

ANALYSIS OF CONSTITUTIONAL COURT DECISION NUMBER 90/PUU-XXI/2023 FROM THE PERSPECTIVE OF JUDGES' INDEPENDENCE AND ACCOUNTABILITY: A CASE STUDY OF PUBLIC TRUST.

The Gift of Immanuel Sitianta Sembiring

Law Study Program, Muhammadiyah University of Education, Sorong
anugrahimanuel27@gmail.com

Muhammad Hasan Rumlus

Law Study Program, Muhammadiyah University of Education Sorong
hasanrumlus97@gmail.com

Adi Randi Rajab

Muhammadiyah University of Education Sorong
iduli0053@gmail.com

Abstract

This study aims to analyze Constitutional Court Decision Number 90/PUU-XXI/2023 from the perspective of judicial independence and accountability, as well as its implications for public trust. The decision has generated significant debate in constitutional law discourse, as it reflects an expansion of the Constitutional Court's role in norm formation, which may affect public perceptions of judicial neutrality. This research employs a normative juridical method using statutory and conceptual approaches. The data consists of primary and secondary

legal materials, including court decisions, academic literature, and survey reports from credible institutions measuring public trust in the Constitutional Court. The analysis is conducted qualitatively by examining the conformity of the decision with the principles of judicial independence and accountability. The findings indicate that Constitutional Court Decision Number 90/PUU-XXI/2023 has significant implications for public perception, as reflected in the decline of public trust in the institution. From a theoretical perspective, this phenomenon can be understood through the balance between judicial independence and accountability, where an imbalance between the two may affect institutional legitimacy. Furthermore, the decline in public trust suggests pressure on diffuse support toward the Constitutional Court as the guardian of the constitution. In response to this condition, the Constitutional Court has undertaken various measures to strengthen institutional accountability and transparency. However, this study emphasizes the importance of enhancing oversight mechanisms, enforcing judicial ethics, and implementing institutional reforms to maintain judicial integrity and sustainably restore public trust.

Keywords: Constitutional Court, Judicial Independence, Accountability of Judges.

INTRODUCTION

The Constitutional Court (MK) of the Republic of Indonesia was established as a main pillar in the Indonesian constitutional system, carrying out a crucial role as the guardian of the constitution and protector of justice. As stated by Susmayanti (2025), decisions taken by the Constitutional Court should reflect pure principles of justice and be free from all forms of political interests.

There are three functions of power classically recognized in legal and political theory: legislative, executive, and judicial. Baron de Montesquieu (1689-1785) idealized these three functions of state power as institutionalized within three state organs. Each organ may

only perform one function and may not interfere in each other's affairs.¹

The Independence and Accountability of the Constitutional Court were tested through Decision Number 90/PUU-XXI/2023 which gave rise to controversy after the issuance of this decision. This controversy was further strengthened when seen in the dynamics of the trial on the same day, October 16, 2023. Before reading Decision No. 90, the Constitutional Court first rejected similar petitions filed in Case No. 29/PUU-XXI/2023 and Case No. 51/PUU-XXI/2023. In both cases, the applicants asked the Constitutional Court to review the constitutionality of Article 169 letter q of Law Number 7 of 2017 concerning General Elections, which stipulates a minimum age requirement of 40 years for Presidential/Vice Presidential Candidates. The applicant's main argument is that the age limit is discriminatory and contradicts the constitutional rights of citizens to obtain equal opportunities in government, as guaranteed by Article 28D paragraph (3) of the 1945 Constitution. However, the Constitutional Court firmly rejected the application, considering that determining the age limit is an open legal policy which is the authority of the legislators (DPR and President).

The erosion of public trust is based on the Constitutional Court's change of stance in Decision No. 90/PUU-XXI/2023, which was deemed rife with political interests. This is confirmed by several surveys that record a decline in public trust in the Constitutional Court (Indopol: from 76.94% in October 2023 to 58.54% in November 2023 post-Decision).²Kompas Research and Development (2024)

¹Jimly Asshiddiqie, *Development and Consolidation of State Institutions Post-Reformation*. (Jakarta: Konstitusi Press, 2006), p. vii.

²Mochammad Farhan, Uu Nurul Huda, "Analysis of Negative Public Response to Constitutional Court Decision Number 90/PUU-XXI/2023 and Its Impact on the President's Role in the Indonesian Government Institutional System", *Jurnal Hukum Legalita* Vol 6 No 2 (2024): 151.

emphasized that public trust is an inevitability that must continue to be maintained and cared for, because it is the main capital in carrying out law enforcement functions.

In Decision No. 90, the Constitutional Court granted a portion of the petition, which had similar substance, by adding an alternative phrase to Article 169 letter q, so that the requirement became a minimum age of 40 (forty) years or having held/currently held a position elected through general elections, including regional head elections. In Decision Aquo, an expert in Constitutional Law, Zainal Arifin Mochtar, stated that the decision was not independent and was influenced by political interests.

MomentumPolitics and law have great potential to be important pillars in strengthening democracy, but they must be managed carefully. It is important to be aware of the potential risk of betrayal of democratic values, which could threaten the quality of national politics and set a negative precedent for law enforcement in Indonesia.³

Based on the above description, it is clear that there is a real and measurable crisis of public confidence in the Constitutional Court, triggered by a single controversial judicial decision. Therefore, this research is relevant and important to conduct to comprehensively analyze how the principles of judicial independence and accountability are tested in decision No. 90/PUU-XXI/2023.

As for the objectives thatThe author wants to achieve is to critically analyze the Constitutional Court's efforts to maintain institutional integrity following Constitutional Court Decision Number 90/PUU-XXI/20023.

RESEARCH METHODOLOGY

³Nugrah, KP, D. Puspitasari, and R. Anggraini, "Analysis of Legal Reasoning and the Impact of Constitutional Court Decision Number 90/PUU-XXI/2023", *Jurnal Fundamental Justice*, 5, no. 2 (2024): 89-104

Type This research is a juridical-normative legal research. This research focuses on the analysis of library materials or secondary data. This research uses secondary data obtained entirely through literature studies.

DISCUSSION

A. Conceptual Basis of Judicial Power

The principles of the rule of law and the supremacy of law outlined above cannot be effectively realized without an institutional architecture consciously designed to address the fundamental challenge of political science: how to limit power itself. The doctrine of the separation of powers, whose roots can be traced back to the thought of Aristotle and John Locke, arose from a deep concern about the natural tendency of power to corrupt and become absolute.

As a logical consequence of efforts to realize the supremacy of law and prevent tyranny, modern constitutional states have adopted the principle of separation of powers. This idea was theoretically popularized by the French philosopher, Charles-Louis de Secondat, often called Montesquieu, in his monumental work, *L'Esprit des Lois* (The Spirit of the Laws). Montesquieu argued that the concentration of power in the hands of a single individual or institution would inherently tend to be corrupt and absolute, ultimately destroying the freedom of citizens. With these consequences, the doctrine of *Trias Politica* offers a solution by dividing state power into three branches that have different, separate, and mutually balancing functions.⁴

Analysis by Arliman S. (2025) shows that the Indonesian model allows for functional relationships and ties between state

⁴Fuad Hasan, "Trias Politica Indonesia: Pillars of Sustainable Democracy", FOKUSCOID, accessed May 2, 2026, <https://fokus.co.id/trias-politica-indonesia-pilar-demokrasi-yang-berkelanjutan>

institutions, which then gives birth to a check and balances mechanism, this system is consciously designed to avoid the superiority of one institution over another, where each branch of power can exercise limited control over other branches of power to ensure that everything runs according to the constitutional corridor (People's Consultative Assembly of the Republic of Indonesia, 2017).

In this state architecture, the judiciary is positioned as an independent and equal branch of power. After the amendment to the 1945 Constitution of the Republic of Indonesia, judicial power is no longer monolithic, but is exercised by the Supreme Court (MA) and the Constitutional Court (MK), as stated in Article 24 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. According to Adnyani (2025), the redesign of the authority of judicial power by establishing the Constitutional Court is a strategic step to strengthen the vertical checks and balances mechanism, namely between the legislators and the constitution as the highest law. With its authority to conduct constitutional review of laws, the Constitutional Court functions as a "gatekeeper" that ensures that legislative products do not violate the constitutional rights of citizens and the basic principles contained in the 1945 Constitution.

B. Fundamental Theory of Judicial Independence and Accountability

After understanding the position of judicial power within the architecture of a state based on the rule of law, the following discussion will focus on the two theoretical pillars that underpin its legitimacy: independence and accountability. These two principles are often viewed in dialectical tension; on the one hand, independence demands freedom from interference, while on the other, accountability demanding accountability.

According to Isra (2025), the ideal of a plenary judicial power can only be achieved when these two principles operate in harmonious balance. They are not mutually exclusive concepts, but rather two sides of the same, inseparable coin. Without independence, the judiciary is vulnerable to becoming a tool of power; but without accountability, the judiciary risks becoming an absolute and uncontrolled force, which will ultimately erode public trust.

C. The Principle of Independence of the Judicial Power (Judicial Independence)

The independence of the judiciary is the heart of a functioning state based on the rule of law. This principle is universally recognized as an absolute prerequisite for the implementation of a fair and impartial trial. The normative basis for this guarantee is structured in layers, starting with the 1945 Constitution of the Republic of Indonesia, which fundamentally affirms the position of the judiciary as an independent branch of government. This constitutional principle is further elaborated in Law Number 48 of 2009 concerning Judicial Power, which operationally prohibits all forms of interference with judges in deciding cases. To complement this guarantee, an external oversight mechanism was established through the Judicial Commission (KY), which, based on Law Number 18 of 2011, is tasked with maintaining the honor and dignity of judges by enforcing a code of ethics to ensure that independence is not abused. Based on these points, there are four things that must be considered: freedom from external influence, judicial autonomy in deciding cases, impartial justice, and guaranteed tenure.

According to Mahfud MD (2025), the urgency of this independence lies in its function as the last line of defense for citizens in protecting their constitutional rights from potential state arbitrariness.

The Constitutional Court's Efforts to Maintain Institutional Integrity Post-Decision Number 90/PUU-XXI/2023.

Ethical violations by Constitutional Court judges seriously impact the integrity and accountability of the judiciary and can undermine public confidence in the judicial system. Judges who violate ethics damage the image of justice and can cause the public to lose confidence in the judicial system as a whole. Judicial accountability depends on transparency and oversight, and ethical violations by Constitutional Court judges can demonstrate a lack of accountability, fuel suspicion, and impact political stability. The image of the judiciary is shaped by its decisions, which are the final bastion of law enforcement and justice.⁵

Judicial independence is not unfettered freedom. To prevent this independence from degenerating into judicial absolutism, an effective accountability mechanism is necessary. The Constitutional Court's most crucial effort in responding to the crisis following Decision No. 90 was the activation of the Constitutional Court's Ethics Council (MKMK) as an instrument of ethical accountability.

The legal explanation for this step demonstrates that the MKMK functions as a "safety valve" ensuring that judicial independence is not abused for extrajudicial purposes. By enforcing the Code of Ethics and Guidelines for Judicial Conduct (KEPPH), the

⁵Edo Maranata Tambunan, et.all., Analysis of the Existence of Constitutional Court Judges in Realizing a Judicial System with Integrity and Accountability (MK Decision No.90/PUU-XXI/2023), Iblam Law Review, Vol 4 No.2 (2024), p. 56.

MKMK seeks to correct personal behavior by judges deemed to undermine the institution's integrity. Academically, this action embodies the balance between independence and accountability; where a judge's personal independence fails to maintain a distance from conflicts of interest, accountability mechanisms must operate to maintain the moral legitimacy of the institution as a whole.

The role of the MKMK is to uphold the principles of judicial ethics and professionalism. In upholding justice for the judges adjudicating Decision Number 90/PUU-XXI/2023, the MKMK issued a ruling, which will be outlined as follows:

Table 1. Statement of the Constitutional Court Judges Regarding Decision Number 90/PUU-XXI/2023.

No.	Constitutional Judge	Position in the Decision	Substance of Views
1.	Anwar Usman	<i>Majority Opinion</i>	Agreeing to the interpretation that the age requirement can be met alternatively through experience gained from general elections.
2.	Manahan MP Sitompul	<i>Majority Opinion</i>	Considering public office experience as an indicator of leadership capacity that can replace age requirements
3.	Mr. Guntur Hamzah	<i>Majority Opinion</i>	Affirming that the decision remains legally valid even if there are ethical issues in the process
4.	Enny Nurbaningsih	<i>Concurring Opinion</i>	Assessing the constitution needs to be interpreted dynamically so that it remains relevant to the development of democracy.
5.			Assessing the constitution

	Daniel Yusmic P. Foekh	<i>Concurring Opinion</i>	needs to be interpreted dynamically so that it remains relevant to the development of democracy.
6.	Isra's Balance	<i>Dissenting Opinion</i>	Rejected because the Court was deemed to have exceeded its authority by creating new norms.
7.	Arief Hidayat	<i>Dissenting Opinion</i>	Criticizing procedural aspects and their impact on the credibility of judicial institutions
8.	Wahiduddin Adams	<i>Dissenting Opinion</i>	Emphasizing that changes to norms should be made by lawmakers, not the Court
9.	Suhartoyo	<i>Dissenting Opinion</i>	In some considerations it shows disapproval of the extension of norms too far.

Source: Copy of Constitutional Court Decision Number 90/PUU-XXI/2023.

Based on the description in the table above, it is clearly visible that the Constitutional Court (especially those who took the Majority Opinion position) is trying to legalize changes related to Article 169 letter q by adding the alternative requirement of having/currently held a position as a regional head who was directly elected through general elections, with the consideration that the Constitutional Court is trying to provide justice and equal opportunities for young people based on Article 27 paragraph 1 of the 1945 Constitution, Article 28D paragraph (1) of the 1945 Constitution, and Article 28D paragraph (3) of the 1945 Constitution (Constitutional Court 2023).

As for The decision resulting from the trial conducted by the Constitutional Court to hear the nine judges who decided the A quo case was based on the Code of Ethics and Conduct of Judges (KEPPH).

MKMK's Decision

Nine JudgesThe Constitutional Court (MK) has proven unable to maintain the confidentiality of the judges' deliberation meeting (RPH) regarding the age limit for presidential and vice-presidential candidates. This was revealed in the MKMK ruling read by the Chairman of the Constitutional Court's Honorary Council (MKMK), Jimly Asshiddiqie, at the Constitutional Court building in Jakarta on Tuesday (November 7, 2023).⁶ On the other hand, the MKMK also assessed that the nine Constitutional Court justices collectively allowed conflicts of interest to arise. Jimly revealed that all the Constitutional Court justices lacked the commitment to remind each other. This was due to a work culture characterized by a lack of respect for each other, which led to the neglect of equality among judges and the prevalence of ethical violations..

CONCLUSION

Constitutional Court Decision Number 90/PUU-XXI/2023 resulted in a crisis of public trust due to a legal anomaly in the form of the court's inconsistency in implementing the principle of open legal policy to become a positive legislator in a very short time. Theoretically, this crisis was triggered by the phenomenon of Judicial Moral Hazard, where the judicial process is perceived by the public to have been co-opted by elite political interests and conflicts of interest. The sociological impact is also measured by the decline in the level of public trust from various survey institutions that undermined diffuse support from among the community for the Constitutional Court.

⁶Yefta CA Sanjaya, Rizal Setyo Nugroho, "MKMK Decision: 9 MK Judges Proven to Receive Oral Sanctions", Kompas.com, accessed May 2, 2026. <https://www.kompas.com/tren/read/2023/11/07/193107465/putusan-mk-mk-9-hakim-mk-terbukti-langgar-etik-hanya-disanksi-lisan>.

The Constitutional Court is striving to maintain institutional integrity following Decision Number 90/PUU-XXI/2023 by optimizing ethical and public accountability mechanisms. A crucial step is the establishment of the Constitutional Court's Committee (MKMK) as an instrument for enforcing the code of ethics to correct violations of judges' personal integrity. Furthermore, the Court is striving to reconstruct its legitimacy through increased transparency, such as providing live streaming of court proceedings and real-time access to verdict texts, to fulfill the public's right to information and realize a judiciary that is open to social scrutiny.

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