a Constitutional Court judge had not yet expired and the person concerned had not submitted his resignation at his own request, had not yet reached the age of 70 and had not experienced continuous physical or mental illness for 3 months, so unable to carry out his duties as proven by a doctor's certificate. As well as not fulfilling the elements of being dishonorably dismissed, such as being sentenced to prison, committing a disgraceful act, violating an oath or promise of office and other elements. Even if there is a reason for dismissal during the term of office, the dismissal by the President will only be carried out after a letter of request from the Chief Justice of the Constitutional Court.

From the regulations contained in the Constitutional Court regulations, it can be said that the removal or dismissal of Judge Aswanto violates the regulations or can be called a formal or material defect or is not relevant to the procedures and mechanisms regulated in the regulations.⁹

If we examine further the provisions of Article 23 of the Constitutional Court Law, of course the dismissal of Constitutional Court judge Aswanto is

not in accordance with procedure. So this has the potential to damage the order of legal norms and constitutional practices and affect the application of the principle of independence and independent judicial power.

Quoting from the opinion of the Chairman of the First Constitutional Court, Jimly Asshiddiqie, the removal of former constitutional judge Aswanto was a form of the DPR's lack of understanding of the confirmation letter from the Constitutional Court regarding the elimination of the periodization of the terms of office of constitutional judges. According to him, the DPR misunderstood the Constitutional Court's letter as a form of request for confirmation from the DPR, so the DPR responded by removing Aswanto. In fact, it is expressly stated in article 87 of the Law concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court that constitutional judges who were in office when the law was promulgated are considered to meet the requirements so that they can continue to serve until they reach the age of 70 years, with a term of office not exceed 15 years. In fact, this law also allows Aswanto to continue serving as Deputy Chief Justice of the Constitutional Court.¹⁰

⁸ Ashari and Amalia.

⁹ Andra Triyudiana et al., "Netralitas Profesi Hakim Di Tengah Intervensi Politik," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 1, no. 01 (2022): 1, <https://doi.org/10.1111/moderasi.xxxxxxx>.

¹⁰ Muhammad Fawwaz Farhan Farabi and Tanaya, "Polemik Legalitas Pemecatan Hakim Konstitusi Oleh Lembaga Pengusul: Tinjauan Kasus Pemecatan Hakim Aswanto Dan Implikasinya Terhadap Kemandirian Kekuasaan Kehakiman," *Jurnal Hukum Dan HAM Wara Sains*

In this case, the Constitutional Court rejected the petition submitted. The Court considers that there is no question of the constitutionality of norms regarding legal certainty in the implementation of independent judicial power as guaranteed in the provisions of the applicable Legislation. Therefore, the applicant's petition is legally groundless. Apart from that, the judge's considerations stated that "Thus, the dismissal of constitutional judges... " to "In the future, dismissal of constitutional judges before the end of their term of office can only be done for the following reasons: resignation at their own request submitted to the chairman of the Constitutional Court, continuous physical or mental illness for 3 (three) months so that they are unable to carry out their duties which is proven by a doctor's certificate, and was dishonorably dismissed for reason 52 as stated in Article 23 paragraph (2) of the Constitutional Court Law."

In this Constitutional Court Decision there are dissenting opinions from three Constitutional Court judges, which are described as follows:¹¹

1. Dissenting opinion from Constitutional Justice Anwar Usman and Constitutional Justice Manahan M.P. Sitompul, is of the opinion that the description or argument presented by the applicant is irrelevant and does

not have a strong legal reason and has no relation to the DPR's actions regarding the replacement of Constitutional Justices. because the DPR's action referred to by the applicant was a response to the Constitutional Court's letter dated July 21 2022 regarding notification of Constitutional Court decision No. 96/PUU-XVIII/2020, one of the legal considerations regarding the term of office of Constitutional judges which no longer recognizes periodicity.

2. Dissenting opinion from Constitutional Justice Suhartoyo, arguing that the provisions of norms in Article 10 paragraph (1) letter a of Law Number 24 of 2003 concerning judicial power and Article 57 paragraph (1) and paragraph (2) of Law Number 7 of 2020 does not have binding legal force and that the applicant has the legal standing to submit an a quo petition because the applicant is able to explain the constitutional disadvantages of the norms requested to be reviewed and the applicant has constitutional rights guaranteed by the 1945 Constitution. Regarding the provisions of Article 87 letter b of Law Number 7 of 2020, the Petitioner does not

2, no. 04 (2023): 294–303, <https://doi.org/10.58812/jhhws.v2i04.291>.

¹¹ "Putusan Mahkamah Konstitusi No. 103/PUU-XX/2022."

have the legal standing to submit an a quo petition because the Petitioner does not yet meet the requirements as a constitutional judge and does not have experience in the legal field as such. However, the Court can consider the applicant's legal position together with the subject matter of the application.

The recall of constitutional judge Aswanto is a serious issue because universal principles of judicial independence do not allow the process of removing judges while they are still in office just because of political disappointment. The prescription relevant to this issue is known as the principle of security of tenure which is one element of the principle of judicial independence where the new Constitutional Court Law also follows this prescription.¹²

The judge's considerations in the Constitutional Court's decision regarding the process of dismissing the Constitutional Court judge later caused a stir. Change of the phrase "Therefore" to "In the future" in the legal considerations section of Constitutional Court Decision No. 103/PUU-XX/2022 is at the heart of

the debate leading to alleged violations of ethics and behavior of constitutional judges¹³. Reporting in the Kompas daily media on page 3 on Friday 27 January 2023 with the title "The Substance of the Constitutional Court's Decision Allegedly Changed", the Constitutional Court responded by immediately holding a Judges' Deliberation Meeting (RPH) on Monday 30 January 2023, and then followed up with formed the Honorary Council of the Constitutional Court (MKMK) whose inauguration and oath-taking was held on February 9 2023.¹⁴

The formation of the Honorary Council of the Constitutional Court which is a mandate from Constitutional Court Regulation Number 1 of 2023. MKMK then held an examination of Guntur Hamzah, the judge who was suspected of having violated the code of ethics and behavior of constitutional judges as stated in the Sapta Karsa Utama - in this case part of the implementation Principle of Integrity. For this violation, M. Guntur Hamzah was subject to a written warning as the Suspect Judge. Thus the Decision of the MK Honorary Council Number 1/MKMK/T/02/2023 was read directly by

¹² Raraniken Ayuning Bintari, "Tinjauan Yuridis Independensi Mahkamah Konstitusi (Studi Putusan Mahkamah Konstitusi Nomor 103/PUU-XX/2022)," *Novum: Jurnal Hukum*, no. 103 (2022): 209–18, <https://doi.org/https://doi.org/10.2674/novum.v0i0>.

¹³ Muhammad Fuad Hassan and Anita Zulfiani, "Pelanggaran Kode Etik Dan Perilaku Hakim Konstitusi Dalam Tindakan Merubah

Substansi Putusan Secara Tidak Sah (Studi Putusan Majelis Kehormatan Mahkamah Konstitusi No.01/MKMK/T/02/2023)," *Ranah Research: Journal of Multidisciplinary Research and Development* 6, no. 1 (2023): 21–33, <https://doi.org/https://doi.org/10.38035/rj.v6i1>.

¹⁴ "Putusan Majelis Kehormatan Mahkamah Konstitusi Nomor 01/MKMK/T/02/2023 Tentang Pelanggaran Kode Etik Dan Perilaku Hakim Konstitusi," 2023. Hlm. 8

the Chairman and Member of the MK Honorary Council I Dewa Gede Palguna (public figure) accompanied by another Member of the MK Honorary Council, namely Enny Nurbaningsih (active Constitutional Judge), and Sudjito (academic). The decision was read out at the Decision Reading Session which took place on Monday (20/3/2023). In the conclusion read by the Chairman of the Honorary Council of the Constitutional Court I Dewa Gede Palguna, the Honorary Council of the MK found that it was true that there had been a change in the phrase "Therefore" to "In the future" in the legal considerations of MK Decision Number 103/PUU-XX/2022 dated 23 November 2022. This change is the reason for the difference between the sound of the text of the decision that was pronounced/read at the decision pronouncement hearing on 23 November 2022 and that stated on the Constitutional Court website which was signed by nine constitutional judges. Constitutional Justice M. Guntur Hamzah as the Suspected Judge admitted that this change was made as a suggestion or recommendation for changes to the legal consideration section of Constitutional Court Decision Number 103/PUU-XX/2022. Regarding the differences in phrases in the legal considerations section of Constitutional Court Decision no. 103/PUU-XX/2022, what applies is the decision pronounced,

namely the decision whose legal considerations are in paragraph (3.13.3) page 51 which contains the phrase "therefore...".¹⁵

B. Study of the Independence of Constitutional Court Judges in Constitutional Court Decision No. 90/PUU-XXI/2023

Constitutional Court Decision No. 90/PUU-XXI/2023 is a legal review case regarding Article 169 letter q of Law Number 7 of 2017, which regulates the minimum age limit of 40 years for Presidential and Vice Presidential candidates.

This application for judicial review was submitted by Almas Tsaqibbiru, the applicant stated in his application materials that the enactment of the provisions of Article 169 letter (q) of Law Number 7 of 2017 concerning General Elections has also caused real discrimination against the Petitioner, which is clear. It has clearly harmed and violated the Petitioner's constitutional rights, which rights are protected in the constitution in Article 28I paragraph (2) of the 1945 Constitution.

In the constitutional review of Article 169 letter q of Law No. 7 of 2017, the applicant's Legal Standing is very weak if it is only based on admiration or inspiration for one of the figures/Regional Heads who are in office and are considered to have had a

¹⁵ "Putusan Majelis Kehormatan Mahkamah Konstitusi Nomor

01/MKMK/T/02/2023 Tentang Pelanggaran Kode Etik Dan Perilaku Hakim Konstitusi."

positive impact on the economic growth of their region. This is also supported by not explaining in detail what kind of constitutional rights are being harmed by the existence of Article 169 letter q of Law Number 7 of 2017. Considering that the applicant at the time of submitting the application was not in the position of Regional Head or was preparing himself as a Presidential/Vice Presidential Candidate.

The issue of legal standing is made even more complex by the fact that the applicant does not meet the qualifications as a candidate for regional head, member of the legislature, or candidate for president or vice president. If there is no evidence of constitutional impairment, this should be the basis for the Constitutional Court to reject the petition. However, the Constitutional Court actually accepted and even granted the petition, which shows that the Constitutional Court's assessment of the applicant's legal standing was not sufficiently based on juridical considerations.¹⁶

Constitutional Court Decision No. 90/PUU-XXI/2023, the Constitutional Court has introduced new regulations that are not in accordance with the

Constitutional Court's basic principles, namely testing the constitutionality of existing norms. For example, in the case of the 40 year age requirement, the Constitutional Court should only decide whether the requirement is in accordance with the constitution or not. The addition of additional requirements such as "ever/currently serving through general elections including regional head elections" is considered inappropriate in the Constitutional Court's decision¹⁷.

The next thing that emerged after the MK decision was issued was the concept of open legal policy. The Petitioner mentioned open legal policy in Constitutional Court Decision No. 22/PUU-XV/2017 which states: "... the Court cannot cancel it, because what is considered bad does not always mean it is unconstitutional, unless the legal policy product clearly violates morality, rationality and intolerable injustice...". The Petitioner understands that the authority to regulate age restrictions for serving as President or Vice President is not regulated in the constitution and therefore it is a legal policy that is open

¹⁶ Amran Anshary Kelilauw and Zuhad Aji Firmantoro, "Analisis Legal Standing Dan Konsistensi Putusan Mahkamah Konstitusi Dalam Pengujian Materiil UU Nomor 7 Tahun 2017 Tentang Pemilihan Umum : Studi Kasus Putusan No . 90 / PUU- XXI / 2023," *Jurnal Ilmu Hukum, Humaniora Dan Politik (JIHHP)* 3, no. 2 (2024): 97–107, <https://doi.org/https://doi.org/10.38035/jihhp.v4i2>.

¹⁷ Andi Muh. Taqiyuddin BN et al., "Menyoal Etika Profesi Hakim Dalam Putusan Mahkamah Konstitusi (MK) Nomor 90/PUU-XXI/2023 Tentang Syarat Usia Calon Presiden (Capres) Dan Calon Wakil Presiden (Cawapres) Perspektif Risalatul Qada 'Umar," *Madani: Jurnal Ilmiah Multidisiplin* 1, no. 11 (2023): 626–38, <https://doi.org/https://doi.org/10.5281/zenodo.10401646>.

to the legislators (open legal policy) to regulate it.¹⁸

Conceptually, open legal policy is the authority of law makers. Law makers in accordance with their constitutional authority can formulate norms in laws as open legal policies as long as these norms are not expressly regulated in the 1945 Constitution and these norms are valid and binding on the public until they are decided or given another meaning by the Court.¹⁹

In this case, the concept of open legal policy interpreted by the Constitutional Court is contradictory when compared with decision no. 29/PUU-XXI/2023. The MK rejected it on the grounds that this application fell into the category of open legal policy, which in this case provides for the legislators to form separate legal norms as further explanations of the provisions in the 1945 Constitution. The MK's view differs from decision no. 90/PUU-XXI/2023. The Constitutional Court is of the opinion that the concept of open legal policy is in principle still recognized for its existence but is not absolute because the norm in question applies as an open legal policy norm as long as it does not become the object of judicial review at the Court. Quoting the

opinion of a lecturer at the Department of State Administration, Faculty of Law, UGM, Andi Sandi Antonius Tabusassa Tonralipu, that the main problem in the Constitutional Court's decision is consistency²⁰.

In decision Number 90/PUU-XXI/2023 regarding the lawsuit regarding the minimum age for vice presidents, dissenting opinions emerged from several Constitutional Court judges who refused to grant the lawsuit regarding the cancellation of the minimum age for vice presidential candidates. There are at least two groups who have two different reasons for rejecting the decision. The first was Arief Hidayat and Saldi Isra who mentioned the issue of ethical violations and irregularities in the decision-making process and court process and then from other judges, namely Wahiddudin Adams and Suhartoyo, who questioned the legal standing and the opinion that article 169 letter q in Election Law no. 7 of 2017 is an open legal policy where as long as it does not conflict with the law, the DPR has the right to propose age restrictions²¹.

After the issuance of the Constitutional Court decision no. 90/PUU-XXI/2023, there are several

¹⁸ "Putusan Mahkamah Konstitusi No. 90/PUU-XXI/2023," 4 (2023).

¹⁹ Putusan Mahkamah Konstitusi No. 90/PUU-XXI/2023.

²⁰ Mellani Mugia Adhita, "Independensi Hakim Mahkamah Konstitusi Dalam Perkara Pengujian UU Yang Memuat Conflict Of Interest Pada Putusan MK No.90/PUU-XXI/2023," Nusantara: Jurnal Pendidikan, Seni, Sains, Dan

Sosial Humaniora 1, no. 2 (2023): 1–25, <https://doi.org/10.11111/nusantara.xxxxxxx>.

²¹ Yahya Lutfi Kurniawan et al., "Analisa Yuridis Dissenting Opinion Putusan Nomor 90/PUU XXI/2023Terkait Argumen Open Legal Policy Dan Etika Hakim MK," *Gudang Jurnal Multidisiplin Ilmu* 1, no. 6 (2023): 192–97, <https://doi.org/https://doi.org/10.59435/gjmi.v1i6.180>.

applications for review of Law Number 7 of 2017 Article 169 letter q, including Case No, 145/PUU-XXI/2023 which was requested by Denny Indrayana and Zainal Arifin Mochtar, the applicants argued for the norms of Article 169 letter q of Law 7/2017 as contained in MK decision No.90/PUU-XXI/2023 does not meet the formal requirements because the decision suffers from formality defects in the preparation and implementation of a norm. This makes the decision not meet the formal requirements and becomes invalid, so it is in conflict with Article 1 paragraph (1), (2), (3), Article 24 paragraph (1), and Article 28D paragraph (1) of the 1945 Indonesian Constitution. and Article 17 paragraphs (5) and (6) of Law No. 48 of 2009 concerning Judicial Power. The decision was read by the Chief Justice of the Constitutional Court, Suhartoyo, who rejected the applicant's request for provisions. In the main petition, rejecting the petitioners' petition in its entirety. Then filed Case Number 154/PUU-XXI/2023 and Case Number 159/PUU-XXI/2023. Regarding the two petitions submitted, the Constitutional Court decided to reject all the petitions. Regarding the Petitioner's argument in Case Number 154/PUU-XXI/2023, Constitutional Justice Enny Nurbaningsih stated that the provisions of Article 169 letter q of the Election Law as interpreted in Constitutional Court

Decision Number 90/PUU-XXI/2023 do not conflict with the principles of the rule of law, the principle of judicial power. independence, the principles of integrity, justice and statesmanship, as well as the protection, promotion, enforcement and fulfillment of human rights contained in Article 1 paragraph (3), Article 24 paragraph (4), and Article 28I paragraph (4) of the 1945 Constitution.²²

Constitutional Court Decision NO. 90/PUU-XXI/2023, then participated in testing the implementation of the principle of independence of Constitutional Court judges. The ruling granted that a person under 40 years of age who was elected as Regional Head or other elected official be eligible to run for President or Vice President on condition that they pass certain material tests and fulfill other eligibility requirements. The Constitutional Court's decision was read by the Chief Justice of the Constitutional Court, Anwar Usman, Gibran Rakabuming's uncle and Jokowi's brother-in-law. Of course, a conflict of interest cannot be avoided in this Constitutional Court decision.

After the Constitutional Court decision no. 90/PUU-XXI/2023, allegations emerged of the existence of a political dynasty and even nepotism. Regarding alleged violations of the code of ethics and behavioral guidelines for judges, at least twenty complaints were submitted to the Constitutional Court, as

²² <https://www.mkri.id/index.php?page=web.Berita&id=19979>

stated in Decision Number 90/PUU-XXI/2023. Every complaint is followed up by the Honorary Council of the Constitutional Court (MKMK).²³

Following up on public complaints, Jimly Asshiddiqie as Chair of the MKMK led an open session regarding reports of violations as stated in the Sapta Karsa Hutama principles of impartiality, integrity principles, competence and equality principles, independence principles, and the principles of appropriateness and politeness²⁴. The Honorary Council of the Constitutional Court issued decision Number 2/MKMK/L/11/2023 which stated that the Chief Justice of the Constitutional Court, Anwar Usman, was proven to have committed a serious violation of the code of ethics and behavior of constitutional judges as stated in the Sapta Karsa Hutama, Principle of impartiality, Principle of integrity, Principle of competence. and equality, the principle of independence, and the principle of appropriateness and decency²⁵. Responding to the decision of

the Honorary Council of the Constitutional Court Number 2/MKMK/L/11/2023, he refused to say that he had a conflict of interest, according to him, the case for judicial review of the 1945 Constitution only concerned norms, not concrete cases, and The decision making is collective by 9 constitutional judges, not by just one chairman.²⁶

In its decision, the Honorary Council of the Constitutional Court stated that it had no authority to provide a legal assessment of the Constitutional Court's decision NO.90/PUU-XXI/2023. This was explained by member of the Honorary Council of the Constitutional Court, Wahiduddin Adams, who said that the Honorary Council of the Constitutional Court was given the authority to reach out and cover all efforts to maintain and uphold the honor, nobility, dignity and code of ethics and behavior of constitutional judges²⁷.

The independence of judges is realized from the qualifications of statesmen to judge and decide cases at

²³ Atika Wahyuni Dekananda and Akmaluddin Syahputra, "Tinjauan Fiqh Siyasah Terhadap Putusan Mahkamah Konstitusi No. 90/PUU-XXI/2023 Tentang Batas Usia Capres Dan Cawapres," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 3 (2024): 253–60, <https://doi.org/https://doi.org/10.38035/jihhp.v4i3>.

²⁴ Nala Syandhira Suzeeta and Kayus Kayowuan Lewoleba, "Pelanggaran Kode Etik Oleh Hakim Mahkamah Konstitusi Terkait Dengan Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023," *Madani: Jurnal Ilmiah Multidisiplin* 1, no. 11 (2023): 256, <https://doi.org/10.5281/zenodo.10252190>.

²⁵ "Putusan Majelis Kehormatan Mahkamah Konstitusi Republik Indonesia Nomor 2/MKMK/L/11/2023" (2023).

²⁶ Mulazi Ibna Fikra, "Conflict of Interest Dalam Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Pengujian Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum," *Tanfidziy* 2, no. 2 (2023): 179–90, <https://doi.org/https://doi.org/10.47766/tanfidziy.v2i2.2352>.

²⁷ <https://www.antaraneews.com/berita/3811962/mkkm-tak-berwenang-nilai-putusan-mk-soal-syarat-usia-capres-cawapres>

the first and last level which are final and permanent. Another thing that is a focal point for judges' ethics is independence, which brings dissenting opinions in the form of judges' personal responsibility for their independence. Apart from that, there are ethics that a judge must have, namely impartiality or neutrality. Continuing the ethics of judges that must be fulfilled previously, namely the doctrine of equality. It applies to constitutional judges to be able to align people as equals, to behave wisely and with integrity regardless of interaction boundaries. Essentially, ethics determines the sustainability of human existence, contained in creating the Constitution. This relates to the fact that ethics is always relevant to the creation of constitutions, because throughout the time when there were constitutions there were ethics in them.²⁸

Constitutional Court judges must have a statesmanlike attitude in exercising judicial power to realize the ideals of a dignified legal state.²⁹

From the two decisions above, it can be concluded that the idea of

constitutional ethics is an important idea that must be developed in tandem with the idea of constitutional rules or constitutional norms. In its development, like the idea of constitutional rules or constitutional norms, the idea of constitutional ethics also has its own development. According to Jimly Asshidiqie, the development of the idea of constitutional ethics also has a counterpart to the development of the idea of constitutional rules or constitutional norms.³⁰

Quoting from Satjipto Rahardjo regarding his ideas regarding progressive law which emphasizes the principle that law is for humans and not humans for the law. Thus, law exists not for itself, but for something broader and greater. That is why when a problem occurs in or related to the law, it is the law that must be reviewed and corrected, not the other way around humans who are forced into the legal scheme³¹.

²⁸ Endriyani Lestari Lestari, "Kualifikasi Negerawan Sebagai Independensi Hakim Mahkamah Konstitusi Di Indonesia," *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 5, no. 2 (2023): 27–33, <https://doi.org/10.52005/rechten.v5i2.113>.

²⁹ Farabi and Tanaya, "Polemik Legalitas Pemecatan Hakim Konstitusi Oleh Lembaga Pengusul: Tinjauan Kasus Pemecatan Hakim Aswanto Dan Implikasinya Terhadap Kemandirian Kekuasaan Kehakiman."

³⁰ Fradhana Putra Disantara et al., "Ekstentifikasi Kewenangan Majelis

Kehormatan Mahkamah Konstitusi Dalam Memperkuat Gagasan Constitutional Ethics," *Litigasi* 24, no. 24 (2023): 40–63, <https://doi.org/10.23969/litigasi.v24i1.7232>.

³¹ Atikah Nurdzakiyyah, Eka Detik Nurwagita, and Galuh Putri Maharani, "Penghapusan Pasal 22 Undang-Undang Mahkamah Konstitusi Sebagai Upaya Memperkuat Independensi Hakim Konstitusi Atikah," *Jurnal Studia Legalia: Jurnal Ilmu Hukum* 3, no. 2 (1987), <https://doi.org/10.1111/j.1755-6988.1987.tb01467.x>.

IV. Conclusion and Suggestion

The independence of the Constitutional Court as an institution of judicial power was tested by the entry of several cases. The existence of a conflict of interest in the process of examining incoming cases tests how the Constitutional Court judges are able to hand down decisions that contain the values of justice, equality and the independence of the judges themselves. Constitutional Court Decision No. 103/PUU-XX/2022 and Constitutional Court Decision No. 90/PUU-XXI/2023 is proof that the Constitutional Court judges' bias towards the object of the

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petition is very strong. The consistency of Constitutional Court Judges in handing down decisions still needs to be evaluated.

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