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The Ethical Approach in Assessing the Legitimacy of Constitutional Court Decisions: Urgency and Orientation

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Abstract

This study examines the importance of ethics as a formal parameter in assessing the validity of Constitutional Court (MK) decisions in Indonesia. The final and binding nature of MK decisions often raises debates regarding absolute power without adequate control mechanisms, especially in the context of ethical violations. This research explores deontological ethics and procedural justice as the basis for analysis, as well as several controversial MK decisions related to ethical issues. This research is a normative legal study that emphasizes a conceptual and statutory approach. The results show that integrating ethics into the assessment of MK decisions can enhance the legitimacy of constitutional justice and ensure more substantive justice. Therefore, this study recommends reformulating the legal framework to incorporate ethics as a key component in the validity assessment process.

Keywords: Judicial Ethics, Constitutional Court, Validity.

INTRODUCTION

The Constitutional Court (MK) plays a vital role in upholding the supremacy of the constitution in Indonesia, particularly in ensuring that every enacted law aligns with the fundamental principles enshrined in the 1945 Constitution.¹ In addition, the Constitutional Court serves as the guardian of the constitution and the enforcer of justice through its inherent authority.² The decisions of the Constitutional Court are final and binding, meaning they cannot be subjected to review through other legal mecha-

¹ Iza Rumesten M. Fadly Hasibuan, "Reorientasi Kewenangan Judicial Review Di Mahkamah Konstitusi Berdasarkan Prinsip Supremasi Konstitusi," *Ekspose* 22, no. 2 (2023): 42-55.

² A H Basri, "Implications of Constitutional Court Decision No. 46/PUU-VIII/2010 on the Rights of Children from Marriage Series Islamic Family Law Perspective," *Kitabaca: Journal of Islamic Studies* 1, no. 1 (2024): 10-26, <https://ejournal.kitabaca.id/index.php/kitabaca/article/view/2%0Ahttps://ejournal.kitabaca.id/index.php/kitabaca/article/download/2/2>.

nisms.³ This characteristic positions the Constitutional Court as a crucial institution in upholding legal certainty and protecting the constitutional rights of citizens.⁴ However, despite this authority, criticisms have emerged that the lack of adequate oversight mechanisms for Constitutional Court decisions could lead to ethical issues, potentially undermining public trust. These criticisms are not without basis, as ethical considerations in decision-making are often overlooked, even in cases where ethical violations by judges have been proven.

In practice, ethical violations committed by Constitutional Court judges generally affect only the career and personal reputation of the judges involved. However, in 2023, there were numerous instances of ethical breaches by Constitutional Court judges.⁵ Meanwhile, the validity of the decisions rendered remains legally recognized as binding and enforceable. This perspective appears to contradict fundamental principles of justice, which demand honesty and integrity in every legal decision-making process. For instance, in several controversial rulings, there have been indications that the decision-making process within the Constitutional Court was not entirely free from bias or conflicts of interest. These ethical violations, however, do not affect the legal validity of the decisions.⁶

This is also legally evident, as the Honorary Council of the Constitutional Court (MKMK) holds authority solely within the realm of ethics, without the power to review or alter the legal substance of Constitutional Court decisions themselves.⁷ The MKMK is tasked with overseeing the behavior and ethics of Constitutional Court judges, ensuring that each judge performs their duties in accordance with established moral and professional standards. However, its authority is limited to disciplinary aspects, such as imposing sanctions or issuing warnings to judges who violate the code of ethics. Ethical violations identified by the MKMK do not have a direct impact on the validity of decisions made by the judges in question. Consequently, from a legal

³ Intan Permata Putri and Mohammad Mahrus Ali, "Karakteristik Judicial Order Dalam Putusan Mahkamah Konstitusi Dengan Amar Tidak Dapat Diterima," *Jurnal Konstitusi* 16, no. 4 (2020): 883.

⁴ Dicky Eko Prasetyo, "Ius Constituendum Legal Standing Bagi WNA Terkait Proses Judicial Review Di Mahkamah Konstitusi Dalam Perspektif HAM," *Hunila* 2, no. 1 (2023): 125-138.

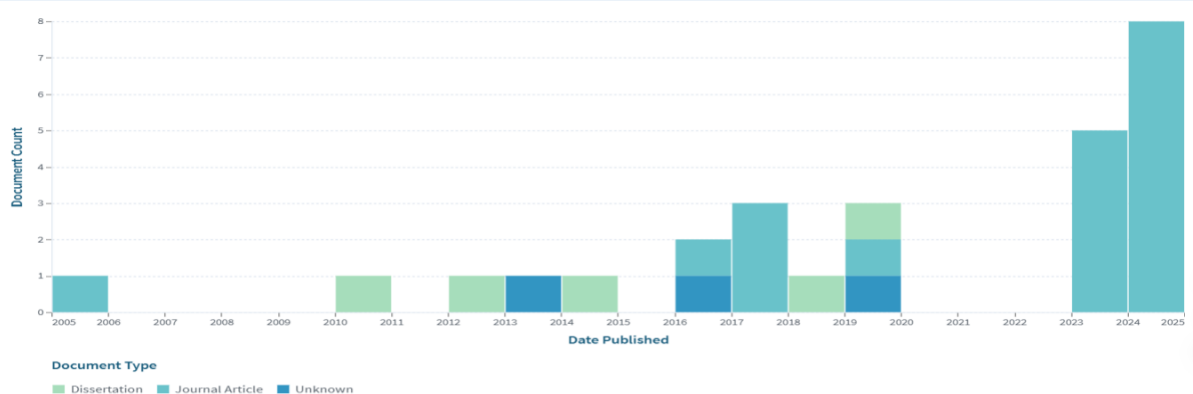
⁵ Ady Thea DA, "Sepanjang Sejarah MK, Tahun 2023 Paling Banyak Hakim Konstitusi Disanksi Etik" (hukumonline.com, 2024), https://www.google.com/search?q=Sepanjang+Sejarah+MK%2C+Tahun+2023+Paling+Banyak+Hakim+Konstitusi+Disanksi+Etik%2C&oq=Sepanjang+Sejarah+MK%2C+Tahun+2023+Paling+Banyak+Hakim+Konstitusi+Disanksi+Etik%2C&gs_lcrp=EgZjaHJvbWUyBggAEEUYOdIBBzQxNWowajeoAgiwAgE&sourceid=chrome&ie=UTF-8.

⁶ Muhammad Rinaldy Bima and John Tumba Jacob, "The Age Threshold for Presidential Nominations in the Perspective of Dignified Justice Theory: Why Is There a Court of Family (Mahkamah Keluarga) Issue?," *Jurnal IUS Kajian Hukum dan Keadilan* 11, no. 3 (2023): 403-422.

⁷ Sutan Sorik, "Eksistensi Majelis Kehormatan Mahkamah Konstitusi (Studi Keputusan Majelis Kehormatan Mahkamah Konstitusi Nomor 01 / MKMK / X / 2013) The Existence of the Honorary Council of the Constitutional Court (Studies Honorary Council of the Constitutional," *Konstitusi* 15, no. 3 (2018): 673.

standpoint, the role of the MKMK cannot influence or annul Constitutional Court decisions that are final and binding, regardless of whether ethical violations occurred during the decision-making process.

Relevant legal theories, such as deontological ethics and procedural justice, can be used as a foundation to explain why ethics should be an integral part of assessing the validity of legal decisions.⁸ *Deontological ethics, for instance, emphasizes that moral obligations in every action, including legal decision-making, must take precedence.*⁹ On the other hand, procedural justice highlights the importance of fair and transparent processes as an integral part of substantive justice. Based on this theoretical framework, integrating ethics into the assessment of the validity of Constitutional Court decisions can provide a stronger foundation for building public trust in constitutional judiciary institutions and ensure that every decision reflects comprehensive principles of justice.



This study is significant for several reasons. For instance, when entering the keyword "Ethics of Constitutional Court Judges" into the Lens.org application, a graph such as the one above can be found. The graph shows that research on the "Ethics of Constitutional Court Judges" began to emerge in 2005, with very limited publications until 2010. A significant increase occurred from 2017, peaking in 2024 with eight publications. The spike in 2024 is likely triggered by recent issues involving judicial ethics in the Constitutional Court. This trend reflects growing academic attention to this topic, which still offers ample room for further exploration in legal and ethical studies in Indonesia.

⁸ Elsa Rina Maya Toule, "Rule of Law and Rule of Ethic in Law Enforcement in Indonesia," *Sasi* 28, no. 1 (2022): 58.

⁹ Emily Keddell, "On Decision Variability in Child Protection: Respect, Interactive Universalism and Ethics of Care," *Social Welfare* 17, no. 1 (2023): 4-19.

The novelty of this study lies in its new approach, which integrates ethics as a formal parameter in assessing the legal validity of Constitutional Court decisions. Unlike previous studies that primarily focused on aspects of integrity, accountability, and ethical oversight of judges, this research proposes that ethical violations should have a direct impact on the formal and material validity of Constitutional Court decisions. Thus, this study offers a reformulation of the legal framework where ethics not only serve as a support for judicial reputation but also as a basis for assessing the legality of decisions. This approach aims to strengthen judicial legitimacy while building public trust through the enforcement of law that is more just and accountable.

Although the Constitutional Court is the highest judicial body whose decisions are final and binding, the ethical aspects of judges are often overlooked when assessing the validity of these decisions. The assessment of the validity of Constitutional Court decisions is typically based solely on procedural legality, without considering the integrity and ethics of judges in the decision-making process. This raises a fundamental question: Should judicial ethics be considered a parameter in assessing the validity of Constitutional Court decisions? If so, what would be the appropriate legal framework to integrate ethics as a formal element in evaluating decision validity? This study aims to examine the role of ethics in assessing the validity of Constitutional Court decisions and to recommend a more comprehensive reformulation of the legal framework.

Previous research related to ethical aspects concerning the Constitutional Court, particularly its decisions, has been conducted by several scholars. For instance, Lestari (2023) discussed the statesmanship dimension of Constitutional Court judges as a critical factor in leveraging ethical considerations in decision-making, even though the study did not specifically address ethics as a primary focus.¹⁰ Another study was conducted by Fadhlullah (2024), which examined the importance of ethical aspects in a Constitutional Court decision. The study emphasized that in cases of ethical violations, enforcement measures should be carried out by the Honorary Council of the Constitutional Court (MKMK).¹¹ Another study by Rabbani et al. (2024) discussed the importance of ethics for Constitutional Court judges, emphasizing that the dignity of the Court is determined not only by the substance of its decisions but also by adherence to the code of ethics.¹²

¹⁰ Endriyani Lestari, "Negarawan, Independensi Kualifikasi Negarawan Sebagai Independensi Hakim Mahkamah Konstitusi Di Indonesia," *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 5, no. 2 (2023): 27-33.

¹¹ Fathan Fadhlullah, "Politik Hukum Putusan Majelis Kehormatan Mahkamah Konstitusi Tentang Etika Hakim Mahkamah Konstitusi," *Madania: Jurnal Hukum Pidana dan Ketatanegaraan Islam* 14, no. 1 (2024): 30-44.

¹² M. Jundi Rabbani, Cahya Kusumajati, and Mukhsin Achmad, "Implementasi Etika Pejabat MK: Studi Kasus Kepemimpinan Anwar Usman," *At-Thullab* 6, no. 1 (2024): 1588-1597.

From the three previous studies mentioned above, it can be observed that research focusing on an ethical approach to assessing the validity of Constitutional Court decisions is still rare or even nonexistent. Previous studies have predominantly emphasized the ethical compliance of Constitutional Court judges rather than considering ethics as a critical aspect of the validity of Constitutional Court decisions.

RESEARCH METHODS

The research method employed in this journal is a normative juridical method with a legislative, conceptual, and case-based approach.¹³ The statute approach is applied by analyzing various regulations governing judicial ethics and the validity of Constitutional Court decisions, such as the Constitutional Court Law and the Code of Ethics for Constitutional Court Judges. The conceptual approach is employed to examine relevant theories, including the principles of ethics in law and the concept of decision validity from the perspective of constitutional law, drawing from books and scholarly articles. Meanwhile, the case-based approach involves analyzing several Constitutional Court decisions deemed controversial due to judicial ethical violations to understand how the integration of ethics can influence the validity of those decisions.¹⁴

ANALYSIS AND DISCUSSION

A. The Urgency of Judicial Ethics and Its Relevance to Judicial Decisions

Judicial ethics is a set of moral principles and standards of conduct that judges are required to adhere to in performing their duties and exercising their authority.¹⁵ As bearers of the mandate of justice, judges play a role that extends beyond the technical application of law to the creation of justice that is dignified and integrity-based.¹⁶ Judicial ethics serve as a code of conduct that ensures judges perform their duties with full responsibility, independence, integrity, and impartiality.¹⁷ These principles are crucial for maintaining public trust in the judiciary system, including the Constitutional Court, which plays a vital role in upholding constitutional supremacy in Indonesia.

In the legal context, judicial ethics not only encompass good personal conduct

¹³ Peter Mahmud Marzuki, *Penelitian Hukum*, 13th ed. (Jakarta: Kencana, 2017).

¹⁴ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: Kencana, 2017).

¹⁵ Alex Brenninkmeijer dan Didel Bish, "Professional Ethics for Judges – Lessons Learned from the Past. Dialogue as Didactics to Develop Moral Leadership for Judges," *Law and Method*, 7, no. 1 (2021).

¹⁶ Christina Maya Indah S and Teguh Prasetyo, "Initiating Law Reform In Indonesia (From The Dignified Justice Perspective," *S, C. M. I., & Prasetyo, T. (2020). Initiating Law Reform In Indonesia (From The Dignified Justice Perspective. 3, 14–25. 3, no. 1 (2020): 14–25.*

¹⁷ Natalia Gavrilenco, "Lack Professional Ethics of Judges - Grounds for Disciplinary Sanctions," *The Journal of the National Institute of Justice* 66, no. 3 (2023): 56–60.

but also relate to substantive justice that must be realized through the decisions rendered.¹⁸ Ethics demand that judges avoid conflicts of interest, consider broader societal interests, and ensure that every decision reflects a high standard of legal integrity. Violations of judicial ethics not only damage the personal reputation of the judge involved but also threaten the legitimacy and validity of the decisions rendered.¹⁹ Therefore, judicial ethics should be regarded as an integral element of legal justice itself, ensuring that decisions rendered are not only procedurally valid but also reflect the moral values and justice expected by society.

Judicial ethics in the context of judicial power in Indonesia play a highly significant role, particularly as they are grounded in Pancasila as the foundational value of the national legal system. Pancasila, as the *grundnorm* in Hans Kelsen's positivist legal theory and as the *staatsfundamentalnorn* according to Hans Nawiasky, is positioned as the fundamental norm that serves as the primary guideline in the formation and enforcement of law in Indonesia.²⁰ Within this framework, ethics are not merely personal conduct rules for judges but rather a higher-value guideline underpinning the principles of justice, truth, and morality in legal decisions.

In the civil law system adopted by Indonesia, the role of judges is generally passive and focused on the application of existing laws. However, Indonesia has a unique characteristic, as its legal system does not solely rely on procedural legality but also emphasizes Pancasila's values as the moral and ethical foundation underlying legal decisions. Pancasila, serving as the state foundation and the source of all legal sources, underscores the importance of values such as justice, humanity, and social welfare, all of which are integrated into the judicial code of ethics. Therefore, ethics become an essential element ensuring that legal decisions are not only procedurally valid but also reflect the substantive justice expected by society.²¹

As guardians of justice and executors of judicial power, judges in Indonesia are not only required to strictly apply the law but must also uphold integrity, independence, and impartiality in accordance with the values of Pancasila. In this context, ethics function not merely as a guideline for personal conduct but also as a substantive norm that influences the validity of legal decisions. Given that Pancasila, as the *grundnorm*, embodies ethical principles, violations of ethics by judges can have serious implications for public trust and the legitimacy of the judicial system. Therefore, the integra-

¹⁸ Tanti Mitasari Wahyu Aji Ramadan, Irma Aulia Pertiwi Nusantara, "Reformulasi Pengawasan Mahkamah Konstitusi Demi Meningkatkan Efektivitas Penegakan Kode Etik Hakim Konstitusi," *Jurnal Studia Legalia : Jurnal Ilmu Hukum* 3, no. 2 (2022): 24.

¹⁹ Harmoko M. Said, "Menggagas Peradilan Etik Penyelenggara Negara Di Indonesia," *Sasi* 27, no. 1 (2021): 24-37.

²⁰ Jimly Asshiddiqie, *Teori Hierarki Norma Hukum*, 1st ed. (Jakarta: Konstitusi Press, 2020).

²¹ Wawan Andriawan, "Pancasila Perspective on the Development of Legal Philosophy: Relation of Justice and Progressive Law," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 5, no. 1 (2022): 1-11.

tion of ethics into legal decisions reflects the application of Pancasila's fundamental values within Indonesia's legal system, serving not only to enforce formal rules but also to achieve broader substantive justice.²²

In the context of judicial power in Indonesia, the importance of judicial ethics can be linked to the deontological theory introduced by Immanuel Kant. Deontological theory emphasizes that a person's actions, including those of judges, must be based on inherent moral obligations, rather than solely on the outcomes or consequences of those actions.²³ Deontological ethics focuses on the principle that individuals must act in accordance with universal moral rules that are obligatory and must be followed without exception.²⁴ In other words, a judge's ethics must reflect fundamental values of justice and morality, which, in Indonesia's legal system, are rooted in Pancasila as the foundational norm.

In deontological theory, principles such as honesty, integrity, and impartiality are moral obligations that judges must always adhere to, regardless of circumstances or outcomes.²⁵ This principle is relevant to the duties of judges in Indonesia, who are expected not only to apply the law correctly but also to uphold morality and ethics in every decision. As guardians of justice, judges must ensure that their rulings are not only procedurally valid but also aligned with the underlying moral obligations, namely the principles of justice and humanity embedded in Pancasila.

Furthermore, deontological theory emphasizes that a judge's ethical actions must be guided by non-negotiable principles, such as integrity and independence, which are crucial for maintaining the legitimacy of the judicial system.²⁶ In this context, ethics are not merely a guide for judges' personal conduct but also a substantive norm that determines the validity of judicial decisions. The rulings issued must reflect moral obligations realized in the form of substantive justice, which goes beyond mere procedural compliance. Thus, judicial ethics, as framed by deontological theory, play a critical role in maintaining public trust in the judicial system and ensuring that legal decisions align with the higher moral values enshrined in Pancasila as the foundational norm.²⁷

In this context, ethics transcend being merely disciplinary rules and serve as a

²² Dinie Anggtaeni Dewi Fannia Sulistiani Putri, "Implementasi Pancasila Sebagai Sistem Etika," *EduPsyCouns: Journal of Education, Psychology and Counseling* 3, no. 1 (2021): 178.

²³ Alessandro Ferrara, "Moral Duties and Juridical Duties: The Ambiguity of Legal Ethics Considered Through the Prism of Kant's Metaphysics of Morals," *German Law Journal* 23, no. 1 (2022): 117-129.

²⁴ Christopher J. Insole, *Kant and the Divine: From Contemplation to the Moral Law* (New York: Oxford University Press, 2020).

²⁵ Jimly Asshiddiqie, "Memperkenalkan Peradilan Etika," *Jurnal Konstitusi dan Demokrasi* 1, no. 1 (2021): 1-7.

²⁶ Jimly Asshiddiqie, *Peradilan Etik Dan Etika Konstitusi*, 1st ed. (Jakarta: Sinar Grafika, 2014).

²⁷ Marzuki Mustamam, "The Position Of Pancasila In The Arrangement Of The Types And Hierarchy Of Laws," *International Journal of Business, Economics and Law* 23, no. 1 (2020): 453-454.

fundamental guideline that directs judges to ensure every legal decision is grounded in high moral principles. In other words, judicial ethics function as an essential parameter supporting legal validity, where justice is assessed not only from a procedural perspective but also by the extent to which decisions reflect the moral values integrated into Pancasila as the foundational norm. This approach underscores that ethics are an inseparable part of the validity of legal decisions within the context of judicial power in Indonesia and represent an effort to harmonize positive law with the fundamental values underpinning the national legal system.

From the explanation above, it can be concluded that ethics, which are later positivized into the Judicial Code of Ethics, become urgent, particularly as the initial justification for the *ratio decidendi* that serves as a reference for judges in formulating their decisions. This underscores that the ethical dimension, particularly a judge's adherence to the code of ethics, is a crucial aspect in affirming that an ideal court decision should not only possess juridical legitimacy but also ethical legitimacy.

B. The Ethical Approach Orientation in Assessing the Validity of Constitutional Court Decisions

The judicial process in the Constitutional Court (MK) represents both the first and final legal recourse. This means that the judicial process begins and concludes in the Constitutional Court, emphasizing the final and binding nature of its decisions.²⁸ In comparison to the litigation process in the Supreme Court (MA), mechanisms for evaluation and oversight by higher judicial bodies are readily available through appeal and cassation processes. Additionally, Supreme Court decisions are explicitly regulated and allow for a review process through the instrument of judicial review.²⁹

The absence of such oversight also creates a serious risk when viewed through the lens of John Dalberg-Acton or Lord Acton, who famously stated, "Power tends to corrupt, and absolute power corrupts absolutely." This underscores the inherent tendency of power to be abused, and absolute power is inevitably misused.³⁰ The latent danger inherent in power is the abuse of authority, especially when that authority is absolute.³¹ This absolute authority is reflected in the nature of

²⁸ Tanto Lailam and Nita Andrianti, "Legal Policy of Constitutional Complaints in Judicial Review: A Comparison of Germany, Austria, Hungary, and Indonesia," *Bestuur* 11, no. 1 (2023): 75-94.

²⁹ Yoni A. Setyono, "Tinjauan 'Novum' Dalam Peninjauan Kembali Sengketa Tata Usaha Negara," *Hukum dan Pembangunan* 49, no. 1 (2019): 143.

³⁰ Hananto Widodo, "The Legal Politics of the Inquiry Rights of the House of Representatives Post 1945 Constitutional Amendment," *Journal of Law, Policy and Globalization* 85 (2019): 123-132.

³¹ Furcony Putri Syakura, "Pengaturan Program Legislasi Nasional Di Indonesia (Studi Pembentukan Undang-Undang Tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah Dan Dewan Perwakilan Rakyat Daerah)," *Jurnal Pendidikan Tambusai* 6, no. 1 (2022): 3101-3116,

Constitutional Court decisions, which are final and binding without any control mechanism.

To prevent absolute power in Constitutional Court (MK) decisions, an effective control mechanism must position ethics as a primary parameter in assessing the validity of decisions. In the legal system, the final and binding nature of MK decisions is often regarded as the highest form of authority, immune to review through other legal avenues. This poses a risk of injustice if such decisions are tainted by judicial ethical violations or influenced by biases inconsistent with the principles of substantive justice. Therefore, integrating ethics as a parameter for decision validity is not only an effort to maintain the institution's credibility but also a fundamental step in curbing absolute power and preventing the misuse of authority by judges.

Ethics, in this context, serve as a moral foundation ensuring that Constitutional Court decisions not only fulfill the requirements of formal legality but also reflect the values of justice underlying Indonesia's constitution and legal system, rooted in Pancasila as the *grundnorm*.³² Moral principles such as integrity, honesty, and independence must be part of the substantive considerations in every decision, ensuring that decisions are not only procedurally valid but also morally just.

An ethics-based control mechanism can be implemented through stronger internal and external oversight, where significant ethical violations may impact the validity of Constitutional Court decisions. This aligns with deontological principles, which emphasize that judges must consistently adhere to moral obligations as a manifestation of their ethical responsibility in carrying out their duties. Thus, ethics not only serve as a guide for personal conduct but also become an integral part of assessing the validity of Constitutional Court decisions, aiming to maintain a balance of power and ensure true justice.

An ethics-based control mechanism can be implemented through stronger internal and external oversight, where significant ethical violations may impact the validity of Constitutional Court decisions. This aligns with deontological principles, which emphasize that judges must consistently adhere to moral obligations as a manifestation of their ethical responsibility in carrying out their duties. Thus, ethics not only serve as a guide for personal conduct but also become an integral part of assessing the validity of Constitutional Court decisions, aiming to maintain a balance of power and ensure true justice.

CONCLUSION

The urgency of incorporating ethical aspects as one of the parameters in as-

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³² Anifatul Kiftiyah and Tri Sutrisno, "Aligning Pancasila Values in The Regulation For Worship House Construction in Indonesia," *Pancasila: Jurnal Keindonesiaan* 3, no. 1 (2023): 47-56.

sessing the validity of Constitutional Court decisions lies in these decisions, which are final and binding. Ethical violations in decision-making can threaten the legitimacy and public trust in the Constitutional Court. A judge's adherence to the code of ethics is a critical factor in affirming that an ideal court decision should possess not only juridical legitimacy but also ethical legitimacy.

The assessment of decision validity, which has so far focused primarily on procedural legality, needs to be expanded to include ethical aspects to ensure substantive justice. By adopting this approach, Indonesia's constitutional judicial system is expected to become more transparent, accountable, and aligned with the moral values embodied in Pancasila as the **grundnorm**. This underscores that an ethics-based control orientation for assessing the validity of Constitutional Court decisions can be achieved by prioritizing the strengthening of the MKMK institution.

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