

The Position of The Honorary Council of The Constitutional Court in the Indonesian Legal Order

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ABSTRACT

This research is qualitative research with a normative approach. The data that researchers use in this article is secondary data that researchers obtained from various credible sources such as legal regulations, books, articles, scientific and various other sources. The data that the researchers used were analyzed using three legal analysis techniques, namely normative legal analysis techniques, historical legal analysis techniques, and teleological legal analysis techniques. The result in this article show The Honorary Council of the Constitutional Court has existed since the enactment of Law no. 24 of 2003, namely Article 23 paragraph (3), which states that; "Requests for dishonorable dismissal as intended in paragraph (2) letters b, c, d, f and g are made after the person concerned has been given the opportunity to defend himself before the Honorary Council of the Constitutional Court." Then in 2006 the Constitutional Court established a Regulation concerning the Honorary Council of the Constitutional Court, namely regulation Number 10/PMK/2006. Regarding changes to Law no. 24 of 2003, the Honorary Council was only defined after the enactment of Law no. 8 of 2011. Article 1 number 4 of Law no. 8 of 2011 states that: "The Honorary Council of the Constitutional Court is a device established by the Constitutional Court to monitor, examine and recommend actions against Constitutional Judges, who are suspected of violating the Code of Ethics and Code of Conduct for Constitutional Judges. Thus, the statement regarding the Honorary Assembly of the Constitutional Court only existing in 2023 is not justified. Theologically, the formation of the constitutional court has objectives, duties and authority, among others: 1. The Honorary Council has the authority to maintain the dignity and honor of the Court. 2. The Honorary Council has the authority to examine and decide on alleged violations of the Code of Ethics and Conduct of Constitutional Judges 3. Alleged violations of the Code of Ethics and Conduct of Constitutional Judges can be examined and decided within a maximum of 30 working days from the time the report is recorded in e-BRLTP 4. In terms of a period of 30 days If the inspection has not been completed, it can be extended for a maximum of 15 working days.

Keywords : Honorary Council, Constitutional Court, Indonesian Legal Order

INTRODUCTION

The Honorary Panel of Judges is a device formed by the Supreme Court and the Judicial Commission whose task is to examine and decide on alleged violations of the Code of Ethics and/or Code of Conduct for Judges. The Honorary Panel of Judges is a forum for self-defense for judges who, based on the results of the examination, are found to have violated the provisions as stipulated in the statutory regulations, and are proposed to be given heavy sanctions in the form of dismissal (Nasution, 2018).

The legal basis for administering MKH is based on article 11A of Law Number 3 of 2009 concerning the Supreme Court, in addition to articles 22F and 22G of Law Number 11 of 2011 concerning KY and joint regulations of MA and KY Number 04/PB/MA/IX/2012 and 04/PB/P.KY.09/2012 Concerning Formation Procedures, Work Procedures and MKH Decision Making Procedures. In Law Number 3 of 2009 concerning the Supreme Court Article 11 A paragraph (1) a Supreme Court judge can only be dishonorably dismissed during his term of office if: a. is convicted of committing a crime based on a court decision that has obtained permanent legal force; b. commit disgraceful acts; c. neglecting obligations in carrying out his work duties continuously for 3 (three) months; d. violates the oath or promise of office; e. violates the prohibitions as intended in Article 10; or f. violates the judge's code of ethics and/or code of conduct. (2) The proposal for dismissal as intended in paragraph (1) letter a is submitted by the Chairman of the Supreme Court to the President. (3) The proposal for dismissal for the reasons as intended in paragraph (1) letter b is submitted by the Supreme Court and/or the Judicial Commission. (4) The proposal for dismissal for the reasons as intended in paragraph (1) letters c, d and e is submitted by the Supreme Court. (5) The proposal for dismissal for the reasons as intended in paragraph (1) letter f is submitted by the Judicial Commission. (6) Before the Supreme Court and/or Judicial Commission proposes dismissal for reasons as intended in paragraph (3), paragraph (4), and paragraph (5), the supreme judge has the right to defend himself before the Honorary Panel of Judges. (7) The Honorary Panel of Judges is formed by the Supreme Court and the Judicial Commission no later than 14 (fourteen) working days from the date the proposal for dismissal is received. (8) The membership of the Honorary Panel of Judges consists of: a.3 (three) supreme judges; and b.4 (four) members of the Judicial Commission. (9) The Honorary Panel of Judges shall examine the proposal for dismissal no later than 14 (fourteen) working days from the date of formation of the Honorary Panel of Judges. (10) In the event that self-defense as intended in paragraph (6) is rejected, the Honorary Panel of Judges shall submit a decision on the recommendation for dismissal to the Chairman of the Supreme Court and the Judicial Commission no later than 7 (seven) working days from the date the examination is completed. (11) The Chief Justice of the Supreme Court submits the proposal for dismissal as intended in paragraph (10) to the President no later than 14 (fourteen) working days from the date of receipt of the decision on the proposal for dismissal from the Honorary Panel of Judges. (12) The President's decision regarding dismissal as intended in paragraph (2) and paragraph (11) is determined no later than 30 (thirty) working days from the date of receipt of the proposal for dismissal from the Chief Justice of the Supreme Court. (13) Provisions regarding the formation procedures, work procedures and decision making procedures of the Honorary Panel of Judges are regulated jointly by the Supreme Court and the Judicial Commission (Firmantoro, 2021).

In Law Number 11 of 2011 concerning KY Article 22 F paragraph (1) Severe sanctions in the form of permanent dismissal as intended in Article 22D paragraph (2) letter c number 4)

and number 5) are proposed by the Judicial Commission to the Honorary Panel of Judges. (2) The Honorary Panel of Judges as referred to in paragraph (1) consists of 4 (four) members of the Judicial Commission and 3 (three) Supreme Court judges. (3) The Honorary Panel of Judges examines and decides on alleged violations of the Code of Ethics and/or Code of Conduct for Judges proposed by the Judicial Commission or the Supreme Court within a maximum period of 60 (sixty) days from the date the proposal is received. (4) The decision of the Honorary Panel of Judges as intended in paragraph (3) is taken by deliberation and consensus and if no decision is reached, a decision is taken by majority vote. (5) The Supreme Court is obliged to implement the decision of the Honorary Panel of Judges within a maximum period of 30 (thirty) days from the date the decision of the Honorary Panel of Judges is pronounced (Undang-Undang Nomor 4 Tahun 2004 Tentang Kekuasaan Kehakiman, 2004).

Based on the explanation above, it can be concluded that the regulations surrounding the Honorary Panel of Judges have existed in Indonesia for a long time. In line with this, a big question arises in the minds of researchers regarding the existence of the Honorary Council of the Constitutional Court which has become a hot topic of public discussion recently. Researchers are interested in comprehensively exploring the existence of the Constitutional Court both normatively, historically and teleologically.

RESEARCH METHODS

Based on the explanation above, it can be concluded that this research aims to comprehensively analyze the existence of the Honorary Council of the Constitutional Court normatively, historically and teleologically (ALISA, 2021). This research is qualitative research with a normative approach (Henni, 2015). The data that researchers use in this article is secondary data that researchers obtained from various credible sources such as legal regulations, books, articles, scientific and various other sources (Rahmawati, 2013). The data that the researchers used were analyzed using three legal analysis techniques, namely normative legal analysis techniques, historical legal analysis techniques, and teleological legal analysis techniques (Rahmawati, 2013).

RESULT AND DISCUSSION

Honorary Council of The Constitutional Court

The Honorary Panel of Judges is a device formed by the Supreme Court and the Judicial Commission whose task is to examine and decide on alleged violations of the Code of Ethics and/or Code of Conduct for Judges. The Honorary Panel of Judges is a forum for self-defense for judges who, based on the results of the examination, are found to have violated the provisions as stipulated in the statutory regulations, and are proposed to be given heavy sanctions in the form of dismissal (Nasution, 2018).

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Normatively and Historically

The arrangement of the Honorary Council of the Constitutional Court has been in place since the enactment of Law no. 24 of 2003 (Undang-Undang Republik Indonesia Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi Sebagaimana Telah Dirubah Dengan Undang-Undang Republik Indonesia Nomor 8 Tahun 2011 Tentang Perubahan Atas Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi., 2003), namely Article 23 paragraph (3), which states that; "Requests for dishonorable dismissal as intended in paragraph (2) letters b, c, d, f and g are made after the person concerned has been given the opportunity to defend himself before the Honorary Council of the Constitutional Court." Then in 2006 the Constitutional Court established a Regulation concerning the Honorary Council of the Constitutional Court, namely regulation Number 10/PMK/2006. Regarding changes to Law no. 24 of 2003, the Honorary Council was only defined after the enactment of Law no. 8 of 2011. Article 1 number 4 of Law no. 8 of 2011 states that: "The Honorary Council of the Constitutional Court is a device established by the Constitutional Court to monitor, examine and recommend actions against Constitutional Judges, who are suspected of violating the Code of Ethics and Code of Conduct for Constitutional Judges.

The specific arrangements for the Honorary Council of the Constitutional Court were only established on March 21 2013 through Constitutional Court Regulation (PMK) No. 1 of 2013. However, the Regulation on the Honorary Council of the Constitutional Court is not valid for long, that is, it is only valid for less than one year. Like PMK No. 2 of 2013, on March 18 PMK No. 1 of 2013 is revoked and declared no longer valid. The arrangements for the Honorary

Council are then regulated in PMK No. 2 of 2014 which is combined with the Ethics Council arrangements. Even though PMK no. 1 of 2013 was declared revoked and replaced with PMK No. 2 of 2014, but the substance in PMK No. 2 of 2014 does not conflict with PMK No. 1 of 2013, but only limited to additional regulations. The arrangements for the Honorary Council of the Constitutional Court are as follows: a. Position and Formation of the Honorary Council of the Constitutional Court: Based on the provisions of Article 2 PMK No. 1 of 2013, the Honorary Council of the Constitutional Court was formed to uphold the honor, dignity, as well as the Code of Ethics and Code of Conduct for Constitutional Judges. Meanwhile, based on PMK no. 2 of 2014, namely the Honorary Council of the Constitutional Court is a device formed by the Constitutional Court to maintain and uphold the honor, nobility, dignity and code of ethics of constitutional judges related to reports regarding alleged serious violations committed by Reported Judges or Suspected Judges submitted by the Ethics Council .17 Honorary Council of the Constitutional Court based on Article 12 PMK No. 1 of 2013 is ad hoc. b. Membership of the Honorary Council of the Constitutional Court: Membership of the Honorary Council of the Constitutional Court was first regulated in Article 27A paragraph (2) of Law no. 8 of 2011. Based on the decision of the Constitutional Court Number 49/PUU-XI/2011, this article was declared contrary to the 1945 Constitution of the Republic of Indonesia. Then the membership of the Honorary Council of the Constitutional Court was re-regulated in Article 3 PMK No. 1 of 2013. The membership arrangements were changed and re-regulated in Article 27A paragraph (5) of Law no. 4 of 2014, and most recently regulated in Article 5 PMK No. 2 of 2014 (Peraturan Mahkamah Konstitusi Republik Indonesia Nomor 1 Tahun 2013 Tentang Majelis Kehormatan Mahkamah Konstitusi, 2013).

Teleologically

The task of the Honorary Council formed by the Constitutional Court is to maintain and uphold the honor, nobility, dignity and Code of Ethics and Behavior of Constitutional Judges. It is regulated in Article 2 of the Constitutional Court Regulation Number 1 of 2023. Furthermore, in Article 3 of the Constitutional Court Regulation Number 1 of 2023, the authority of the MKMK is stated, namely: 1. The Honorary Council has the authority to maintain the dignity and honor of the Court. 2. The Honorary Council has the authority to examine and decide on alleged violations of the Code of Ethics and Conduct of Constitutional Judges 3. Alleged violations of the Code of Ethics and Conduct of Constitutional Judges can be examined and decided within a maximum of 30 working days from the time the report is recorded in e-BRLTP 4. In terms of a period of 30 days If the inspection has not been completed, it can be extended for a maximum of 15 working days (Peraturan Mahkamah Konstitusi Nomor 1 Tahun 2023 Tentang Majelis Kehormatan Mahkamah Konstitusi, 2023).

CONCLUSION

Based on the explanation above, several things can be concluded below regarding the existence of the Honorary Council of the Constitutional Court in the Indonesian legal order which is studied from the Normative, Historical and Teleological aspects as follows:

1. The Honorary Council of the Constitutional Court has existed since the enactment of Law no. 24 of 2003, namely Article 23 paragraph (3), which states that; "Requests for dishonorable dismissal as intended in paragraph (2) letters b, c, d, f and g are made after the person concerned has been given the opportunity to defend himself before the Honorary Council of the Constitutional Court." Then in 2006 the Constitutional Court established a Regulation concerning the Honorary Council of the Constitutional Court, namely regulation Number 10/PMK/2006. Regarding changes to Law no. 24 of 2003, the Honorary Council was only defined after the enactment of Law no. 8 of 2011. Article 1 number 4 of Law no. 8 of 2011 states that: "The Honorary Council of the Constitutional Court is a device established by the Constitutional Court to monitor, examine and recommend actions against Constitutional Judges, who are suspected of violating the Code of Ethics and Code of Conduct for Constitutional Judges. Thus, the statement regarding the Honorary Assembly of the Constitutional Court only existing in 2023 is not justified.
2. Theologically, the formation of the constitutional court has objectives, duties and authority, among others: 1. The Honorary Council has the authority to maintain the dignity and honor of the Court. 2. The Honorary Council has the authority to examine and decide on alleged violations of the Code of Ethics and Conduct of Constitutional Judges 3. Alleged violations of the Code of Ethics and Conduct of Constitutional Judges can be examined and decided within a maximum of 30 working days from the time the report is recorded in e-BRLTP 4. In terms of a period of 30 days If the inspection has not been completed, it can be extended for a maximum of 15 working days.

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