



# *The Requirements of the Statesman Principle Of The Honorary Council of the Constitutional Court as the Guardian Of Ethics*

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*The principle of statesmanship is an important foundation for every individual who serves as a member of the Honorary Council of the Constitutional Court to uphold the code of ethics in handling ethical violations by Constitutional Court Judges, as stipulated in Constitutional Court Regulation Number 1 of 2023. However, the regulation does not explicitly contain a requirement that prospective members of the Honorary Council of the Constitutional Court must have a spirit of statesmanship. Therefore, this study uses a normative approach to comprehensively analyze the principles of statesmanship in the context of laws and regulations governing the Honorary Council of the Constitutional Court. A conceptual approach is used to integrate the principle of statesmanship as one of the requirements for a person to become a member of the Honorary Council of the Constitutional Court. By combining literature review and analysis of relevant legal regulations, this research aims to provide recommendations regarding the importance of including the principle of statesmanship as a formal requirement in the selection process of candidates for members of the Honorary Council of the Constitutional Court. Thus, the results of this study are expected to make a positive contribution to improving the regulation and management practices of the Honorary Council of the Constitutional Court in Indonesia..*

**Keywords :** *statesmanship; honor council of the constitutional court; guardian of the code of ethics of constitutional court judges.*

## I. INTRODUCTION

The establishment of the Constitutional institution in the third amendment of the 1945 Constitution made this judicial institution equal to the Supreme Court as part of the judicial power. Article 24 paragraph (2) of the 1945 Constitution, the authority of the Constitutional Court is explained that The content of the article means that judicial power is exercised by the Supreme Court and 4 lower courts in various fields and the Constitutional Court

The Honorary Council of the Constitutional Court is a body established by the Constitutional Court and consists of Constitutional Judges or Constitutional Judges and other elements. Its task is to monitor, examine, and provide recommendations for action against Constitutional Judges who are suspected of violating the Code of Ethics for Constitutional Judges, the Code of Conduct for Constitutional Judges, or legal norms stipulated in laws and regulations. "The Bangalore Principles, which include the principles of independence, impartiality, integrity, propriety and decency, equality, skill, and fairness, as well as the principles of wisdom and discretion recognized in Indonesian society, are used as guidelines and benchmarks for assessing the conduct of constitutional judges. The aim is to uphold honesty, trustworthiness, chivalry, sportsmanship, discipline, hard work, independence, shame, responsibility, honor, and dignity as constitutional judges. The principles in the Code of Ethics and Conduct for Constitutional Judges are intended to complement, not detract from, the existing legal and behavioral provisions that bind constitutional judges.

However, Constitutional Court Regulation No. 1 of 2023 governing the MKMK does not include a mandatory requirement for prospective MKMK members to have the principle of statesmanship. The principle of

statesmanship includes integrity, exemplary, and the ability to lead wisely. This requirement is considered important because the role of MKMK is not only technical, but also strategic in maintaining the dignity and honour of the Court. The absence of this statesmanship requirement raises concerns about the potential for violations of the code of ethics that are not properly resolved, which in turn can damage the credibility of the Constitutional Court as the guardian of the constitution.

The absence of the requirement of statesmanship in this regulation raises various questions regarding the effectiveness of MKMK. The principle of statesmanship is expected to ensure that MKMK members not only understand the law and code of ethics, but also have a strong leadership spirit and a broad view in deciding cases of ethical violations. This is important because the decisions made by MKMK will affect the image and public trust in the Constitutional Court.

Without the requirement of statesmanship, there is the potential that MKMK cannot effectively deal with violations of the code of ethics committed by Constitutional Judges. This could result in a decline in public confidence in the Court's ability to maintain the integrity of the institution. In addition, decisions made in the absence of the principle of statesmanship could be quite unfair and unwise, which could damage the reputation of the Constitutional Court as a respected institution.

In addition, this lack of statesmanship requirement could also result in the election of MKMK members who may have conflicts of interest or insufficient understanding of the complexity of the task at hand. This could negatively impact the quality of supervision and enforcement of the code of ethics. As a result, violations that occur within the Constitutional Court may not be properly addressed, thus weakening the existing legal and governance system.

The Constitutional Court is a judicial institution that upholds Pancasila and the 1945 Constitution. As the guardian of the constitution and the final interpreter of the constitution, the Constitutional Court has great responsibility and high morals in every decision made when examining and adjudicating cases. Constitutional judges who were reported in cases of alleged ethical violations related to decision No.90/PUU-XXI/2023. Based on the investigation of the Honorary Council of the Constitutional Court, there were 18 reports from different reporters regarding alleged violations of the ethics of constitutional judges. This violation of the code of ethics was proven in the trial of the Honorary Council of the Constitutional Court (MKMK), although a Constitutional Court judge has freedom and confidence in resolving each case. In State Administrative law, the legal relationship that occurs is between Government Officials as the governing party and citizens as the governed party. The government carries out *bestuurszorg*, namely the implementation of the public interest, which is carried out by the state administrative authorities with the authority obtained through state administrative law. The exercise of state power over individuals and citizens should not be done arbitrarily, making them mere objects. Authority is the power to perform a public legal act. According to Karl Olivecrona, authority is "organized power." The nature of the Government's authority is always tied to a specific period, which is set out in its basic rules. This authority is also subject to specified limits, including territorial limits and the scope of the material of its authority, and its implementation must be in accordance with written and unwritten law. In the face of extremely harsh environmental conditions and the inability of the Forestry Minister to prevent environmental damage, a commitment to open government and equitable access is important in the administrative process. This focus should remain paramount for administrators and courts. Careful judgment is needed to ensure that in the incorporation of case studies, adequate space is available to cover the topics of administrative organization and structure, administrative law theory, and the remedial basis of judicial review. From this background, the problem formulation arises: Why does Constitutional Court Regulation No. 1 of 2023 not include the requirement of statesmen as members of the Honorary Council of the Constitutional Court?

## II. LITERATURE REVIEW

The Honorary Council of the Constitutional Court is a body established by the Constitutional Court, consisting of Constitutional Judges or Constitutional Judges together with other elements. Its task is to monitor, examine, and provide recommendations for action against Constitutional Judges who are suspected of violating the Code of Ethics for Constitutional Judges, the Code of Conduct for Constitutional Judges, or legal norms stipulated in laws and regulations. The Honorary Council also has the authority to maintain the dignity and honor of the Court and has the authority to examine and decide on alleged violations of the Code of Ethics and Conduct of Constitutional Judges. The Honor Council is responsible for enforcing the Code of Ethics and Code of Conduct for Constitutional Judges. This includes gathering information or testimony related to alleged offenses committed by Constitutional Court Judges. The Council then examines the information and makes recommendations to the Chairman of the Constitutional Court regarding potential actions to be taken.

Candidate members of the Honorary Council mentioned in Article 4 paragraph (1) letter b are public figures appointed by the RPH by fulfilling the following requirements: a. have integrity and impeccable personality; b. be honest, fair, impartial, and non-partisan; c. be at least 60 years old; and d. have extensive knowledge in the field of ethics, morals, and the profession of judges, as well as understanding the constitution and decisions of the Constitutional Court. Candidates for members of the Honorary Council mentioned in Article 4 paragraph (1) letter c are academics appointed by the RPH by fulfilling the following requirements: a. have integrity and an irreproachable personality; b. honest, fair, impartial, and non-partisan; c. at least 60 years old; d. has extensive knowledge in the field of ethics, morals, and the profession of judges, and understands the constitution and decisions of the Constitutional Court; and e. is a professor in the field of law.

Membership of the Honorary Council referred to in paragraph (1) be permanent for three years or ad hoc principles arranged by RPH. A reported faction against a Constitutional Judge as referred to in paragraph (1) letter a, his/her membership shall be replaced according to the decision of RPH. If all Constitutional Judges become reported parties, their membership shall be determined by the RPH. Article 5 (1) Prospective members of the Honorary Council as referred to in Article 4 paragraph (1) letter b shall be public figures appointed by the RPH by fulfilling the following requirements: a. have integrity and irreproachable personality; b. be honest, fair, impartial, and non-partisan; c. be at least 60 years old; and d. have extensive knowledge in the field of ethics, morals, and the profession of judges, and understand the constitution and decisions of the Constitutional Court. (2) Candidates for members of the Honorary Council mentioned in Article 4 paragraph (1) letter c are academics appointed by the RPH by fulfilling the following requirements: a. have integrity and irreproachable personality; b. be honest, fair, impartial, and non-partisan; c. be at least 60 years old; d. have extensive knowledge in the field of ethics, morals, and the profession of judges, as well as understanding the constitution and decisions of the Constitutional Court; and e. be a professor in the field of law..

Candidates for members of the Honorary Council as referred to in Article 4 paragraph (1) letter b are community leaders appointed by the RPH, by fulfilling the following requirements: a. have integrity and impeccable personality; b. honest, fair, impartial, and non-partisan; c. at least 60 (sixty) years old; and d. have broad insight in the field of ethics, morals and the profession of judges, as well as understanding the constitution and decisions of the constitutional court. (2) Candidates for members of the Honorary Council as referred to in Article 4 paragraph (1) letter c are academics appointed by the RPH, by fulfilling the following requirements: a. have integrity and an irreproachable personality (2) The membership of the Honorary Council as referred to in paragraph (1) shall be permanent for a term of office of 3 (three) years or ad hoc as determined in the RPH. (3) In the event that the Constitutional Judge as referred to in paragraph (1) letter a is the reported party, its membership shall be replaced as determined in the RPH. (4) In the event that all Constitutional Judges are reported party, its membership shall be determined in the RPH..

Article 5 (1) Candidates for members of the Honorary Council as referred to in Article 4 paragraph (1) letter b are public figures appointed by the RPH, by fulfilling the following requirements: a. have integrity and impeccable personality; b. honest, fair, impartial, and non-partisan; c. at least 60 (sixty) years old; and d. have broad insight in the field of ethics, morals and the profession of judges, as well as understanding the constitution and decisions of the constitutional court. (2) Candidates for members of the Honorary Council as referred to in Article 4 paragraph (1) letter c are academics appointed by the RPH, by fulfilling the following requirements: a. having integrity and irreproachable personality; b. honest, fair, impartial, and non-partisan; c. at least 60 (sixty) years old; d. having broad knowledge in the field of ethics, morals and the profession of judges, as well as understanding the constitution and decisions of the constitutional court; and e. a professor in the field of law;

#### *Code of Conduct*

According to Shidarta, a code of ethics are moral principles that are intrinsically attached to a profession and are systematically organized. This means that a profession can continue to function even without a systematically designed code of ethics, because these moral principles are inherent in the profession. Nevertheless, the existence of a code of ethics becomes important as the number of professionals in the profession increases, and the demands of society become more complex. Therefore, at this point, the establishment of professional organizations becomes indispensable.

Along with the development of thoughts on the structure of the state, statesmen have emerged. One of Plato's works entitled *The Statesman* or *Politikos* describes a dialog between Socrates and Theodorus, his student. In the dialog, Plato proposes the idea that to be a leader, special abilities (gnosis) are required that only statesmen possess. These abilities include the skills to govern fairly and wisely and to prioritize the interests of the citizens..

1. A professional code of ethics is necessary for many reasons. First, as a social control tool that helps maintain the quality and behavior of members of the profession. Second, as a preventive measure against unwanted interference from other parties. Third, as an effort to prevent misunderstandings and conflicts among members of the profession as well as with the general public. In addition, the code of ethics also serves as a standard of professional principles that have been established, so that it can be ensured that members of the profession, both long-standing and new, or prospective members, clearly understand and comply with their professional obligations. It can also avoid conflicts of interest between fellow members of the profession or with the public in general. Through the implementation of a code of ethics, oversight can be provided to ensure that members of the profession are performing their professional duties in accordance with established standards.

### III. METHOD

This research uses a normative research approach to comprehensively analyze the principles of statesmanship in the perspective of laws and regulations on the Honorary Council of the Constitutional Court. A conceptual approach is used to integrate the principle of statesmanship as a requirement for members of the Honorary Council of the Constitutional Court. This research also utilizes literature sources and applies the perspective of the principle of statesmanship listed in the Constitutional Court Regulation Number 1 of 2023. The analysis focused on the principle of statesmanship applied in the United States to propose the requirement of statesmanship as a legal norm written in the Constitutional Court regulations. The purpose of this research is to provide input to the Honorary Council of the Constitutional Court as the protector of the constitution in order to become a highly respected institution. The focus of this research is to consider the principle of statesmanship as a formal requirement for selecting candidates for the Honorary Council of the Constitutional Court, which will be included in the amendment to Article 5 paragraph (1) of the Constitutional Court Regulation Number 1 of 2023..

### IV. RESULT AND DISCUSSION

*Regulation of the Constitutional Court Number 1 of 2023 does not include the requirement of statesmen as the Honorary Council of the Constitutional Court.*

The role of the Honorary Council of the Constitutional Court is a mechanism to oversee the behavior and actions of Constitutional Court judges in resolving cases at the national level. Unlike judges under the Supreme Court who are supervised by the Judicial Commission, Constitutional Court judges do not have supervision from the same institution. Therefore, the Honorary Council of the Constitutional Court has the authority to supervise and maintain the discipline of Constitutional Court judges.

The legal basis for the establishment of the Honorary Council of the Constitutional Court can be found in Law Number 24 of 2003 concerning the Constitutional Court, which has undergone several amendments including the latest with Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court. Constitutional Court Decision Number 56/PUU-XX/2022 also influenced the formation of this regulation, which came into force on June 20, 2022.

This regulation is intended to maintain and uphold the honor, dignity, and Code of Ethics of Constitutional Judges. In early 2023, the Constitutional Court issued Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court. This regulation explains that the Honorary Council of the Constitutional Court is an institution established by the Constitutional Court, whose members consist of Constitutional Judges or Constitutional Judges along with other elements. Its main function is to monitor, examine, and recommend action against Constitutional Court judges who are suspected of violating the Code of Ethics for Constitutional Judges, the Code of Conduct for Constitutional Judges, or violating legal norms stipulated in laws and regulations.

An analysis of the requirements set out in the Regulation on the Honorary Council of the Constitutional Court can be described as follows: to become a candidate for the Honorary Council as mentioned in Article 4 paragraph (1) letter b, a person must be a public figure appointed by a consultative meeting of judges. The requirements that must be met include having integrity and an irreproachable personality, honesty, fairness, impartiality, and non-partisanship, being at least 60 years old, and having a broad understanding in the fields of ethics, morals, the profession of judges, as well as understanding the constitution and decisions of the constitutional court. Meanwhile, in paragraph (2), the prospective member of the Honorary Council as referred to in Article 4 paragraph

(1) letter c is an academic appointed by the RPH. The requirements that must be met are similar to those previously mentioned.

Membership in the Honorary Council, as stated in paragraph (1), lasts for three years or may be ad hoc in accordance with the provisions in the RPH. Furthermore, in situations where a Constitutional Judge is the reported party, the replacement of his/her membership is determined in accordance with the provisions in the RPH. The same applies if all Constitutional Judges become reported. Article 5 paragraph (1) confirms that prospective members of the Honorary Council as referred to in Article 4 paragraph (1) letter b are also public figures appointed by the RPH, with the same requirements as previously described. Meanwhile, the prospective member of the Honorary Council as referred to in Article 4 paragraph (1) letter c is an academic who is also appointed by the RPH, with the additional requirement of being a professor in the field of law. The rules governing the Honorary Council of the Constitutional Court emphasize the competence of candidates in general, which includes experience in the field of law and having a good or irreproachable personality.

In other words, from the requirements listed in the Constitutional Court Regulation, it can be concluded that a person's character is assessed based on legal expertise and experience, without explicitly mentioning the criteria of a statesman. The definition of "Statesman" according to the Big Indonesian Dictionary refers to someone who is an expert in managing the country wisely, organizing policies with foresight, and overcoming state problems with wisdom and authority. Statesmen are also described as individuals who have a long-term view, care about the welfare of society, and promote equality and justice for all citizens. In English, "Statesman" is referred to as "statesman" or "stateswoman", referring to figures who are respected for their careers in state affairs, both at the national and international levels. Although the term "statesman" is mentioned in the 1945 Constitution to describe Constitutional Court judges, there is no clear definition of the concept in the various laws and regulations. In line with the concept above, not only prospective judges in the Constitutional Court and Supreme Court, but also the Honorary Council of the Constitutional Court are considered as statesmen in carrying out court processes related to the code of ethics for Constitutional Court judges who are accused of violating the code of ethics. Furthermore, the Honorary Council of the Constitutional Court is not involved in politicization efforts in imposing sanctions on Constitutional Court judges who violate the code of ethics, because the application of the code of ethics also reflects the principles of independence, impartiality, integrity, politeness, equality, competence and fairness that exist in society Indonesia. The principles of wisdom and discretion are also considered part of the code of ethics for constitutional judges.

The Honorary Council of the Constitutional Court is elected through a Judges' Consideration Meeting (RPH) which determines the candidates who will be part of the Honorary Council. Although in many references statesmen are often considered the same as politicians, in more depth, statesmen are better known for having vision, wisdom and impartiality which are reflected in their actions. This is different from politicians who tend to focus on personal or group interests in the name of the people's interests. By including the principle of statesmanship in the requirements to become a member of the Honorary Council of the Constitutional Court, it is hoped that the decisions produced by the assembly will be more objective when Constitutional Court judges violate the code of ethics, without taking sides or considering political factors, but instead providing sanctions that are in accordance with the interests of the state. For example, in MKMK Decision Number 02/MKMK/L/11/2023, the Honorary Council of the Constitutional Court (MKMK) decided that the Chief Justice of the Constitutional Court, Anwar Usman (Reported Judge), had violated several principles such as Impartiality, Integrity, Competency and Equality, Independence, as well as Appropriateness and Politeness as regulated in Sapta Karsa Hutama. As a result, the MKMK decided to dismiss Anwar Usman from the position of Chief Justice of the Constitutional Court. Questions arise regarding why Anwar Usman was only dismissed from the position of Chief Justice of the Constitutional Court but not from the position of judge of the Constitutional Court. Are there any special considerations between the Honorary Council of the Constitutional Court and Anwar Usman? A statesman is a figure who is an expert in running the country with visionary policies, prioritises the welfare of the community, and is able to be fair and nurture all components of the nation. In the context of MKMK, the principle of statesmanship is important to ensure that elected members can maintain the integrity of the institution and carry out their duties wisely. This principle includes the ability to make decisions that are not only based on the law and code of ethics, but also consider the long-term impact on the integrity of the institution and public trust. Adding the requirement of statesmanship as a formal

criterion will assist MKMK in maintaining and upholding the honour and dignity of the Constitutional Court.

The absence of statesmanship in the criteria for MKMK members poses several risks. Without this principle, there is a possibility that elected MKMK members may not have the leadership vision necessary to deal with complex ethical challenges. This may result in ill-advised decision-making that does not consider the long-term interests of the institution. In addition, without statesmanship, MKMK members may not be able to maintain public trust in the Court, which is critical to the legitimacy and effectiveness of the institution in carrying out its constitutional duties. To address this shortcoming, it is recommended that Constitutional Court Regulation No. 1 of 2023 be revised to include the principle of statesmanship as a formal requirement for prospective MKMK members. This will ensure that MKMK members not only have integrity and legal expertise, but also the leadership qualities necessary to maintain and uphold the code of ethics and honour of the Constitutional Court. With this requirement, MKMK is expected to function more effectively in overseeing and enforcing ethics among Constitutional Judges, thereby increasing public confidence in the Constitutional Court as the guardian of the constitution and democracy in Indonesia.

#### V. CONCLUSION

Whereas the rules governing the honorary council of the constitutional court prioritize the general competence of candidates who meet the criteria of being experienced in the field of law and having a good or irreproachable personality, meaning that if we look at the requirements contained in the Constitutional Court Regulations, it can be interpreted that a person's character is seen in their habits. or legal ability based on experience, has not specifically touched on the criteria for being a statesman. The Constitutional Court Regulation Number 1 of 2023 was formed in order to maintain and uphold the honor, dignity, and Code of Ethics of Constitutional Judges regarding the Honorary Council of the Constitutional Court, or Constitutional Judges, and other elements, to monitor, examine, and recommend action against Constitutional Judges who are suspected of violating the Code of Ethics for Constitutional Judges, the Code of Conduct for Constitutional Judges, or violating legal norms as regulated. The requirements for being on the Honorary Council do not yet include statesmen, because looking at the case at the end of 2023 in preparation for the 2024 general election, it is clear that the sanctions given by the honorary council still have a political element, which means that a judge's violation of independence is a serious violation of the code of ethics. So a statesman's self-view will not have thoughts of justice and integrity when applying just legal sanctions.

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