



Judicial Ethics, Legal Reasoning, and the Validity of Court Decisions: The Paradox of Constitutional Adjudication in Indonesia

Umarwan Sutopo,^{1} Endrik Safudin,² Kholili Badriza³*

^{1,2} Universitas Islam Negeri Kiai Ageng Muhammad Besari Ponorogo, Indonesia

³ Melbourne University, Australia

*Corresponding Author: umarwansutopo@uinponorogo.ac.id

DOI: [10.21154/syakhsiyyah.v8i1.13333](https://doi.org/10.21154/syakhsiyyah.v8i1.13333)

Received: 18 February 2026

Revised: 20 May 2026

Accepted: 17 June 2026

Abstract: This study aims to analyze the correlation between ethical and non-ethical rulings in the Indonesian judicial system, particularly in light of Constitutional Court Decision No. 90/PUU-XXI/2023, which was upheld despite the judge's ethical violations, as determined by the Constitutional Court's Honorary Council. The research focuses on the inconsistency between legal norms and judicial practice regarding the implications of ethical violations for the validity of rulings. This study employs a doctrinal legal method with a jurisprudential, conceptual, and critical-analytical approach to legislation, court rulings, and the construction of legal and moral reasoning in judicial practice. Data were analyzed qualitatively through a normative interpretation of the relationship between ethical norms and the legal legitimacy of rulings. The results indicate that the relationship between ethical and non-ethical rulings is paradoxical: normatively, they are integrated, yet in judicial practice, they are treated as separate, meaning that ethical violations do not automatically invalidate legal rulings. This study confirms that ethical and non-ethical rulings rest on different bases of reasoning; thus, they do not directly validate one another, yet they still influence each other within the framework of legal legitimacy, certainty, and justice.

Keywords: Ethical Decision; Non-Ethical Decision; Legal Reasoning.

Abstrak: Penelitian ini bertujuan menganalisis korelasi antara putusan etik dan putusan non-etik dalam sistem peradilan Indonesia, khususnya pasca Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 yang tetap dinyatakan berlaku meskipun terdapat pelanggaran etik hakim berdasarkan putusan Mahkamah Kehormatan Mahkamah Konstitusi. Fokus penelitian diarahkan pada problem inkonsistensi antara norma hukum dan praktik peradilan terkait implikasi pelanggaran etik terhadap keabsahan putusan. Penelitian ini menggunakan metode hukum doktrinal dengan pendekatan jurisprudensial, konseptual, dan analitis-kritis terhadap peraturan perundang-undangan, putusan pengadilan, serta konstruksi penalaran hukum dan moral dalam praktik peradilan. Data dianalisis secara kualitatif melalui interpretasi normatif terhadap relasi antara norma etik dan legitimasi yuridis putusan. Hasil penelitian menunjukkan bahwa hubungan antara putusan etik dan putusan non-etik bersifat paradoksal: secara normatif keduanya terintegrasi, namun dalam praktik peradilan diposisikan terpisah sehingga pelanggaran etik tidak



otomatis membatalkan putusan hukum. Penelitian ini menegaskan bahwa putusan etik dan non-etik dibangun atas basis penalaran yang berbeda, sehingga tidak saling memvalidasi secara langsung, tetapi tetap saling mempengaruhi dalam kerangka legitimasi hukum, kepastian, dan keadilan.

Kata Kunci: Putusan Etik; Putusan Non Etik; Penalaran Hukum.

Introduction

The judge's decision is important in resolving the dispute. Usually, a verdict includes the facts in dispute, the evidence, and the judge's considerations in assessing those facts, so that the judge's decision can be explained.¹ The judge's accountability is not limited to the law but also to non-law, namely, morality. This is an affirmation of the function of the law as a supporter of legal certainty, justice, and utility.² The noble function of the law is realized when the judge, in examining a case, avoids interests that could affect his decision.³ Judges who cannot avoid these 'interests' may face consequences, including the nullity of the decision they issue.⁴

Article 17 paragraph (5) of Law Number 48 of 2009 concerning judicial power states that: *"a judge or panel is obliged to resign from the trial if he has a direct or indirect interest in the case being examined, either on his own volition or at the request of the litigant."* furthermore, in Paragraph (6): *"in the event of a violation of the provisions as referred to in paragraph (5), the decision shall be declared invalid and the judge or clerk concerned shall be subject to administrative sanctions or punished in accordance with the provisions of laws and regulations."* And paragraph (7) states: *"the case as referred to in paragraph (5) and paragraph (6) is examined by the different composition of the judges."*

The formulation can be understood to mean that a judge's ethical violation will result in the cancellation of the decision to be issued. Therefore, it can be noted that legal decisions (non-ethical decisions) are closely related to non-legal decisions (ethical decisions). On this basis, a judge who will first examine a case must be free of various interests so that their decision has strong legal validity.

However, in the case of Constitutional Court Decision Number 90/PUU-XXI/2023, which was decided by a Constitutional Judge, the judge who rendered the decision was later found guilty of violating ethics through the Constitutional Court Honorary Court Decision Number 02/MKMK/L/11/2023. However, after the issuance of MKMK Decision Number 02/MKMK/L/11/2023, the Constitutional

¹ Miasiratni Miasiratni, "Peran Putusan Pengadilan Agama Dalam Penyelesaian Sengketa Harta Bersama Setelah Perceraian," *Journal of Global Legal Review* 3, no. 1 (2025): 1-10, <https://doi.org/10.59963/jglegar.v3i1.428>.

² Adam Ilyas et al., "Membangun moralitas dan hukum sebagai integrative mechanism di masyarakat dalam perspektif hukum progresif," *Mimbar Keadilan* 14, no. 2 (2021): 128-38, <https://doi.org/10.30996/mk.v14i2.4694>.

³ Firman Floranta Adonara, "Prinsip Kebebasan Hakim Dalam Memutus Perkara Sebagai Amanat Konstitusi," *Jurnal Konstitusi* 12, no. 2 (2016): 217, <https://doi.org/10.31078/jk1222>.

⁴ Osayd Awawda, "Assessment of De Jure Judicial Independence of Constitutional Courts According to International Guidelines," *Constitutional Review* 10, no. 1 (2024): 202, <https://doi.org/10.31078/consrev1017>.

Court decision Number: 90/PUU-XXI/2023 is still used as the basis for presidential and/or vice presidential candidacy.

The enforcement of the decision means that ethical decisions are made as if there is no connection and do not have a significant impact on non-ethical decisions. This becomes interesting to study further. Therefore, in this context, discourses on the correlation between ethical and unethical decisions in the realization of legal functions are interesting for testing the mutual relationship between the two. This research will examine the correlation between ethical reasoning in ethical decisions and legal reasoning in non-ethical decisions, to realize the legal function. The analysis focuses on Article 7, paragraph 6, of Law Number 48 of 2009 concerning the Judicial Power.

Departing from the correlation of ethical reasoning and legal reasoning, there is a growing suspicion that "perhaps between the ethical decision and the non-ethical decision, it is found that there is no correlation between the two in realizing the legal function". So, the existence of Article 7, paragraph 6, of Law Number 48 of 2009 concerning Judicial Power is only an accessory to the law. The analysis will be even more interesting when linked to the decision-making processes of different social institutions. In other words, ethical decisions are decided by ethical institutions or ethical courts, while judges in the judicial process decide non-ethical decisions. In addition, ethical decisions are guided by ethical values (moral reasoning), while non-ethical decisions are guided by legal reasoning. In the end, it will be suspected that "as if" there is indeed no strong relationship between the realization of legal functions and benefits.⁵

Several studies have emphasized the integrity of judges as the main prerequisite for fair and lawful decisions, as well as the importance of the relationship between law and ethics in judicial practice.⁶ In this perspective, ethics is understood as the moral foundation that guides judges' behavior, while law serves as a normative instrument that regulates the juridical consequences of each decision.⁷ Furthermore, research on judicial professional ethics shows that the existence of a code of ethics serves as a code of conduct⁸ as well as a mechanism for monitoring the independence and integrity of judges.⁹ However, most of these

⁵ Annisa Salsabila et al., "Initiating Constitutional Morality: Political Intervention, Ethical Reinforcement, and Constitutional Court Decisions in Indonesia," *Constitutional Review* 10, no. 2 (2024): 505–37, <https://doi.org/10.31078/consrev1028>.

⁶ Achmad Fausi, "The Principle of Justice in the Executorial Title of Court Decisions and Its Relevance to Strengthening the Integrity of Judges," *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 19, no. 1 (2025): 57, <https://doi.org/10.35931/aq.v19i1.4084>; Naafiatul Mukarromah et al., "Judicial Inconsistency and the Rule of Law: A Critical Analysis of Constitutional Court Decision on Presidential Age Requirements in Indonesia," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 13, no. 2 (2024): 213–36, <https://doi.org/10.14421/ad8p7x10>.

⁷ Stephen Guest, *Ronald Dworkin: Third Edition* (Stanford University Press, 2012); Ronald Dworkin, *Law's Empire* (Harvard University Press, 1986).

⁸ J. Harvie Wilkinson III, *Cosmic Constitutional Theory: Why Americans Are Losing Their Inalienable Right to Self-Governance* (Oxford University Press, 2012).

⁹ Jonaedi Efendi, *Rekonstruksi Dasar Pertimbangan Hukum Hakim* (Prenada Media, 2018).

studies still frame ethics in a normative framework separate from the concrete implications for decision validity, and thus have not comprehensively examined the direct relationship between ethical violations and the validity of judges' decisions.

On the other hand, Article 17, paragraph (6), of Law Number 48 of 2009 explicitly links ethical violations to the consequences of invalidity of the decision. However, in judicial practice, especially in the Constitutional Court Decision Number 90/PUU-XXI/2023, a phenomenon has been observed in which the verdict is still enforced even though the Honorary Court of the Constitutional Court has found ethical violations. This condition reveals a gap between legal norms and judicial practice that has not been studied in depth in the legal literature, particularly regarding the relationship between ethical and legal reasoning in decision-making.¹⁰ Based on this, this study seeks to fill a research gap by analyzing the correlation between ethical and non-ethical decisions through legal and ethical reasoning. The novelty of this research lies in integrating analyses of ethical and legal reasoning to assess their relationship, thereby making a conceptual contribution to understanding the validity of decisions and legal functions in the judicial system.

Some of the research related to this is "Analysis of Legal Reasoning and the Impact of the Constitutional Court Decision Number 90/PUU-XXI/2023". This article focuses on the analysis of legal reasoning and the impact of judgments, but it has not examined in depth the theoretical relationship between ethical reasoning and legal reasoning.¹¹ Another article is "Legal Review of Constitutional Court Decisions Based on Gross Ethical Violations by Constitutional Judges." This article is related to the final decision of the Constitutional Court.¹² A similar study is titled "Analysis of the Influence of Violations of the Code of Ethics of Constitutional Court Judges on Determined Decisions (Case Study of Constitutional Court Decision Number 90/PUU-XXI/2023)," which emphasizes the independence of judges and violations of the code of ethics.¹³

Compared to some of the studies above, this study offers novelty in two main aspects. First, this study not only discusses the relationship between law and ethics normatively, but also specifically examines the distinction between ethical and non-

¹⁰ Robert Alexy and Neil MacCormick, *A Theory of Legal Argumentation: The Theory of Rational Discourse as Theory of Legal Justification* (Oxford University Press, 2010); Burhanuddin Burhanuddin and Eza Tri Yandy, "Constitutional Court Decisions and Substantive Justice Based on Islamic Values in the Pancasila State," *Decisio: Journal of Judicial Law and Procedure* 1, no. 1 (2026): 43–56, <https://doi.org/10.66882/decisio.v1i1.41>.

¹¹ Kristiawan Putra Nugraha et al., "Analisis Legal Reasoning dan Dampak Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023," *Jurnal Fundamental Justice* 5, no. 2 (2024): 89–104, <https://doi.org/10.30812/fundamental.v5i2.4433>.

¹² Fathorrahman Fathorrahman et al., "The Ethical Approach in Assessing the Legitimacy of Constitutional Court Decisions: Urgency and Orientation," *Indonesian Journal of Administrative Law and Local Government* 1, no. 02 (2024), <https://doi.org/10.26740/ijalgov.v1i02.36462>.

¹³ Hanifah Hanifah et al., "Ethical Violations Of Constitutional Judges: Study Of The Decision Of The Honour Panel Of The Constitutional Court (MKMK) Number : 2/MKMK/L/11/2023," *JISRAH: Jurnal Integrasi Ilmu Syariah* 5, no. 3 (2024): 235–42, <https://doi.org/10.31958/jisrah.v5i3.13750>.

ethical decisions within the framework of Article 17, paragraph (6), of Law Number 48 of 2009, which has not been analyzed in depth in the legal literature. Second, this study introduces a reasoning-based analysis approach by making a firm distinction between ethical and legal reasoning as two epistemological bases for decision-making. Through this approach, the study found that the relationship between ethical and non-ethical decisions is pseudo-integrated. Normatively, they appear integrated, but in practice, they do not validate one another. Thus, this research makes a conceptual contribution to understanding the legitimacy of decisions and enriches legal studies on the integration of ethical and legal norms in the judicial system.

Research Methods

This article is directed at the study of doctrinal law (literature study). In this Article, 7, paragraph 6, of Law Number 48 of 2009 concerning Judicial Power as a primary legal subject matter is the subject of study. The approach is directed at 3 (three) things, namely: the first is the case approach, namely the Constitutional Court Decision Number 90/PUU-XXI/2023. This approach is used because the researcher refers to the construction and logic of the verdict. Second, the approach to laws and regulations. This approach is used because the researcher refers to existing provisions. By using this approach, the researcher must refer to legal principles, whether in the form of scholarly views, legal doctrines, or laws. The data analysis technique is carried out through three stages. First, legal interpretation, namely interpreting the provisions of Article 17 paragraph (6) of Law Number 48 of 2009 and related decisions to understand the normative meaning of the relationship between ethical violations and the validity of decisions. Second, legal argumentation, which is to develop a logical construction of the relationship between ethical decisions and non-ethical decisions by comparing the reasoning bases used, namely ethical reasoning and legal reasoning. Third, the systematization of the law involves categorizing and arranging the relationship between the two types of decisions within the theoretical framework of legal functions. Through these stages, this research method is used to explain the gap between norms and practices, resulting in findings that, normatively, there is integration between ethical and non-ethical decisions. Still, in practice, the two do not validate each other.

Law, Ethics, Code of Ethics, and Ethical Reasoning

Law and society are like two sides of values that cannot be separated and give each other value. There is a community, so that's where the law is. Where there is a law, there is a community (*ubi societas ibi ius*).¹⁴ Thus, it can be known that the law is always attached to human association.¹⁵ The existence of society, ethical values,

¹⁴ Endrik Safudin, *Alternatif Penyelesaian Sengketa dan Arbitrase* (Intrans Publishing, 2018), 1.

¹⁵ Harly Clifford Jonas Salmon et al., *Hukum Alternatif Penyelesaian Sengketa* (Penerbit Widina, 2025).

moral values, and legal norms is interconnected and complementary in realizing a harmonious and balanced life.¹⁶

Legal norms are not the only norms that address human behavior; there are other norms with the same object of conversation, namely, social norms.¹⁷ These other social norms can be called "moral".¹⁸ The relationship between law and norms is also a very important and inseparable part of social life. Among the various norms, moral norms are the most relevant to law because they relate to human behavior.¹⁹ Law formulates human acts and behavior from the outside of law, while morality arranges human behavior from the inside of human beings. The side of moral goodness shown through the attitude of a brave person is actually not limited to the qualities in the person alone, but also from within the behavior outside of that person that is required by this quality (brave attitude).²⁰

The most important aspects of professional practice are understanding moral principles and values/ethics, as well as knowledge of the law. Some people believe that law and morality are basically the same, but if you look more deeply, it will be very clear that there is a difference between the two. Ethics and law are designed to provide standards that facilitate harmonious social existence.²¹ Ethics is constantly being revised and reflects a set of standards and principles of conduct for practitioners. There may be no criminal punishment for violating a code of ethics. Still, violators of a professional organization's code of ethics can face sanctions from their professional organization. At the same time, the law usually imposes criminal punishments, and violators face sanctions from society and the judicial system to control human behavior.

¹⁶ Adithiya Diar and Beny Saputra, "Judicial Activism In Indonesia Constitutional Court: The Adjudication of Regional Election Disputes," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 25, no. 2 (2025): 37–57, <https://doi.org/10.30631/alrisalah.v25i2.1920>.

¹⁷ Mustafa Mustafa et al., "Hukum Sebagai Pengendalian Sikap Dan Perilaku Sosial," *Jurnal Hukum Caraka Justitia* 4, no. 2 (2024): 138–53, <https://doi.org/10.30588/jhcj.v4i2.1849>.

¹⁸ Claude Proeschel et al., *Religion, Law and the Politics of Ethical Diversity: Conscientious Objection and Contestation of Civil Norms* (Routledge, 2021); Bakti Siahaan et al., "Adjudicating Certainty: Paradigms of Finality and Fallibility in the Decisions of Indonesia's Constitutional Court," *International Journal of Research and Innovation in Social Science* IX, no. VI (2025): 1–6, <https://doi.org/10.47772/IJRISS.2025.90600001>.

¹⁹ Siahaan et al., "Adjudicating Certainty"; Artha Debora Silalahi et al., "Rational Adjudication in Diverse Society: Integrating Raz's Philosophy of Authority in Indonesian Constitutional Justice," *Jurnal Ilmu Sosial Indonesia (JISI)*, December 31, 2025, 101–11, <https://doi.org/10.15408/jisi.v6i2.43900>.

²⁰ Arif Budiman and Firdaus Arifin, "Reconstructing the judicial supervision paradigm in indonesia: Analysis of constitutional court decision NO. 39/PUU-XIII/2015: rekonstruksi paradigma supervisi di indonesia: analisis keputusan mahkamah konstitusional NO. 39/PUU-XIII/2015," *Constitutional Law Society* 5, no. 1 (2026): 21–36, <https://doi.org/10.36448/jcls.v5i1.146>.

²¹ Annisa Meidaniyasari, "Teori Hukum Normatif Dalam Perspektif Aliran Pemikiran Neo Kantian," *Lex Renaissance* 10, no. 1 (2025): 1–29, <https://doi.org/10.20885/JLR.vol10.iss1.art1>.

According to legal positivism, law and morality are distinct fields.²² The law does not need morality to be valid.²³ In such a situation, the connection between law and morality becomes blurred, and the doctrine of the separation of law and morality, according to Hart, becomes relevant. The doctrine of separation of law and morality seeks to mediate equally unhealthy tendencies. *First*, if law and morality are considered to be absolutely related to make a law that is not in accordance with morality as not a law, then what is born is an anarchist attitude. A person who believes that the law must be in accordance with his moral views will always disobey the applicable law, regardless of whether the disobedience harms many people or not. As a result, if enough people commit these acts, the legal system will not work because each person will act according to their own moral views.²⁴ *Second*, people who consider law as an expression of moral views will see law as the final reference for action. As a result, the person cannot accept a critical view of the law itself. In other words, the person becomes an anti-change conservative.²⁵

The above two tendencies seek to be mediated by the doctrine of the separation of law and morality. Law is law, and thus it can be in accordance with or contrary to morality.²⁶ From this perspective, positivism holds that the law should be obeyed. On the other hand, because law is not a moral view, legal positivism also leaves room for criticism.²⁷

Law and morality are closely related, because law is part of the moral demands humans face in their lives. The relationship between law and morality is, in fact, very close. Law contains and serves as a means of upholding moral values. Many values inspire the legal norms of a society. Therefore, in forming regulations, both written and unwritten, laws and other regulations that are positive laws must be based on good morals. In the settlement of legal disputes, they must also be based on sound morals whose goal is ultimately to create a legal order that ensures equal justice.

Furthermore, the law embodies an ethical value: its formation is guided by moral freedom. Law is a set of conditions that ensures the will of one person is adjusted to that of another in accordance with the general norms of freedom; here, law is understood as the fruit of human moral attitudes. Law and morality are closely

²² Fathor Rahman, "Titik persinggungan antara hukum dan moral dalam tindak pidana korupsi menurut perspektif neo positivisme hukum," *Jurnal Magister Hukum Perspektif* 15, no. 2 (2024): 41–56, <https://doi.org/10.37303/magister.v15i2.116>; Dian Latifiani and Raden Muhammad Arvy Ilyasa, "The position of moral values in law," *Diponegoro Law Review* 6, no. 1 (2021): 51–61, <https://doi.org/10.14710/dilrev.6.1.2021.51-61>.

²³ Petrus Bello, "Sahkah Hukum Yang Buruk Secara Moral? Perdebatan Antara Lon luvois fuller dan H.L.A. Hart," *Honeste Vivere* 33, no. 2 (2023): 98–112, <https://doi.org/10.55809/hv.v33i2.238>.

²⁴ Agus Santoso, *Hukum, Moral & Keadilan* (Prenada Media, 2015).

²⁵ Winda Wahyuni et al., "Judicial Law-Making and the Limits of Constitutional Adjudication: Reassessing Judicial Power in Indonesia after Decision No. 92/PUU-XXII/2024," *Al-Adalah: Jurnal Hukum Dan Politik Islam*, January 31, 2026, 216–28, <https://doi.org/10.30863/ajmpi.v11i1.11331>.

²⁶ Salman Luthan, "Dialektika hukum dan moral dalam perspektif filsafat hukum," *Jurnal hukum ius quia iustum* 19, no. 4 (2012): 506–23, <https://doi.org/10.20885/iustum.vol19.iss4.art2>.

²⁷ Prisilia Moonik, "Indonesian Constitutional Court's Moral Legitimacy: A Dworkinian Rights-Based Defense," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 12, no. 1 (2025), <https://doi.org/https://doi.org/10.22304/pjih.v12n1.a3>.

related because norms that differ in abstract and concrete terms need not arise separately. Norms of manners become legal norms when they apply morally; they are then codified as laws, thereby making moral norms more effective in social life. Thus, law and morals cannot be separated. Ethics are also indispensable in law enforcement.

Ethics is the concept of assessing the nature of truth or goodness of social actions based on traditions owned by individuals and groups. Ethics is formed through a philosophical process, so it is part of philosophy. The main element of ethics is morality. The concept of ethics, according to Imam Al-Ghazali, is *al-dunya mazra'atu al-akhirat* (the world is the field of the hereafter); b) welfare (social welfare); c) the values of goodness; d) Stay away from usury. Imam Al-Ghazali's concept of ethics regarding the avoidance of *riba*, when applied to legal reasoning, is interpreted as the avoidance of fraudulent acts. Al-Ghazali's ethics were religious and Sufi in nature. Thus, his opinion concludes that ethics is the study of certain religious beliefs (*i'tiqâdât*), and of the right or wrong in deeds to be practiced, and not for the sake of mere knowledge.²⁸

The code of ethics is the foundation on which ethical decisions are born. According to Stuart C. Gilman, "Ethics codes or codes of conduct seldom provide detailed, specific prohibitions. Rather, they are broader sets of principles designed to inform specific laws or government actions."²⁹ A code of ethics can provide a framework for both professional workers and civil servants to carry out their public responsibilities.³⁰ A code of conduct can clearly articulate unacceptable perpetrators and provide a vision that government officials are fighting for. The fundamental mechanism for ensuring professionalism is the code of ethics.³¹ Therefore, some ethical principles are written as a code of ethics, while others are not written but are reflected in ethical feelings (a sense of ethics).³²

Therefore, a code of ethics that provides standards for civil servants to uphold and articulate a special sense of responsibility, given their professional positions in their communities. The value of the code of ethics comes from the cognitive demands (reasoning) in understanding the code of ethics, as well as its ability to attract emotions, guilt, shame, conscience, and pride in the profession, which can be just as important as reason in motivating ethical behavior.³³

²⁸ Abdullah Tri Wahyudi, "Dialektika Penalaran Hukum Sistemik Ke Arah Penalaran Hukum Non-Sistemik: Basis Nilai Penalaran Hukum Non-Sistemik," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 6, no. 2 (2021): 127–42, <https://doi.org/10.22515/alahkam.v6i2.4030>.

²⁹ Jay Black and Ralph D. Barney, *Codes of Ethics: A Special Issue of the Journal of Mass Media Ethics* (Routledge, 2003); Wadsworth, *Codes of Ethics for the Helping Professions* (Brooks/Cole-Thomson Learning, 2004).

³⁰ Bello, "Sahkah hukum yang buruk secara moral?"

³¹ Muklis Al'anam, "Moralitas hukum dalam pemikiran Lon Fuller, H.L.A. Hart, Dan Hans Kelsen," *Law Jurnal* 5, no. 2 (2025): 146–57, <https://doi.org/10.46576/lj.v5i2.6015>.

³² Jimly Asshiddiqie, *Peradilan Etik dan Etika Konstitusi: Perspektif Baru tentang Rule of Law and Rule of Ethics & Constitutional Law and Constitutional Ethics (Edisi Revisi)* (Sinar Grafika, 2022), 103.

³³ Aries Saputro and Radian Salman, "The Legal and Moral Principles as Guidelines for Carrying Out Official Duties," *Yuridika* 39, no. 2 (2024): 127–52, <https://doi.org/10.20473/ydk.v39i2.50496>.

A code of conduct is written to guide behavior. Any final analysis of the code's impact should include the extent to which it affects behavior. The code of conduct is not designed for people who are "evil", but for people who want to act ethically.³⁴ The code of ethics guides ideal values and attitudes that influence decision-making. A code of ethics is an ethical standard that provides a set of values or approaches to decision-making, allowing workers to make an independent assessment of which actions are most appropriate and how to take them.³⁵

A code of ethics is the set of moral rules for a particular profession, job, or position that binds and guides its members regarding the values of good and bad, right and wrong within a common organization.³⁶ The code of ethics, in its formal sense, contains rules that reflect an organization's efforts to codify its values in statements to its members about the principles of right and wrong, as well as what is good and bad, to guide decision-making within the organization. A code of ethics contains a set of general principles based on social or moral values that guide rather than dictate behavior.³⁷ According to Michael Davis, a professional code of ethics should be viewed as an agreement or convention among professionals themselves (a convention between professionals). In his view, "the code is intended to protect each professional from certain pressures (for example, the pressure to cut corners to save money) by making it reasonably likely... that most other members of the profession will not take advantage of her good conduct. A code protects members of a profession from certain consequences of competition. A code is a solution to a condonation problem."³⁸

Charles E. Harris et al put forward six functions of the code of ethics in practice. *First*, the code of ethics can serve as a means of collective recognition among members of a profession of their responsibility. *Second*, a code of ethics can help create an environment where ethical behavior becomes the norm. *Third*, a code of ethics can serve as a guide or reminder in certain situations. *Fourth*, developing and modifying the code of ethics can also be useful to the profession. *Fifth*, the code of ethics can also serve as an educational tool, providing materials and guidance for classroom and professional meeting discussions. Finally, sixth, the code of ethics can

³⁴ Ria Anggraeni Utami et al., "Hukum dan moral dalam kasus-kasus hukum di indonesia," *Al Ijarah : jurnal pemerintahan dan politik islam* 7, no. 2 (2022): 195–208, <https://doi.org/10.29300/imr.v7i2.3053>.

³⁵ Bakti Bakti and M. Arfan Tarigan, "Law And Morality: The Hart And Fuller Debate," *Syah Kuala Law Journal* 6, no. 2 (2022): 242–53, <https://doi.org/10.24815/sklj.v6i2.29123>.

³⁶ Jimly Asshiddiqie, *Peradilan Etik dan Etika Konstitusi: Perspektif Baru tentang Rule of Law and Rule of Ethics & Constitutional Law and Constitutional Ethics (Edisi Revisi)* (Sinar Grafika, 2022), 103; Topan Yulia Pratama et al., "The Constitutional Adjudication in Indonesia: Bridging Political Legitimacy and the Supremacy of Law," *Jurnal legalitas* 18, no. 2 (2025): 194–213, <https://doi.org/10.33756/jelta.v18i2.34388>.

³⁷ Marjan Miharja et al., "The Role of Constitutional Law in Achieving Political Stability and Social Justice in Indonesia," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 24, no. 1 (2025): 2127–48, <https://doi.org/10.31941/pj.v24i1.5839>.

³⁸ Michael Davis, *Thinking Like an Engineer: Studies in the Ethics of a Profession* (Oxford University Press, 1998); Michael Davis, "Thinking Like an Engineer: The Place of a Code of Ethics in the Practice of a Profession," *Philosophy & Public Affairs* 20, no. 2 (1991): 150–67.

also signal to other parties that the profession concerned really cares about professional and responsible behavior.³⁹

In the ethical norm system, some recommendations are like the substance of legal norms, containing principles and values that guide and direct (directive principles). Therefore, its function is mainly related to the sanction system, which is more preventive than enforcement. For this reason, sanctions are usually issued in stages, ranging from verbal reprimands to written reprimands, and from light to harsh. It is even sometimes found that the reprimand can be imposed in stages, for example, a first-level reprimand, a second-level reprimand, and a last-level reprimand.⁴⁰

The imposition and regulation of the system and mechanism for imposing sanctions are guided by a guideline for the most effective enforcement of the code of ethics, based on the nature of the work whose behavior is to be controlled by the relevant ethical system. The harshest form is due to the seriousness or severity of ethical violations committed by an official or public office holder (ambts-dragger). It involves the sanction of dismissal from the public position concerned. The Code of Ethics serves as the yardstick for ethical decision-making. The ethics decision is the result of an ethics hearing. In the ethics hearing, the professional code of ethics is enforced against violations committed by a person.⁴¹ In making ethical decisions, the first and most important step is to identify the ethical dimension. This is useful for determining whether the problem at hand requires ethical analysis.

Meanwhile, ethical reasoning is a normative assessment process oriented towards moral standards and ethical values to determine whether an action is right or wrong. This reasoning rests on principles such as fairness, honesty, integrity, and propriety, and refers to the professional code of ethics as a guideline for behavior. In the context of the judiciary, ethical reasoning serves as an internal control mechanism that maintains judges' independence and impartiality, especially by preventing conflicts of interest. In ethical decision-making, integrity is the consistency between decisions and actions. Ethical decision-making, i.e., decisions related to ethical (moral) values, is carried out through four stages: ethical sensitivity, ethical reasoning, ethical motivation, and ethical implementation (Rest, 1986). In his Four Component Model, Rest describes how the internal process of ethical decision-making underlies a person's actions.⁴²

³⁹ Zainal Arifin Mochtar, "Guarding Democracy: Judicial Activism in the Indonesian Constitutional Court Decisions in Regional Head Electoral Disputes," *Constitutional Review* 11, no. 1 (2025): 36–62, <https://doi.org/10.31078/consrev1112>.

⁴⁰ Gordon Graham, *Teori-Teori Etika* (Nusamedia, 2019); Satjipto Rahardjo, "Etika, Budaya, dan Hukum," *Jurnal Hukum & Pembangunan* 16, no. 6 (2017): 6, <https://doi.org/10.21143/jhp.vol16.no6.1229>.

⁴¹ Irham Wandira A et al., "Peran Peradi Terhadap Advokat Yang Melakukan Pelanggaran Kode Etik Profesi Advokat," *El-Mujtama: Jurnal Pengabdian Masyarakat* 4, no. 1 (2024): 109–17, <https://doi.org/10.47467/elmujtama.v4i1.447>.

⁴² Anggara Wisesa, "Integritas Moral Dalam Konteks Pengambilan Keputusan Etis," *Jurnal Manajemen Teknologi*, 2011, <https://journal.sbm.itb.ac.id/index.php/mantek/article/view/133>.

Legal Reasoning and Non-Ethical Decisions

Legal reasoning is the search for reasons for the law or the basis for a judge's decision in a legal case.⁴³ Legal reasoning is part of the court's decision in deciding a case. Judges, when formulating and compiling legal considerations, must be meticulous and systematic, and use correct and good Indonesian.⁴⁴ In carrying out his duties, a judge must have good reasoning in studying and giving sufficient consideration.⁴⁵ In this case, a legal reasoning process is required. Legal reasoning in this case is the search for "reason" in the law, or the basis for a judge's decision.

Meanwhile, the non-ethical envoy referred to in this study is the judge's decision. This decision is the court's. According to Sudikno Mertokusumo, a judge's decision is a statement made by a judge in a country authorized to do so, pronounced at trial, and intended to end or resolve a case or problem between the parties. It is not only what is spoken that is called a verdict, but also a statement that is stated in written form and then pronounced by the judge at the trial. A (written) verdict concept has no force as a verdict before it is pronounced at trial by a judge.⁴⁶

The final verdict in a dispute decided by the examining judge in the trial generally imposes sanctions, such as punishment, against the defeated party. This punishment sanction, both in the Civil Procedure Law and the Criminal Procedure Law, can be imposed on violators of rights indiscriminately;⁴⁷ the only difference in the Civil Procedure Law is that the punishment is in the form of fulfilling achievements and/or providing compensation to the party who has been harmed or who has won in a court trial in a dispute. In contrast, under the Criminal Procedure Law, the punishment is generally imprisonment and/or a fine. Non-ethical decisions can only be implemented when they have permanent legal force. According to Abdulkadir Muhammad, a decision that has permanent legal force is one that, under the law, no longer permits the use of ordinary legal remedies to challenge it. In contrast, a decision that lacks permanent legal force is one that, under the law,

⁴³ Aditya Yuli Sulistyawan and Aldio Fahrezi Permana Atmaja, "Arti penting legal reasoning bagi hakim dalam pengambilan putusan di pengadilan untuk menghindari onvoldoende gemotiveerd," *Jurnal Ius Constituendum* 6, no. 2 (2021): 482–96, <https://doi.org/10.26623/jic.v6i2.4232>.

⁴⁴ Mirza Satria Buana, "Legal-Political Paradigm of Indonesian Constitutional Court: Defending a Principled Instrumentalist Court," *Constitutional Review* 6, no. 1 (2020): 36–66, <https://doi.org/10.31078/consrev6i2>.

⁴⁵ Bun Joi Phiau et al., "Legal Certainty In The Implementation of Judicial Review Decisions By The Constitutional Court In Indonesia," *Asian Journal of Social and Humanities* 3, no. 5 (2025): 913–21, <https://doi.org/10.59888/ajosh.v3i5.497>.

⁴⁶ Sudikno Mertokusumo, *Teori Hukum* (Universitas Atma Jaya, 2011); Erma Rusdiana and Ahmad Agus Ramdlany, *Pengantar ilmu hukum: Mengenal Tata Nilai, Norma Dan Falsafah Dasar Pembentukan Ilmu Hukum* (Scopindo Media Pustaka, 2022).

⁴⁷ Imron Rosyadi and Syamsul Fatoni, "Pemidanaan Terhadap Pelaku Kekerasan Seksual Dalam Perspektif Sistem Peradilan Pidana," *Jurnal Yudisial* 15, no. 3 (2023): 337–59, <https://doi.org/10.29123/jy.v15i3.540>; Deni Purnama et al., "The Justice Orientation in the Court Decree: The Judge Legal Reasoning in Compensation Imposition of Musharakah Agreement," *Justicia Islamica* 20, no. 2 (2023): 241–60, <https://doi.org/10.21154/justicia.v20i2.6845>.

remains open to legal remedies to challenge it, for example, *verzet*, appeal, and cassation.⁴⁸

The power of non-ethical decisions that have legal force still comprises 3 kinds: binding power (*bindende kracht*), evidentiary power (*bewijde kracht*), and executorial power (*executoriale kracht*). A decision that has binding legal force (*bindende kracht*) is a judge's decision that cannot be revoked, even if there is a *verzet*, appeal, or cassation, meaning it has permanent legal force and is binding. The power of proof (*bewijde kracht*) stems from the fact that the verdict is an authentic deed and can be used as evidence by the parties, whether for an appeal, cassation, or its implementation.⁴⁹ In the law of proof, a verdict is interpreted as that with the verdict a certainty has been obtained about an event, because every means that gives clarity or certainty about an event has probative power, even though the verdict does not have binding power on a third party, but has evidentiary power against a third party.

The judicial branch in Indonesia is an independent branch that holds a constitutional mandate to administer justice for the upholding of law and justice pursuant to Article 24, paragraphs (1) and (2) of the 1945 Constitution, which the Supreme Court carries out along with the courts under its jurisdiction, as well as by the Constitutional Court.⁵⁰ For the legal rulings issued by these judicial institutions to be enforceable, such rulings must possess executory power, that is, the lawful authority for state officials to enforce compliance with such rulings.⁵¹ Pursuant to Article 2(1) of Law No. 48 of 2009 on Judicial Power, this executory power is legally established and attached only if the court decision includes a preamble or heading stating "In the Name of Justice Based on the One and Only God."

As an instrument for implementing the Constitution, Law No. 48 of 2009 was enacted to update and reformulate the regulatory framework of the previous legislation (Law No. 4 of 2004) to make it far more comprehensive.⁵² This law contains several crucial substantive changes for the reform of the judicial system, including: the establishment of a special chapter on the principles governing the exercise of judicial power; the oversight of judges and constitutional judges based on a code of ethics and code of conduct; the standardization of the appointment and removal of judges; and provisions regarding special courts and the role of *ad hoc* judges. Furthermore, this law establishes a legal foundation for arbitration or alternative dispute resolution outside the courts, provides for Legal Aid Posts

⁴⁸ Eza Tri Yandy and Tri Endah Karya Lestiyani, "The Theory of Justice and Ultra Petita Decisions: A Critical Analysis of Judicial Review in the Constitutional Court," *Constitutionale* 6, no. 1 (2025): 13–26, <https://doi.org/10.25041/constitutionale.v6i1.3946>.

⁴⁹ Sudirman, *Hukum Acara Peradilan Agama*, 1st ed. (IAIN Parepare Press, 2021), 118.

⁵⁰ Article 24, paragraphs (1) and (2), of the 1945 Constitution of the Republic of Indonesia.

⁵¹ Meida Anggi Fahira and Syawaludin Nur A. Fahmi, "Professional Ethics of Judges in Court," *MILRev: Metro Islamic Law Review* 1, no. 2 (2022): 176–87, <https://doi.org/10.32332/milrev.v1i2.6207>.

⁵² Explanatory Notes to Law of the Republic of Indonesia No. 48 of 2009 on Judicial Power, Supplement to the Official Gazette of the Republic of Indonesia No. 5076.

(Posbakum) for indigent litigants, and guarantees security and welfare for judges and constitutional judges in the performance of their duties.

In addition to addressing structural aspects, this law focuses on upholding the moral integrity of court proceedings to eliminate conflicts of interest through the mutually binding provisions of Article 17. Article 17(5) establishes a primary norm in the form of an absolute obligation for a judge or panel of judges to recuse themselves from a trial if they have an interest, whether direct or indirect, in the case under review.⁵³ If this obligation is violated, paragraphs (6) and (7) impose strict legal sanctions: the judgment that has been rendered is immediately declared invalid; the judge or court clerk involved is subject to administrative sanctions or criminal prosecution; and a panel of judges must rehear the case with a different composition.

Assessing Legal Validity and Moral Legitimacy in Judicial Power

The judiciary is one of the main pillars of the rule of law (*rechtsstaat*), serving to ensure the supremacy of the law, the protection of human rights, and the administration of justice for all citizens. In modern constitutional systems, the independence of the judiciary is not only understood as institutional freedom from the intervention of other branches of government, but also encompasses the moral integrity of judges, who are the primary actors carrying out judicial functions. Therefore, the success of the judiciary in realizing justice is not solely determined by the quality of the legal norms applied, but also by the ethical and moral quality of the judges who interpret and implement those norms in concrete rulings.⁵⁴

Public trust in the judiciary is fundamentally built through the public's perception of judicial integrity. In this context, judges do not merely act as enforcers of the law but also as guardians of the values of justice that exist within society. When a judge performs their duties independently, impartially, and with integrity, the resulting rulings gain strong social legitimacy. Conversely, when moral integrity is neglected, legal rulings may lose their moral authority even if they formally meet the requirements of legality.

Theoretically, the relationship between law and morality has long been a subject of debate in legal philosophy. Legal positivists view the validity of law as determined by its formation procedures, while the natural law school emphasizes that good law must reflect moral values and justice. In modern judicial practice, these two perspectives are no longer opposed but are complementary, serving to ensure the realization of substantive justice. Therefore, a judge's morality is an inseparable element of the law's true effectiveness. Awareness of the importance of judicial integrity has prompted the state to establish stricter standards of judicial

⁵³ Saldi Isra, *Kekuasaan dan perilaku korupsi: catatan hukum* (Penerbit Buku Kompas, 2009); Farid Wajdi et al., *Pengawasan Hakim dan Penegakan Kode Etik di Komisi Yudisial* (Sinar Grafika, 2022).

⁵⁴ Lukman Santoso, *Negara Hukum Dan Demokrasi Di Indonesia* (Arti Bumi Intaran, 2024).

ethics. In the Indonesian legal system, these regulations are reflected in Law No. 48 of 2009 on Judicial Power, which establishes the principle of impartiality as an imperative legal obligation. This provision indicates that ethics is no longer positioned merely as a personal moral guideline but has been integrated into positive legal norms that possess binding force and specific legal consequences.⁵⁵

One concrete example of this integration between ethics and law is found in Article 17(5) of Law No. 48 of 2009. This provision requires a judge or the presiding judge to recuse themselves from hearing a case if they have a direct or indirect interest in it. This norm reflects the universal principle of judicial impartiality, which serves as the primary standard in judicial systems worldwide. This obligation to recuse oneself does not stop at the ethical level alone. Article 17(6) explicitly stipulates that a violation of this provision renders the decision invalid. At the same time, the judge or court clerk involved may be subject to administrative or criminal sanctions under applicable laws and regulations. Furthermore, Article 17(7) mandates that a different panel of judges rehear cases tainted by a conflict of interest. This formulation indicates that the legislature views ethical violations as an issue capable of affecting the legal validity of a judgment.

If the provisions of Article 17(6) are analyzed normatively, five main elements form its legal framework. First, the existence of an act violating the ethical obligations established by law. Second, it is connected to the judge's duty, as stipulated in Article 5(1), to explore and understand the legal values and sense of justice that exist within society. Third, the emergence of legal consequences in the form of the invalidity of the judgment. Fourth, the existence of specific legal subjects held accountable, namely judges and court clerks: Fifth, the existence of accountability mechanisms through administrative or criminal sanctions.

These five elements indicate that the legislature does not view ethics as a standalone norm. Rather, ethics is positioned as an integral part of the legal system with tangible legal consequences. Thus, an ethical violation is not merely a breach of a professional code of conduct, but also a violation of legal norms that can impact the existence and validity of a court ruling. The relationship between Article 17(5) and Article 17(6) is, in fact, one of a causal-correlative nature. The provision of paragraph (5) functions as a primary ethical norm governing a judge's conduct in the face of potential conflicts of interest, while paragraph (6) serves as a secondary norm addressing the legal consequences should that primary norm be violated. Therefore, these two provisions cannot be separated when understanding the concept of judicial integrity as envisioned by the Law on Judicial Power.⁵⁶

⁵⁵ Andri Nurwandri et al., "Judges' code of ethics: foundation for maintaining integrity and accountability," *Multidisciplinary Indonesian Center Journal (MICJO)* 2, no. 2 (2025): 1023-37, <https://doi.org/10.62567/micjo.v2i2.532>.

⁵⁶ Anthonio Bimo et al., "Challenges in the Implementation of Judges' Professional Ethics and Conflicts of Interest That Affect Integrity," *Qistina: Jurnal Multidisiplin Indonesia* 2, no. 2 (2023): 853-56, <https://doi.org/10.57235/qistina.v2i2.821>.

From a broader perspective, the obligation for a judge with a conflict of interest to recuse themselves demonstrates that legal validity is not determined solely by procedural and formal aspects. A decision rendered by a judge who has a personal interest in the case is substantively deemed flawed because it contains an element of lack of objectivity. Thus, legal validity is, in essence, closely intertwined with ethical validity.

This conception aligns with the view that law and morality must go hand in hand. While law provides certainty through written norms, morality provides the foundation of legitimacy that makes the law acceptable to society. When law is completely separated from morality, it risks losing its social legitimacy and becoming merely a formal instrument of power. From a sociological perspective on law, legitimacy is a crucial factor in determining law's effectiveness. Society tends to comply with the law if it believes the law was enacted through a fair process and is enforced by institutions of integrity. Conversely, if there are indications of ethical deviations in the decision-making process, public compliance with legal rulings may decline due to a loss of trust in the institutions issuing those rulings.

The issue regarding the relationship between legal validity and moral legitimacy has become highly relevant in the development of Indonesian constitutional law in recent years. One of the most widely discussed examples is Constitutional Court Decision No. 90/PUU-XXI/2023 regarding the age requirements for presidential and vice-presidential candidates. This decision sparked widespread debate as it was linked to allegations of a conflict of interest involving the constitutional judges who examined and adjudicated the case.⁵⁷

The debate intensified after the Constitutional Court's Honorary Council, through Decision No. 02/MKMK/L/11/2023, declared that the then-Chief Justice of the Constitutional Court had committed a serious ethical violation. The MKMK ruling essentially confirms a violation of the principles of impartiality and judicial independence, which should form the cornerstone of the constitutional adjudication process. Interestingly, although the ethical violation was found to be proven, Constitutional Court Decision No. 90/PUU-XXI/2023 remains in effect and legally binding. This situation creates a paradox between the ideal norms contained in Article 17(6) of the Judicial Power Act and the evolving practice of constitutional law. Normatively, an ethical violation may render a decision invalid; however, in practice, the decision remains legally binding.

This phenomenon demonstrates a separation between ethical decisions and legal decisions in institutional practice. Ethical decisions are fundamentally produced through mechanisms for reviewing professional codes of ethics, whereas legal decisions are produced through judicial mechanisms grounded in positive legal norms. Although interrelated, the two do not always have automatic legal

⁵⁷ Pan Mohamad Faiz, "Dimensi Judicial Activism Dalam Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 13, no. 2 (2016): 406–30, <https://doi.org/10.31078/jk1328>.

consequences for one another.⁵⁸ This distinction can be explained through the reasoning approaches used in each type of decision. Ethical decisions arise from the process of moral reasoning—a reflective process to determine right or wrong based on moral values and professional ethics. In the context of judges, moral reasoning serves as a crucial instrument for maintaining integrity and independence in the exercise of judicial functions.⁵⁹

Conversely, legal decisions arise through legal reasoning, which focuses on interpreting norms, constructing legal arguments, and applying statutory regulations to relevant facts. Legal reasoning aims to produce legal certainty and consistency in the application of positive law. Therefore, the primary focus of legal reasoning differs from that of moral reasoning, which emphasizes the ethical dimensions of an action.⁶⁰ Based on this discussion, it is clear that the main obstacle to integrating ethical and legal decisions lies in the differing epistemological foundations of each. Ethical decisions are grounded in moral legitimacy, whereas legal decisions are grounded in normative validity. This difference means that the two do not always produce identical consequences even when addressing the same event.

Nevertheless, the relationship between ethical decisions and legal decisions remains functional and inseparable. A legally valid ruling requires moral legitimacy to be accepted and obeyed by society. Conversely, ethical decisions require the support of legal mechanisms to possess enforceability and effectiveness. Therefore, the primary challenge for Indonesia's judicial system moving forward is to strengthen the integration of moral and legal reasoning so that the legal objectives of justice, utility, and legal certainty can be realized in a balanced manner.

The paradox between legal validity and moral legitimacy, as seen in Constitutional Court Decision No. 90/PUU-XXI/2023, is also evident in the context of Constitutional Court decisions in the field of marriage law. Constitutional disputes in the field of marriage law generally concern matters closely tied to society's moral, religious, and cultural values. Therefore, the legitimacy of a decision is determined not only by the strength of the legal arguments advanced by the judges but also by the extent to which the decision-making process meets ethical and institutional integrity standards. In this context, the relationship between ethical and legal decisions becomes increasingly important, as rulings on the institution of the family have broad and long-term social impacts.⁶¹

⁵⁸ Susi Dwi Harijanti, "Pengisian Jabatan Hakim: Kebutuhan Reformasi Dan Pengekangan Diri," *Jurnal Hukum Ius quia iustum* 21, no. 4 (2014): 531–58, <https://doi.org/10.20885/iustum.vol21.iss4.art2>; Lailani Sungkar et al., "Urgensi Pengujian Formil Di Indonesia : Pengujian Legitimasi Dan Validitas," *Jurnal Konstitusi* 18, no. 4 (2021): 748–73, <https://doi.org/10.31078/jk1842>.

⁵⁹ Jeremy Waldron, "Judges as Moral Reasoners," *International Journal of Constitutional Law* 7, no. 1 (2009): 2–24, <https://doi.org/10.1093/icon/mon035>.

⁶⁰ Loura Hardjaloka, "Legal Reasoning Pada Perkara Pengujian Undang-Undang (Studi Perbandingan)," *Jurnal Konstitusi* 12, no. 1 (2015): 94–116, <https://doi.org/10.31078/jk1216>.

⁶¹ Teuku Saiful Bahri Johan, *Kekuasaan Negara dalam Pembentukan Hukum (Legal Drafting dari Sudut Pandang Hukum Tata Negara dan Hukum Administrasi Negara)* (Deepublish, 2022).

One important example is Constitutional Court Decision No. 46/PUU-VIII/2010 regarding the legal status of children born out of wedlock. In that decision, the Court expanded the civil relationship between a child born out of wedlock and his biological father to the extent that it can be proven by scientific and technological evidence, as well as other evidence admissible under the law. From a legal reasoning perspective, this decision is grounded in the protection of children's constitutional rights and the principle of non-discrimination as guaranteed by the 1945 Constitution of the Republic of Indonesia. However, from a sociological perspective, this decision has sparked debate because some segments of society view it as potentially undermining the moral and religious constructs regarding a child's status within family law. This debate demonstrates that acceptance of a legal ruling depends not only on its normative validity but also on the moral legitimacy that accompanies it.⁶²

A similar phenomenon is evident in Constitutional Court Decision No. 22/PUU-XV/2017, which served as the basis for changing the minimum age for marriage. In that case, the Court ruled that the difference in the minimum marriage age between men and women, as stipulated in Law No. 1 of 1974, was inconsistent with the principle of equality before the law and the protection of children's rights. This decision subsequently led to the enactment of Law No. 16 of 2019, which set the minimum marriage age at 19 years for both men and women. Interestingly, this decision achieved a relatively high level of social legitimacy because, in addition to being based on constitutional arguments, it also aligned with evolving public morality that increasingly emphasizes child protection and gender equality. Thus, the Court's legal reasoning was reinforced by the moral reasoning developing within society.⁶³

Conversely, in Constitutional Court Decision No. 68/PUU-XII/2014, which reviewed the provision prohibiting interfaith marriage in the Marriage Law, the Court upheld the existing norm, asserting that marriage in Indonesia has a religious dimension that cannot be separated from the national legal system. This decision demonstrates that, in certain family law cases, the Court does not rely solely on a textual-constitutional approach to legal reasoning but also considers the moral, religious, and cultural values embedded in society. This demonstrates that in practice, the boundary between legal reasoning and moral reasoning is often not entirely distinct, particularly in cases concerning the institutions of marriage and the family.⁶⁴

⁶² Lia Noviana et al., "Interpreting Legal Rights: Disparities in Judicial Treatment of Children Born Out of Wedlock in East Java, Indonesia," *Lex Scientia Law Review* 8, no. 1 (2024): 1, <https://doi.org/10.15294/lslr.v8i1.4606>.

⁶³ Ni'matul Huda and Riri Nazriyah, *Teori Dan Pengujian Peraturan Perundang-Undangan* (Nusamedia, 2019); Decision No. 22/PUU-XV/2017 on the Review of Law No. 1 of 1974 on Marriage in Light of the 1945 Constitution of the Republic of Indonesia.

⁶⁴ Decision No. 68/PUU-XII/2014 on the Review of Law No. 1 of 1974 on Marriage in Light of the 1945 Constitution of the Republic of Indonesia.

Regarding the relationship between ethical and legal rulings, various Constitutional Court decisions in the field of marriage law indicate that the social legitimacy of a ruling is largely determined by the integrity of the adjudicating judge and the quality of the accompanying moral arguments. Therefore, if a judge commits an ethical violation during the case review process, even though the decision remains valid and legally binding, its social acceptance is likely to decline. From this perspective, the lesson to be drawn from the controversy surrounding Decision No. 90/PUU-XXI/2023 is that the sustainability of the Constitutional Court's authority as the guardian of the constitution depends not only on the legal validity of its decisions, but also on the institution's ability to maintain consistency between ethical integrity and the quality of legal reasoning in every case, including family law cases that touch upon the fundamental values of society.

Conclusion

Based on the analysis, this study confirms that the relationship between ethical and unethical decisions in the Indonesian judicial system is paradoxical: normatively integrated, yet in practice, justice runs separately. Article 17, paragraph (6), of Law Number 48 of 2009 concerning Judicial Power expressly stipulates that violations of judges' ethics render a decision invalid, thereby establishing a relationship between the moral integrity of the judge and the validity of legal decisions. However, the practice in the Constitutional Court Decision Number 90/PUU-XXI/2023 shows different conditions, because the decision is still declared valid and used as a legal basis even though the judge who decided the case was declared to have violated ethics through the Decision of the Honorary Court of the Constitutional Court Number 02/MKMK/L/11/2023. This fact shows that ethical violations do not automatically invalidate the juridical applicability of the verdict, but rather affect the moral legitimacy and public trust in the judiciary. In this context, ethical and non-ethical judgments are based on different reasoning and do not validate each other. Ethical decisions rely on ethical reasoning that assesses the integrity, independence, and propriety of judges' behavior. In contrast, unethical decisions rely on legal reasoning oriented towards the interpretation of norms, legal certainty, and the applicability of decisions. Thus, although the two still influence each other within the framework of legal legitimacy and legal functions to realize justice, certainty, and utility, the relationship lacks effective operational force in Indonesian constitutional practice.

Generative AI Usage Statement

Umarwan Sutopo, Endrik Safudin, and Kholili Badriza used generative artificial intelligence (AI) tools solely for limited editorial assistance, including grammar correction, language refinement, and transliteration support. The AI tools were not used to generate research ideas, analyze data, interpret findings, or

formulate conclusions. All scholarly content, arguments, and interpretations presented in this article are the sole responsibility of the authors. The authors carefully reviewed and verified all AI-assisted outputs to ensure the accuracy, originality, and academic integrity of the manuscript.

Bibliography

- A, Irham Wandira, Muhammad Suheri, and Fatimah Zahara. "Peran Peradi Terhadap Advokat Yang Melakukan Pelanggaran Kode Etik Profesi Advokat." *El-Mujtama: Jurnal Pengabdian Masyarakat* 4, no. 1 (2024): 109–17. <https://doi.org/10.47467/elmujtama.v4i1.447>.
- Adonara, Firman Floranta. "Prinsip Kebebasan Hakim Dalam Memutus Perkara Sebagai Amanat Konstitusi." *Jurnal Konstitusi* 12, no. 2 (2016): 217. <https://doi.org/10.31078/jk1222>.
- Al'anam, Muklis. "Moralitas Hukum dalam Pemikiran Lon Fuller, H.L.A. Hart, dan Hans Kelsen." *Law Jurnal* 5, no. 2 (2025): 146–57. <https://doi.org/10.46576/lj.v5i2.6015>.
- Alexy, Robert, and Neil MacCormick. *A Theory of Legal Argumentation: The Theory of Rational Discourse as a Theory of Legal Justification*. Oxford University Press, 2010.
- Asshiddiqie, Jimly. *Peradilan Etik dan Etika Konstitusi: Perspektif Baru tentang Rule of Law and Rule of Ethics & Constitutional Law and Constitutional Ethics (Edisi Revisi)*. Sinar Grafika, 2022.
- Awawda, Osayd. "Assessment of De Jure Judicial Independence of Constitutional Courts According to International Guidelines." *Constitutional Review* 10, no. 1 (2024): 202. <https://doi.org/10.31078/consrev1017>.
- Bakti, Bakti, and M. Arfan Tarigan. "Law And Morality: The Hart And Fuller Debate." *Syiah Kuala Law Journal* 6, no. 2 (2022): 242–53. <https://doi.org/10.24815/sklj.v6i2.29123>.
- Bello, Petrus. "Sahkah Hukum Yang Buruk Secara Moral ? Perdebatan Antara Lon Luvois Fuller dan H.L.A. Hart." *Honeste Vivere* 33, no. 2 (2023): 98–112. <https://doi.org/10.55809/hv.v33i2.238>.
- Bimo, Anthonio, Cathleen Lie, Vivian Clarosa, Juttah Christian, Hanz Bryan, and Jeane Neltje Saly. "Challenges in the Implementation of Judges' Professional Ethics and Conflicts of Interest That Affect Integrity." *Qistina: Jurnal Multidisiplin Indonesia* 2, no. 2 (2023): 853–56. <https://doi.org/10.57235/qistina.v2i2.821>.
- Black, Jay, and Ralph D. Barney. *Codes of Ethics: A Special Issue of the Journal of Mass Media Ethics*. Routledge, 2003.
- Buana, Mirza Satria. "Legal-Political Paradigm of Indonesian Constitutional Court: Defending a Principled Instrumentalist Court." *Constitutional Review* 6, no. 1 (2020): 36–66. <https://doi.org/10.31078/consrev612>.
- Budiman, Arif, and Firdaus Arifin. "Reconstructing the judicial supervision paradigm in Indonesia: analysis of constitutional court decision no. 39/PUU-XIII/2015: Rekonstruksi paradigma supervisi di indonesia: analisis keputusan mahkamah konstitusional no. 39/PUU-XIII/2015." *Constitutional Law Society* 5, no. 1 (2026): 21–36. <https://doi.org/10.36448/jcls.v5i1.146>.
- Burhanuddin, Burhanuddin, and Eza Tri Yandy. "Constitutional Court Decisions and Substantive Justice Based on Islamic Values in the Pancasila State." *Decisio:*

- Journal of Judicial Law and Procedure* 1, no. 1 (2026): 43–56.
<https://doi.org/10.66882/decisio.v1i1.41>.
- Davis, Michael. *Thinking Like an Engineer: Studies in the Ethics of a Profession*. Oxford University Press, 1998.
- Davis, Michael. "Thinking Like an Engineer: The Place of a Code of Ethics in the Practice of a Profession." *Philosophy & Public Affairs* 20, no. 2 (1991): 150–67.
- Diar, Adithiya, and Beny Saputra. "Judicial Activism in Indonesia's Constitutional Court: The Adjudication of Regional Election Disputes." *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 25, no. 2 (2025): 37–57.
<https://doi.org/10.30631/alrisalah.v25i2.1920>.
- Dworkin, Ronald. *Law's Empire*. Harvard University Press, 1986.
- Efendi, Jonaedi. *Rekonstruksi Dasar Pertimbangan Hukum Hakim*. Prenada Media, 2018.
- Fahira, Meida Anggi, and Syawaludin Nur A. Fahmi. "Professional Ethics of Judges in Court." *MILRev: Metro Islamic Law Review* 1, no. 2 (2022): 176–87.
<https://doi.org/10.32332/milrev.v1i2.6207>.
- Faiz, Pan Mohamad. "Dimensi Judicial Activism Dalam Putusan Mahkamah Konstitusi." *Jurnal Konstitusi* 13, no. 2 (2016): 406–30.
<https://doi.org/10.31078/jk1328>.
- Fathorrahman, Fathorrahman, Muhammad Juang Rambe, and Agung Ali Fahmi. "The Ethical Approach in Assessing the Legitimacy of Constitutional Court Decisions: Urgency and Orientation." *Indonesian Journal of Administrative Law and Local Government* 1, no. 02 (2024).
<https://doi.org/10.26740/ijalgov.v1i02.36462>.
- Fausi, Achmad. "The Principle of Justice in the Executorial Title of Court Decisions and Its Relevance to Strengthening the Integrity of Judges." *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 19, no. 1 (2025): 57.
<https://doi.org/10.35931/aq.v19i1.4084>.
- Graham, Gordon. *Teori-Teori Etika*. Nusamedia, 2019.
- Guest, Stephen. *Ronald Dworkin: Third Edition*. Stanford University Press, 2012.
- Hanifah, Hanifah, Zainuddin Zainuddin, Saadatul Maghfira, and Roni Efendi. "Ethical Violations Of Constitutional Judges: Study Of The Decision Of The Honor Panel Of The Constitutional Court (MKMK) Number : 2/MKMK/L/11/2023." *Jisrah: Jurnal Integrasi Ilmu Syariah* 5, no. 3 (2024): 235–42.
<https://doi.org/10.31958/jisrah.v5i3.13750>.
- Hardjaloka, Loura. "Legal Reasoning Pada Perkara Pengujian Undang-Undang (Studi Perbandingan)." *Jurnal Konstitusi* 12, no. 1 (2015): 94–116.
<https://doi.org/10.31078/jk1216>.
- Harijanti, Susi Dwi. "Pengisian Jabatan Hakim: Kebutuhan Reformasi Dan Pengekangan Diri." *Jurnal Hukum IUS QUIA IUSTUM* 21, no. 4 (2014): 531–58.
<https://doi.org/10.20885/iustum.vol21.iss4.art2>.
- Huda, Ni'matul, and Riri Nazriyah. *Teori Dan Pengujian Peraturan Perundang-Undangan*. Nusamedia, 2019.
- III, J. Harvie Wilkinson. *Cosmic Constitutional Theory: Why Americans Are Losing Their Inalienable Right to Self-Governance*. Oxford University Press, 2012.
- Ilyas, Adam, Dicky Eko Prasetyo, and Felix Ferdin Bakker. "Membangun moralitas dan hukum sebagai integrative mechanism di masyarakat dalam perspektif

- hukum progresif." *Mimbar Keadilan* 14, no. 2 (2021): 128–38. <https://doi.org/10.30996/mk.v14i2.4694>.
- Isra, Saldi. *Kekuasaan dan perilaku korupsi: catatan hukum*. Penerbit Buku Kompas, 2009.
- Johan, Teuku Saiful Bahri. *Kekuasaan Negara dalam Pembentukan Hukum (Legal Drafting dari Sudut Pandang Hukum Tata Negara dan Hukum Administrasi Negara)*. Deepublish, 2022.
- Latifiani, Dian, and Raden Muhammad Arvy Ilyasa. "The position of moral values in law." *Diponegoro Law Review* 6, no. 1 (2021): 51–61. <https://doi.org/10.14710/dilrev.6.1.2021.51-61>.
- Luthan, Salman. "Dialektika hukum dan moral dalam perspektif filsafat hukum." *Jurnal hukum ius quia iustum* 19, no. 4 (2012): 506–23. <https://doi.org/10.20885/iustum.vol19.iss4.art2>.
- Meidaniasari, Annisa. "Teori Hukum Normatif Dalam Perspektif Aliran Pemikiran Neo Kantian." *Lex Renaissance* 10, no. 1 (2025): 1–29. <https://doi.org/10.20885/JLR.vol10.iss1.art1>.
- Mertokusumo, Sudikno. *Teori Hukum*. Universitas Atma Jaya, 2011.
- Miasiratni, Miasiratni. "Peran Putusan Pengadilan Agama Dalam Penyelesaian Sengketa Harta Bersama Setelah Perceraian." *Journal of Global Legal Review* 3, no. 1 (2025): 1–10. <https://doi.org/10.59963/jglegar.v3i1.428>.
- Miharja, Marjan, Sulis Setyowati, Suhendar, and Achmad Zahrudin. "The Role of Constitutional Law in Achieving Political Stability and Social Justice in Indonesia." *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (2025): 2127–48. <https://doi.org/10.31941/pj.v24i1.5839>.
- Mochtar, Zainal Arifin. "Guarding Democracy: Judicial Activism in the Indonesian Constitutional Court Decisions in Regional Head Electoral Disputes." *Constitutional Review* 11, no. 1 (2025): 36–62. <https://doi.org/10.31078/consrev1112>.
- Moonik, Prisilia. "Indonesian Constitutional Court's Moral Legitimacy: A Dworkinian Rights-Based Defense." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 12, no. 1 (2025). <https://doi.org/https://doi.org/10.22304/pjih.v12n1.a3>.
- Mukarromah, Naafiatul, Fachri Hamzah Pangestu, Udiyo Basuki, and Muhammad Fahrul Hudallah. "Judicial Inconsistency and the Rule of Law: A Critical Analysis of Constitutional Court Decision on Presidential Age Requirements in Indonesia." *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 13, no. 2 (2024): 213–36. <https://doi.org/10.14421/ad8p7x10>.
- Mustafa, Mustafa, Chery Maria, Shalsya Malika Yunus, et al. "Hukum Sebagai Pengendalian Sikap Dan Perilaku Sosial." *Jurnal Hukum Caraka Justitia* 4, no. 2 (2024): 138–53. <https://doi.org/10.30588/jhcj.v4i2.1849>.
- Noviana, Lia, Lukman Santoso, and Mega Puspita. "Interpreting Legal Rights: Disparities in Judicial Treatment of Children Born Out of Wedlock in East Java, Indonesia." *Lex Scientia Law Review* 8, no. 1 (2024): 1. <https://doi.org/10.15294/lslr.v8i1.4606>.
- Nugraha, Kristiawan Putra, Dela Puspitasari, and Riska Anggraini. "Analisis Legal Reasoning dan Dampak Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023." *Jurnal Fundamental Justice* 5, no. 2 (2024): 89–104. <https://doi.org/10.30812/fundamental.v5i2.4433>.

- Nurwandri, Andri, Astri Anggraini, and Armi Puspita Zaini. "Judges' code of ethics: foundation for maintaining integrity and accountability." *Multidisciplinary Indonesian Center Journal (MICJO)* 2, no. 2 (2025): 1023–37. <https://doi.org/10.62567/micjo.v2i2.532>.
- Phiau, Bun Joi, Amzulian Rifai, and Abdul Latif. "Legal Certainty In The Implementation of Judicial Review Decisions By The Constitutional Court In Indonesia." *Asian Journal of Social and Humanities* 3, no. 5 (2025): 913–21. <https://doi.org/10.59888/ajosh.v3i5.497>.
- Pratama, Topan Yulia, Saivol Virdaus, and Dimas Tri Kurniawan. "The Constitutional Adjudication in Indonesia: Bridging Political Legitimacy and the Supremacy of Law." *Jurnal Legalitas* 18, no. 2 (2025): 194–213. <https://doi.org/10.33756/jelta.v18i2.34388>.
- Proeschel, Claude, David Koussens, and Francesco Piraino. *Religion, Law and the Politics of Ethical Diversity: Conscientious Objection and Contestation of Civil Norms*. Routledge, 2021.
- Purnama, Deni, Asmuni Asmuni, and Dhiauddin Tanjung. "The Justice Orientation in the Court Decree: The Judge's Legal Reasoning in Compensation Imposition of Musharakah Agreement." *Justicia Islamica* 20, no. 2 (2023): 241–60. <https://doi.org/10.21154/justicia.v20i2.6845>.
- Rahardjo, Satjipto. "Etika, Budaya, dan Hukum." *Jurnal Hukum & Pembangunan* 16, no. 6 (2017): 6. <https://doi.org/10.21143/jhp.vol16.no6.1229>.
- Rahman, Fathor. "Titik persinggungan antara hukum dan moral dalam tindak pidana korupsi menurut perspektif neo positivisme hukum." *Jurnal Magister Hukum Perspektif* 15, no. 2 (2024): 41–56. <https://doi.org/10.37303/magister.v15i2.116>.
- Rosyadi, Imron, and Syamsul Fatoni. "Pemidanaan terhadap pelaku kekerasan seksual dalam perspektif sistem peradilan pidana." *Jurnal Yudisial* 15, no. 3 (2023): 337–59. <https://doi.org/10.29123/jy.v15i3.540>.
- Rusdiana, Erma, and Ahmad Agus Ramdlany. *Pengantar Ilmu Hukum: Mengenal Tata Nilai, Norma Dan Falsafah Dasar Pembentukan Ilmu Hukum*. Scopindo Media Pustaka, 2022.
- Safudin, Endrik. *Alternatif Penyelesaian Sengketa Dan Arbitrase*. Intrans Publishing, 2018.
- Salmon, Harly Clifford Jonas, Judy Marria Saimima, Selamat Lumban Gaol, et al. *Hukum Alternatif Penyelesaian Sengketa*. Penerbit Widina, 2025.
- Salsabila, Annisa, Tria Noviantika, and Ahmad Yani. "Initiating Constitutional Morality: Political Intervention, Ethical Reinforcement, and Constitutional Court Decisions in Indonesia." *Constitutional Review* 10, no. 2 (2024): 505–37. <https://doi.org/10.31078/consrev1028>.
- Santoso, Agus. *Hukum, Moral & Keadilan*. Prenada Media, 2015.
- Santoso, Lukman. *Negara Hukum Dan Demokrasi Di Indonesia*. Arti Bumi Intaran, 2024.
- Saputro, Aries, and Radian Salman. "The Legal and Moral Principles as Guidelines for Carrying Out Official Duties." *Yuridika* 39, no. 2 (2024): 127–52. <https://doi.org/10.20473/ydk.v39i2.50496>.
- Siahaan, Bakti, Saleh Sjafei, and Arfan Tarigan. "Adjudicating Certainty: Paradigms of Finality and Fallibility in the Decisions of Indonesia's Constitutional Court."

- International Journal of Research and Innovation in Social Science* IX, no. VI (2025): 1–6. <https://doi.org/10.47772/IJRISS.2025.90600001>.
- Silalahi, Artha Debora, Rizal Mustansyir, and Sindung Tjahyadi. "Rational Adjudication in Diverse Society: Integrating Raz's Philosophy of Authority in Indonesian Constitutional Justice." *Jurnal Ilmu Sosial Indonesia (JISI)*, December 31, 2025, 101–11. <https://doi.org/10.15408/jisi.v6i2.43900>.
- Sudirman. *Hukum Acara Peradilan Agama*. 1st ed. IAIN Parepare Press, 2021.
- Sulistiyawan, Aditya Yuli, and Aldio Fahrezi Permana Atmaja. "Arti penting legal reasoning bagi hakim dalam pengambilan putusandi pengadilan untuk menghindari onvoldoende gemotiveerd." *Jurnal Ius Constituendum* 6, no. 2 (2021): 482–96. <https://doi.org/10.26623/jic.v6i2.4232>.
- Sungkar, Lailani, Wicaksana Dramanda, Susi Dwi Harijanti, and Adnan Yasar Zulfikar. "Urgensi Pengujian Formil Di Indonesia : Pengujian Legitimasi Dan Validitas." *Jurnal Konstitusi* 18, no. 4 (2021): 748–73. <https://doi.org/10.31078/jk1842>.
- Utami, Ria Anggraeni, Zico Junius Fernando, Wiwit Pratiwi, and David Aprizon Putra. "Hukum dan moral dalam kasus-kasus hukum di indonesia." *Al Ijarah: Jurnal pemerintahan dan politik islam* 7, no. 2 (2022): 195–208. <https://doi.org/10.29300/imr.v7i2.3053>.
- Wadsworth. *Codes of Ethics for the Helping Professions*. Brooks/Cole-Thomson Learning, 2004.
- Wahyudi, Abdullah Tri. "Dialektika Penalaran Hukum Sistemik Ke Arah Penalaran Hukum Non-Sistemik: Basis Nilai Penalaran Hukum Non-Sistemik." *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 6, no. 2 (2021): 127–42. <https://doi.org/10.22515/alakhkam.v6i2.4030>.
- Wahyuni, Winda, Multi Sri Asnani, and Dirawati. "Judicial Law-Making and the Limits of Constitutional Adjudication: Reassessing Judicial Power in Indonesia after Decision No. 92/PUU-XXII/2024." *Al-Adalah: Jurnal Hukum Dan Politik Islam*, January 31, 2026, 216–28. <https://doi.org/10.30863/ajmpi.v11i1.11331>.
- Wajdi, Farid, Imran, and Muhammad Ilham Hasanuddin. *Pengawasan Hakim dan Penegakan Kode Etik di Komisi Yudisial*. Sinar Grafika, 2022.
- Waldron, Jeremy. "Judges as Moral Reasoners." *International Journal of Constitutional Law* 7, no. 1 (2009): 2–24. <https://doi.org/10.1093/icon/mon035>.
- Wisesa, Anggara. "Integritas Moral Dalam Konteks Pengambilan Keputusan Etis." *Jurnal Manajemen Teknologi*, 2011. <https://journal.sbm.itb.ac.id/index.php/mantek/article/view/133>.
- Yandy, Eza Tri, and Tri Endah Karya Lestiyani. "The Theory of Justice and Ultra Petita Decisions: A Critical Analysis of Judicial Review in the Constitutional Court." *Constitutionale* 6, no. 1 (2025): 13–26. <https://doi.org/10.25041/constitutionale.v6i1.3946>.