



Conditional Finality and Constitutional Rehearing: Recalibrating Judicial Integrity in Indonesia's Constitutional Court

Finalitas Bersyarat dan Pemeriksaan Kembali Konstitusional: Rekalibrasi Integritas Yudisial di Mahkamah Konstitusi Indonesia

Siti Nurhayati , Fenolia Intan Saputri

Fakultas Syariah, UIN Syekh Wasil, Kediri, Jawa Timur, Indonesia

Article Info

Corresponding Author:

Siti Nurhayati

✉ sitinurhayati@uinkediri.ac.id

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Abstract

Constitutional Court Decision Number 90/PUU-XXI/2023 exposed a legitimacy crisis in Indonesia's judicial power, as serious ethics violations did not affect the enforceability of a final and binding decision. The underlying problem is that a rigid separation between legal validity and ethical accountability allows judicial products tainted by conflicts of interest to remain legally operative. Using normative juridical research with statutory, conceptual, case, and comparative approaches, this study finds that judicial integrity is an objective constitutional requirement for the validity of constitutional adjudication. It proposes the doctrine of conditional finality, under which finality may become defeasible when an integrity defect is authoritatively established by an ethics institution. The doctrine is operationalized through a Constitutional Rehearing mechanism as a form of judicial self-correction. The study concludes that Indonesia should adopt integrity-linked adjudication through legislative and procedural reform to harmonize law, ethics, legal certainty, and substantive justice.

Abstrak

Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 memperlihatkan krisis legitimasi kekuasaan kehakiman di Indonesia karena pelanggaran etik serius tidak memengaruhi keberlakuan putusan yang final dan mengikat. Penelitian ini penting karena pemisahan kaku antara validitas hukum dan pertanggungjawaban etik memungkinkan produk yudisial yang tercemar konflik kepentingan tetap berlaku secara hukum. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, kasus, dan komparatif. Hasil penelitian menunjukkan bahwa integritas yudisial merupakan syarat konstitusional objektif bagi validitas adjudikasi konstitusional. Penelitian ini menawarkan doktrin finalitas bersyarat, yaitu finalitas putusan dapat dibuka kembali apabila cacat integritas terbukti secara otoritatif oleh lembaga etik. Doktrin tersebut dioperasionalkan melalui mekanisme Pemeriksaan Kembali Konstitusional sebagai bentuk koreksi diri peradilan. Penelitian ini menyimpulkan bahwa Indonesia perlu mengadopsi adjudikasi berbasis integritas melalui reformasi legislasi dan hukum acara untuk menyelaraskan hukum, etika, kepastian hukum, dan keadilan substantif.



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A. INTRODUCTION

1. Background

The principles of judicial independence and impartiality are core attributes of a state governed by the rule of law.¹ Accordingly, when deciding cases, judges must demonstrate integrity, competence, and adherence to the standards established by procedural law. This issue became prominent after the Constitutional Court of the Republic of Indonesia (MK) issued Decision Number 90/PUU-XXI/2023 on October 16, 2023, concerning the age requirement for presidential and vice-presidential candidates. In relation to that decision, Anwar Usman, then Chief Justice of the MK and the constitutional justice named in the report, was found to have violated the principles of impartiality, integrity, propriety, and decency set out in *Sapta Karsa Hutama*, as stated in the Honorary Council of the Constitutional Court (MKMK) Decision Number 02/MKMK/L/11/2023, issued on November 7, 2023.²

The MKMK decision did not affect the enforceability of MK Decision Number 90/PUU-XXI/2023, even though that decision was found to be connected to ethics violations. This was due, first, to the principle of *res judicata* and the final and binding character of MK decisions.³ Second, the mechanisms for addressing legal violations and ethics violations are separate, creating two processes that cannot be procedurally linked. Third, no rule provides for sanctions against a judicial decision tainted by ethics violations.⁴

Ethics violations that do not affect the validity of judicial decisions are not confined to constitutional adjudication; they also occur within the general judiciary. The case of Ahmad Yamani, a reported judge who was found to have violated the Joint Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia and the Chairman of the Judicial Commission of the Republic of Indonesia (KY), Number 047/KMA/SKB/IV/2009 and Number 02/SKB/P.KY/IV/2009, concerning the Code of Ethics and Code of Conduct for Judges (KEPPH), is one example. From January to September 2023, the Honorary Council of Judges (MKH) dismissed four judges who were proven to have violated the code of ethics, one of whom was involved in a bribery and gratuity case.⁵

¹ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Jakarta: Konstitusi Press, 2005).

² Hafizatul Ulum and Sukarno, "Analisis pengaruh pelanggaran kode etik hakim Mahkamah Konstitusi terhadap putusan yang ditetapkan: Studi kasus Putusan MK Nomor 90/PUU-XXI/2023," *Unizar Law Review* 6, no. 2 (December 2023), <https://doi.org/10.36679/ulr.v6i2.60>.

³ M. Agus Maulidi, "Menyoal kekuatan eksekutorial putusan final dan mengikat Mahkamah Konstitusi," *Jurnal Konstitusi* 16, no. 2 (July 2019): 339, <https://doi.org/10.31078/jk1627>.

⁴ See Republik Indonesia, *Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi*, art. 10(1), as amended; Maulidi, "Menyoal kekuatan eksekutorial," 339.

⁵ Singgih Wiryono and Dani Prabowo, "MKH pecat 4 hakim yang terbukti langgar kode etik sepanjang Januari–September 2023," *Kompas.com*, November 4, 2023, <https://nasional.kompas.com/read/2023/11/04/06330181/mkh-pecat-4-hakim-yang-terbukti-langgar-kode-etik-sepanjang-januari>.

Within the general judiciary, several legal remedies remain available, including appeal, cassation, and extraordinary review (*peninjauan kembali*, PK). The question is what happens when an ethics violation occurs within constitutional adjudication. Upholding morality and ethics is essential for public officials, including judges.⁶ This raises a broader question about how Indonesian judicial power has positioned ethics as a foundational legal instrument.⁷ This normative gap deserves examination because it concerns how law should operate once ethical norms have been violated.

Meanwhile, the concept of “mistrial” is an important feature of procedural law, particularly in common law systems. In general, it refers to the termination or invalidation of a trial because of procedural defects, such as incomplete evidence, improper jury-selection procedures, other material irregularities, or a hung jury. After a mistrial is declared, the trial must begin again, including the selection of a new jury.⁸ A related procedural safeguard appears in Rule 26.3 of the Federal Rules of Criminal Procedure, which requires the court to give the parties an opportunity to comment before a mistrial is ordered.⁹ Functionally, a mistrial corrects defects in the trial process and restores its legitimacy, although the mechanism may also be misused.¹⁰

Problems of legal and ethical justice in Indonesia cannot be separated from the influence of particular paradigms in legal philosophy. The legal paradigm adopted by a nation shapes its basic assumptions and the way legal phenomena are understood. Among the legal paradigms embraced across jurisdictions, legal positivism remains dominant in many countries, including Indonesia.¹¹ According to Soetandyo Wignjosoebroto, the positivist school views law as a science concerned with social life and behavior, which should be orderly and governed by causal norms; its adherents therefore seek to formulate those causal relationships in legislation.¹² This orientation is reflected in the use of laws and

⁶ Universitas Muhammadiyah Yogyakarta, “Tanggapi hasil keputusan MKMK, Dekan FH UMY tekankan perlunya moralitas dan etika dalam praktik bernegara,” November 8, 2023, <https://www.umy.ac.id/tanggapi-hasil-keputusan-mkmk-dekan-fh-umy-tekanan-perlunya-moralitas-dan-etika-dalam-praktik-bernegara/>.

⁷ Despan Heryansyah, “Etika dan hukum,” *Indonesian Corruption Watch*, February 27, 2018, <https://antikorupsi.org/id/article/etika-dan-hukum>.

⁸ Mac Aditiawarman, *Terminologi Hukum Amerika* (Padang: Ekasakti University Press, 2011).

⁹ See Federal Rule of Criminal Procedure 26.3; Aditiawarman, *Terminologi Hukum Amerika*, 6; Gerard Coffey, “Evaluating the Common Law Principle against Retrials,” *Dublin University Law Journal* 29 (2007): 26–56.

¹⁰ Moch Choirul Rizal, “Dari ‘Kid Lawyer’ dan ikhtiar mengoreksi peradilan,” *Harian Bhirawa*, January 8, 2024, <https://harianbhirawa.co.id/dari-kid-lawyer-dan-ikhtiar-mengoreksi-peradilan/>.

¹¹ Maryati Maryati, “Kritik terhadap paradigma positivisme hukum dan beberapa pemikiran dalam rangka membangun paradigma hukum yang berkeadilan,” *Inovatif: Jurnal Ilmu Hukum* 7, no. 2 (May 2014), <https://www.neliti.com/publications/43210/kritik-terhadap-paradigma-positivisme-hukum-dan-beberapa-pemikiran-dalam-rangka>.

¹² Soetandyo Wignjosoebroto, “Positivisme dan doktrin positivisme dalam ilmu hukum serta kritik terhadap doktrin” (paper, Yogyakarta, 2007).

regulations issued by competent authorities as the basis for determining whether an act is legally sanctionable.

Legal positivism understands law as a system of rules that are binding because they originate from legitimate authority and are applied objectively, independently of personal moral or ethical values. Within this paradigm, the spiritual dimension, including religion, ethics, and morality, is separated from the development of modern civilization. In its development, modern law has lost one of its essential elements: spiritual values.¹³ This understanding can constrain legal reasoning because it leaves insufficient room to examine whether every regulation issued by governing authorities is just. At the same time, legal positivism presupposes codified ethical norms to ensure legal certainty. Because written legal rules occupy the highest position in legal positivism, codified ethical norms, such as codes of conduct established through official laws or regulations, are treated as legitimate and binding. By contrast, unwritten ethics or ethics based on social norms do not carry the same legal force. Against this background, the relationship between ethics and law may also be understood as a clash of paradigms that affects enforcement of both.

The literature on the integration of legal and ethical justice remains limited in books, journal articles, and other scholarly works. This study therefore engages prior research on code-of-ethics violations and the authority of ethics institutions, including Noviatun Isna's thesis, *Violations of the Code of Ethics of Judges in the Constitutional Court from the Perspective of Islamic Legal Ethics: A Study of Decision Number 01/MKMK/T/02/2023 of the Honorary Council of the Constitutional Court*. That study found that the MKMK's written reprimand against Guntur Hamzah was consistent with applicable laws and regulations because it did not depart from the integrity expected of a constitutional justice, as stated in *Sapta Karsa Utama*. Both that study and the present study examine code-of-ethics violations. The distinction lies in the research source: the previous study used MKMK Decision Number 01/MKMK/T/02/2023 as its primary source.¹⁴

The dynamics of judicial power in Indonesia reached a critical point after MK Decision Number 90/PUU-XXI/2023, a judicial anomaly that led to the MKMK decision. The MKMK's finding of serious ethics violations by constitutional justices in the decision-making process revealed a fundamental conflict between personal or political interests and judicial integrity.¹⁵

¹³ Abdul Halim, "Teori-teori hukum aliran positivisme dan perkembangan kritik-kritiknya," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 42, no. 2 (July 2008), <https://doi.org/10.14421/ajish.v42i2.115>.

¹⁴ Isna Noviatun, "Pelanggaran kode etik hakim di Mahkamah Konstitusi perspektif etika hukum Islam: Studi Putusan Majelis Kehormatan Mahkamah Konstitusi Nomor 01/MKMK/T/02/2023" (thesis, UIN Prof. K.H. Saifuddin Zuhri Purwokerto, 2023), <https://repository.uinsaizu.ac.id/22449/>.

¹⁵ Titon Slamet Kurnia, "Kritik terhadap Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 menggunakan pendekatan hak Dworkin," *Jurnal Konstitusi* 22, no. 1 (2025): 157–77, <https://doi.org/10.31078/jk2217>.

Systemically, this case exposes the fragility of the relationship between law and ethics in Indonesia's constitutional design. A legal impasse arises because, on the one hand, ethics violations have been authoritatively established by the MKMK, while, on the other hand, judicial decisions tainted by those violations remain valid under the doctrine of "final and binding." The systemic problem lies in the absolute separation between the ethics court mechanism, which addresses the conduct of the subject, namely the judge, and the court of law, which concerns the validity of the object, namely the decision, as if the two operated in separate vacuums and had no effect on one another.¹⁶

This tension is rooted in the dominance of an overly rigid legal-positivist paradigm in Indonesian judicial practice. Positivism treats legal validity as dependent solely on formal procedures, that is, on the way a decision is made, regardless of the internal morality of the process. As a result, the constitutional doctrine on the final and binding nature of decisions has been transformed into a shield for ethically flawed decisions. A comparison with the concept of "mistrial" in the United States common law system, where defects in the integrity of the trial process may prevent the proceeding from producing a valid outcome, shows that the Indonesian impasse is not unavoidable; rather, it reflects an institutional design that isolates ethics from the core of adjudication.¹⁷

Although much of the literature discusses judicial ethics in general or criticizes MK Decision Number 90/PUU-XXI/2023 from a legal-political perspective, a significant research gap remains in examining ethics as a substantive condition for the validity of a judicial decision. Existing scholarship has not adequately explained how ethics findings and legal decisions can be systematically integrated without undermining legal certainty. This study seeks to fill that gap by offering the concept of judicial harmonization, an approach that places ethical accountability not outside the legal system but as a decisive pillar of the legitimacy of judicial power.

2. Research Questions

Based on the background above, this study addresses two questions. First, what implications does the legal-positivist paradigm have for the fragmentation of authority between legal adjudication and ethics adjudication in Indonesia, and to what extent can constitutional coherence be developed to position judicial integrity as a parameter for the validity of judicial decisions and thereby soften the rigidity of the "final and binding"

¹⁶ Herwinda Larasati et al., "Code of Ethics Violations Due to Constitutional Court Decision Number 90/PUU-XXI/2023 towards the Dynamics of the 2024 Election in Indonesia," *Jurnal Hukum In Concreto* 3, no. 2 (2024): 131–48, <https://doi.org/10.35960/inconcreto.v3i2.1484>.

¹⁷ For the functional use of mistrial and retrial principles in comparative analysis, see Coffey, "Evaluating the Common Law Principle against Retrials," 26–56; Aditiawarman, *Terminologi Hukum Amerika*, 6.

doctrine? Second, how can the judicial harmonization model be integrated into judicial procedural law by using substantive justice and judicial independence as benchmarks for legitimizing the Constitutional Rehearing mechanism for decisions affected by integrity defects?

3. Research Methods

This study is normative legal research that examines law as a system of norms that is internally structured yet open to external values, particularly ethics. It is prescriptive and analytical: it not only describes the law as it is (*das sein*) but also develops arguments about how the law ought to be constructed (*das sollen*) to achieve judicial harmonization. To analyze the fragmentation of authority and develop an integration model, this study employs four main approaches.

First, the statutory approach analyzes inconsistencies among the 1945 Constitution, particularly the principle of integrity¹⁸; the Law on Judicial Power, particularly the principle of *res judicata*; and the Constitutional Court Law, particularly the final and binding character of MK decisions. Second, the conceptual approach examines legal positivism, judicial integrity, and conditional finality to establish the foundation for the judicial harmonization model. Third, the case approach provides an in-depth analysis of MK Decision Number 90/PUU-XXI/2023 and MKMK Decision Number 02/MKMK/L/11/2023 as legal materials that represent the conflict between law and ethics.

Among the various ethics decisions, MKMK Decision Number 02/MKMK/L/11/2023 is the most important instrument for this study. Its significance lies in its authoritative finding of a substantive conflict of interest that directly affected the adjudication of a constitutional case. Other decisions, namely Decision Number 03/MKMK/L/11/2023, Decision Number 04/MKMK/L/11/2023, and Decision Number 05/MKMK/L/11/2023, addressed important issues of professional conduct and administrative impartiality within the decision-making framework. This article argues, however, that when an ethics breach, such as the breach established in Decision Number 02/MKMK/L/11/2023, undermines the requirement of an impartial tribunal, it challenges the legitimacy of the resulting decision and requires a mechanism for judicial self-correction. Fourth, the comparative approach uses the concepts of mistrial and vacating judgments in other jurisdictions to examine the possibility of annulling decisions on the ground of integrity violations.¹⁹

¹⁸ See Republik Indonesia, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, art. 24(1); Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*.

¹⁹ This comparative approach is used functionally, not as a direct transplant. See Coffey, "Evaluating the Common Law Principle against Retrials," 26–56; Aditiawarman, *Terminologi Hukum Amerika*, 6.

Legal materials are classified into three categories. First, primary legal materials include the 1945 Constitution, the Law on Judicial Power, the Constitutional Court Law, the KEPPH, and court decisions, particularly MK and MKMK decisions. Second, secondary legal materials consist of reputable legal journals, legal theory texts, and research findings relevant to judicial integrity. Third, non-legal materials, namely legal dictionaries and encyclopedias, are used to clarify technical terminology.

The legal materials were collected and analyzed through a literature review of relevant norms and doctrines. The analysis used teleological interpretation, which identifies the essential purpose of the law, and systematic interpretation, which connects one norm to another. The legal materials were assessed using substantive justice and judicial independence as benchmarks for determining whether the proposed rehearing norms would contradict or strengthen the judicial power system.

B. DISCUSSION/ANALYSIS

1. Fragmentation of Authority and Doctrinal Rigidity: The Antinomy Between Procedural Certainty and Judicial Integrity

At the level of legal dogmatics, the tension between law and ethics in Indonesia's judicial power appears as a normative antinomy between the principle of *res judicata pro veritate habetur*—that a judicial decision is presumed to be correct—which is embodied in the final and binding nature of MK decisions, and the principle of judicial integrity, which constitutes a constitutional mandate under Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.²⁰ The legal-positivist paradigm that has dominated judicial practice tends to reduce the term “final” to a procedural endpoint that cannot be challenged by any post-decision variable. In theory, however, the finality of a decision is not a freestanding value; it is a legal status that can attach only when the adjudication process satisfies the requirements of due process and integrity.

This conflict becomes sharper when gross ethics violations, such as conflicts of interest, occur during the decision-making process. From the perspective of legal integrity, a decision produced through a morally flawed process is not merely a matter of judicial conduct but a substantial defect that undermines the legitimacy of the decision itself. Isolating legal validity from the ethics findings of supervisory institutions, such as the MKMK or KY, in the name of legal certainty would instead produce pseudo-legal certainty, in which law is forced to justify a moral anomaly. Doctrinal reconstruction is therefore needed to place

²⁰ A. Resopijani and Yohanes Baptista Neonbeni, “Ethical Violation by the Chairman of the Constitutional Court against Indonesian Law and Democracy,” *Journal of Multidisciplinary Academic Business Studies* 1, no. 3 (May 2024): 401–8, <https://doi.org/10.35912/jomabs.v1i3.2147>.

integrity not as an extrajudicial element but as an administrative-substantive condition that determines whether a decision is entitled to the attribute of “final and binding” or may be rendered voidable and subject to annulment through a defined procedure for failing to satisfy the internal morality of law.²¹

The dominance of legal positivism in Indonesia is firmly embedded in Article 10 paragraph (1) of the Constitutional Court Law, which states that MK decisions are “final.” In positivist terms, finality is interpreted as a procedural dead end. The positivist assumptions at work are twofold. First, law is separated from morality. The validity of a decision depends only on institutional authority, or the source thesis, and on compliance with formal procedures, not on the moral integrity of the judge. Second, norms are treated as exclusive. Because the Constitutional Court Law does not regulate a mechanism for annulling decisions on the basis of ethics violations, positivism treats such a mechanism as nonexistent, creating a legal vacuum despite its moral urgency.²²

Empirically, this fragmentation can be seen in the MKMK’s statement that a gross ethics violation had occurred, while the MKMK also acknowledged that, as a matter of judicial power, it lacked authority to alter the MK’s decision because of the positivist doctrine of finality under the Constitutional Court Law.²³ This illustrates how positivist legal design severs the causal relationship between ethical truth and legal validity. The following matrix visualizes these philosophical-practical relations:

Table 1.
Positivist Assumptions and Institutional Fragmentation in Constitutional Court Adjudication

Assumption of Positivism	Implementation in the Design of the Constitutional Court Law	Practical Impact (Fragmentation)
Separation of Law and Morality	No integrity variable is included in the validity requirements for decisions under the Constitutional Court Law.	The decision remains valid even if the judge is found to have committed gross ethics violations.

²¹ 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 (December 2024): 235, <https://doi.org/10.31958/jisrah.v5i3.13750>.

²² Hanifah et al., “Ethical Violations of Constitutional Judges,” 235.

²³ See Mahkamah Konstitusi Republik Indonesia, *Putusan Majelis Kehormatan Mahkamah Konstitusi Nomor 02/MKMK/L/11/2023*; Republik Indonesia, *Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi*, art. 10(1), as amended.

Assumption of Positivism	Implementation in the Design of the Constitutional Court Law	Practical Impact (Fragmentation)
Procedural Legal Certainty	Rigid interpretation of Article 24C of the 1945 Constitution and Article 10 of the Constitutional Court Law (absolute finality).	Rehearing or judicial self-correction is foreclosed.
Textual Supremacy	The absence of rehearing norms is treated as a prohibition on correction.	A legal deadlock arises between the MKMK's ethics findings and the MK's decision.

Source: *Authors' synthesis (2025)*

The causal relationship between the legal philosophy of positivism and institutional fragmentation in Indonesia is not merely philosophical abstraction; it is embedded in the normative architecture of the Constitutional Court Law. This study finds that the “fingerprint” of positivism operates through two main pathways in legislative design. First, it operates through the formalism of Article 10 paragraph (1) of the Constitutional Court Law. The provision stating that MK decisions are final and binding is interpreted as a textual-literal procedural endpoint. Empirically, the positivist assumption that separates law and morality, as conceptualized by H.L.A. Hart,²⁴ is manifested in the absence of integrity as a substantive condition for the validity of a decision under the Constitutional Court Law. This design makes validity depend solely on the source of authority, or the source thesis. Consequently, when the MKMK finds moral defects in the decision-making process, Indonesian positive law provides no procedural gateway for correction because the statutory text does not create one.

Second, ethics and legal jurisdictions are institutionally isolated. This separation is a direct consequence of the legal-positivist view that treats law as a closed logical system.²⁵ This is clearly demonstrated in MKMK Decision Number 02/MKMK/L/11/2023. Although the Council found gross ethics violations to have been proven, it concluded that it lacked formal authority to review or annul the MK's decision because of its final and binding nature. This jurisdictional limitation underscores the rigid boundary between ethical accountability and legal finality, which often leaves substantive integrity issues unaddressed within the

²⁴ H. L. A. Hart, *The Concept of Law*, 3rd ed. (Oxford: Oxford University Press, 2012).

²⁵ Nadia Rohadatul Aisyi and F. X. Joko Priyono, “Positivism and the Separation of Law and Morals,” *International Journal of Research and Innovation in Social Science* 7, no. 11 (2023): 1240–50, <https://doi.org/10.47772/IJRISS.2023.7011096>.

formal legal framework. The Constitutional Court Law does not establish a normative bridge between ethics findings and the legal status of judicial decisions. This fragmentation is not an administrative accident; it is a legal-ideological choice that prioritizes procedural legal certainty over material-ethical truth. Thus, the MK's inability to address its own morally flawed decisions demonstrates that institutional practice in Indonesia remains confined within a rigid legal-positivist framework.

Broadly speaking, adjudication encompasses a series of activities aimed at applying and enforcing the law in order to achieve justice in society.²⁶ Even before independence, court institutions existed as bodies or agencies that carried out judicial functions by examining, adjudicating, and deciding cases to uphold law and justice, although their structure and number remained limited.

The duties and authority of the judiciary in Indonesia form part of the judicial power system, namely the independent power of the state to administer justice in order to uphold law and justice.²⁷ In Indonesia, judicial power assures the public that justice will be upheld and legal certainty maintained. This is also a core principle of the rule of law: judicial power must be exercised independently to uphold law and justice.

Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that judicial power is exercised by the Supreme Court and the judicial bodies under it within the general, religious, military, and state administrative courts, as well as by the MK. Based on this formulation, judicial power is vested in both the Supreme Court and the MK. Although both institutions exercise judicial power, their authorities differ. Article 24C paragraph (2) of the 1945 Constitution of the Republic of Indonesia also stipulates that the MK decides the opinion of the House of Representatives concerning alleged violations by the President and/or Vice President under the 1945 Constitution.

The judicial process is carried out by the institutions exercising judicial power, namely the Supreme Court and the judicial bodies under it, as well as the MK. The MK functions as a court of norms,²⁸ while the Supreme Court functions both as a court of norms and as a court of concrete cases.²⁹ In Indonesia, an ethics court refers to a process for enforcing a code of ethics through certain institutions or bodies to ensure that officials or professionals in particular fields act according to established ethical standards. Examples of ethics courts

²⁶ Ahmad Asif Sardari and Ja'far Shodiq, "Peradilan dan pengadilan dalam konsep dasar, perbedaan dan dasar hukum," *JIFLAW: Journal of Islamic Family Law* 1, no. 1 (2022): 15, <https://ejournal.iaingorontalo.ac.id/index.php/jiflaw/article/view/355>.

²⁷ Halim, "Teori-teori hukum aliran positivisme."

²⁸ Joko Widarto, *Menjalankan Peradilan Norma* (Jakarta: Fakultas Hukum Universitas Esa Unggul, 2017).

²⁹ Mahkamah Agung Republik Indonesia, "Tugas Pokok dan Fungsi," accessed June 9, 2026, <https://mahkamahagung.go.id/id/tugas-pokok-dan-fungsi>.

in Indonesia include the Honorary Council of Election Organizers (DKPP), the Honorary Council of Advocates (DKA), the Honorary Court of the Council (MKD), and the Notary Honorary Council (MKN).³⁰

An ethics court has the function and authority to examine, assess, adjudicate, and decide alleged ethics violations. Closely related to judicial power, although not itself an institution exercising judicial power, is the KY, whose existence and position are designed to support the selection of candidates for Supreme Court justices and to maintain the honor, dignity, and conduct of judges. The supervisory authority of the KY is therefore limited to matters of judicial ethics and conduct and does not extend to judicial technicalities; the KY cannot act as an ethics court.³¹

Broadly speaking, the ethical justice system within the scope of judicial power lacks uniformity in ethics trial procedures. Both the MKMK and MKH complement the ethics court framework by conducting ethics hearings within state institutions. The MKH itself serves as a forum for judges to defend themselves when, based on examination results, they are found to have violated the KEPPH or applicable laws and regulations and are proposed to receive severe sanctions in the form of honorable or dishonorable dismissal.

Accordingly, in MKH hearings, the complainant and witnesses from the supervisory team, whether from the KY or the Supreme Court, are no longer examined. Proposals for an MKH hearing concerning behavioral violations committed by Supreme Court justices, high court judges, judges, or ad hoc judges may be submitted by either the Supreme Court or the KY, provided that sufficient reasons and evidence exist. The legal basis for implementing the MKH is Article 11A of Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court; Articles 22F and 22G of Law Number 11 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission; and the Joint Regulation of the Chairman of the Judicial Commission and the Chief Justice of the Supreme Court Number 04/SKB/P.KY/IX/2012 and 04/KMA/SKB/IX/2012 concerning Procedures for the Establishment, Work Procedures, and Decision-Making Procedures of the Honorary Council of Judges.³²

Meanwhile, the MKMK is an organ established by the MK to maintain and enforce the honor, dignity, and code of ethics of constitutional justices, as well as to address reports of gross violations committed by a judge who is the subject of a report or allegation submitted

³⁰ See Republik Indonesia, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, arts. 24(2), 24C(1); Republik Indonesia, *Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman*.

³¹ Basuki Resko Wibowo, "Kedudukan Komisi Yudisial sebagai peradilan etik dalam sistem peradilan di Indonesia," paper presented at Seminar Nasional MKD DPR-ICAKHI, 2018, 1–19.

³² Mega Ayu Werdiningsih, "Check and Balances dalam sistem peradilan etik," *Jurnal Konstitusi & Demokrasi* 1, no. 1 (June 25, 2021): 68, <https://doi.org/10.7454/JKD.v1i1.1104>.

by the Ethics Council. The MKMK consists of three members: one constitutional justice, one community figure, and one legal academic. The relevant provisions are set out in Constitutional Court Regulation (PMK) Number 11 of 2024, the latest regulation governing the MKMK. This PMK was enacted on September 12, 2024, to update the previous provisions and strengthen ethical supervision within the MK.³³

These two ethics courts have different institutional features. For example, an ethics court does not necessarily hold both enforcement and supervisory functions, because separate institutions may be established to carry out those functions. The MK established the Ethics Council as an internal instrument for enforcing the code of ethics, and the Ethics Council formed the MKMK to carry out the ethics court function. By contrast, the MKH carries out the ethics court function, while enforcement and supervision of the code of ethics are performed by two state institutions rather than a single internal body: the Supreme Court, which operates internally, and the KY, which operates externally.

Ethical enforcement is an important foundation for maintaining the integrity, independence, and professionalism of the judiciary. In Indonesia, however, the implementation of these principles remains fragmented. This can be seen, first, in the different sources of authority: legal adjudication is based on law, whereas ethics adjudication is based on a code of ethics. In terms of legal sources, law is governed by statutory regulations, whereas ethical matters are referred back to the relevant professions or institutions. For institutions exercising judicial power, the main basis is the KEPPH, established through a joint decision of the Chief Justice of the Supreme Court of the Republic of Indonesia and the Chairman of the KY,³⁴ while the MK is guided by the principles of *Sapta Karsa Hutama*, the code of ethics and conduct for constitutional justices.³⁵

Second, there is no clear linkage between legal adjudication and ethics adjudication. Within the Supreme Court, ethical enforcement usually begins with public reports or internal findings. The MKH, which consists of members of the KY and Supreme Court justices, then examines the alleged violations. If the violation is proven, the judge concerned may face sanctions ranging from a reprimand to dismissal.³⁶ Meanwhile, enforcement of the code of

³³ Mahkamah Konstitusi Republik Indonesia, *Peraturan Mahkamah Konstitusi Nomor 11 Tahun 2024 tentang Majelis Kehormatan Mahkamah Konstitusi* (2024), <https://www.mkri.id/peradilan/majelis-kehormatan-mk/peraturan-mkmk>.

³⁴ Mahkamah Agung Republik Indonesia and Komisi Yudisial Republik Indonesia, *Keputusan Bersama Ketua Mahkamah Agung Republik Indonesia dan Ketua Komisi Yudisial Republik Indonesia Nomor 047/KMA/SKB/IV/2009 dan Nomor 02/SKB/P.KY/IV/2009 tentang Kode Etik dan Pedoman Perilaku Hakim* (2009).

³⁵ Mahkamah Konstitusi Republik Indonesia, *Peraturan Mahkamah Konstitusi Nomor 09/PMK/2006 tentang Pemberlakuan Deklarasi Kode Etik dan Perilaku Hakim Konstitusi* (2006).

³⁶ Komisi Yudisial Republik Indonesia, "KY beri sanksi bagi hakim yang melanggar kode etik," August 3, 2023, https://www.komisiyudisial.go.id/frontend/news_detail/15421/ky-beri-sanksi-bagi-hakim-yang-melanggar-kode-etik.

ethics for constitutional justices is carried out in stages, including procedures for gathering evidence to prove the alleged violation.³⁷ The latest regulation that comprehensively governs the MKMK's authority to examine violations and impose sanctions is PMK Number 11 of 2024 concerning the MKMK.

The mechanism for imposing sanctions in the two ethics proceedings is determined by the institution whose members are being supervised. Even within the Supreme Court, despite the involvement of the KY in supervision and ethical enforcement, the decision to impose sanctions is determined by the Supreme Court, whether in the form of severe sanctions, such as permanent dismissal through a Supreme Court decision, or light and moderate sanctions based on recommendations from the KY. The KY, however, is a state institution and not a complement to the Supreme Court. Moreover, an ethics hearing precedes the decision to impose sanctions. In these ethics courts, there is no mechanism for objecting to MKMK and MKH decisions; the resulting decisions are therefore final and not subject to appeal.³⁸

This process shows that ethics courts operate separately from ordinary judicial proceedings, although they often arise after legal proceedings have already been initiated. The essence of ethical justice is to maintain the integrity of the judicial system itself. The current separation between legal and ethics proceedings therefore creates difficulties in achieving coherence and institutional synergy. This incompatibility has appeared in many cases, including the case of the three Surabaya District Court judges who acquitted the defendant Gregorius Ronald Tannur. The KY emphasized that the three judges had committed serious violations of the KEPPH and recommended dismissal with pension rights. The sanction, however, still had to be decided by the MKH because the Supreme Court was awaiting the final outcome of the cassation proceedings in the Ronald Tannur case.³⁹ This case is one among many in which a KY recommendation has not functioned as a sufficiently "powerful weapon" for safeguarding judicial ethics and morality. The mechanism for resolving ethics violations must still be completed internally through the MKH. Such a mechanism often results in impasse and even resistance within the Supreme Court. It is therefore foreseeable that these institutions may sometimes take different positions toward each other.⁴⁰

³⁷ Henny Pertiwi Gani and Abdul Gani Abdullah, "Mekanisme penegakan hukum terhadap hakim yang melakukan pelanggaran kode etik di Mahkamah Konstitusi yang memenuhi unsur pidana: Studi Putusan Nomor 01/MKMK-SPL/II/2017," *Jurnal Hukum Adigama* 3, no. 1 (2020): 1173–96.

³⁸ Werdiningsih, "Check and Balances dalam sistem peradilan etik," 68.

³⁹ Fath Putra Mulya, "MA jelaskan perkembangan MKH tiga hakim PN Surabaya disanksi KY," *Antara News*, October 24, 2024, <https://www.antaraneews.com/berita/4419293/ma-jelaskan-perkembangan-mkh-tiga-hakim-pn-surabaya-disanksi-ky>.

⁴⁰ Idul Rishan, "Justifikasi pelembagaan peradilan etik," *Dialogia Iuridica: Jurnal Hukum Bisnis dan Investasi* 9, no. 1 (2017): 95, <https://doi.org/10.28932/di.v9i1.733>.

This fact shows that ethics court procedures are often not resolved quickly enough to provide direct support for the administration of justice. Ethics courts often intervene only at the end of judicial processes, after ethics violations have occurred. Consequently, legal outcomes that are considered legitimate may continue to operate despite underlying ethical concerns. The primacy of ethics proposed in this study does not reduce ethical standards to a mere formal validation or “stamp” for court decisions. This is illustrated by the dismissal of Justice Patrialis Akbar in MKMK Decision Number 01/MKMK-SPP/II/2017, in which the ethics council issued its decision on the basis of a breach of integrity before the criminal proceedings reached a final verdict. This precedent is instructive precisely because of its limit. Although the breach of integrity was authoritatively established, no decision in which Patrialis Akbar had participated was annulled as a consequence. The case therefore does not show that ethics findings already control the validity of judicial products; it demonstrates the opposite, and exposes the very lacuna this study addresses, in which an authoritative ethics finding reaches the judge as an individual yet leaves the legal status of the decision untouched.

The situation differs within the MK. The series of MKMK decisions dated November 7, 2023, established a gradation of sanctions for ethics violations in the case concerning the age requirements for presidential and vice-presidential candidates, culminating in Decision Number 02/MKMK/L/11/2023, which imposed a severe sanction by removing Anwar Usman from the position of Chief Justice of the MK because he was proven to have had a real conflict of interest. Decision Number 03/MKMK/L/11/2023 stated that Saldi Isra was not at fault because dissenting opinions are part of judicial independence, while Decision Number 04/MKMK/L/11/2023 imposed a written reprimand on Arief Hidayat for public statements considered to have degraded the dignity of the institution. Finally, Decision Number 05/MKMK/L/11/2023 issued a collective verbal reprimand to nine constitutional justices for failing to maintain the secrecy of the Judges' Consultative Meeting (RPH), collectively confirming a systemic integrity crisis within the MK.⁴¹ Because MK decisions are final and binding, they cannot be annulled or challenged through ordinary legal remedies such as appeal, cassation, or PK.

The disconnected relationship between legal justice and ethical justice makes clear that, although ethics is said to be the basis of law, the two systems operate through separate procedural mechanisms. Ethics can be understood as the social basis for the functioning

⁴¹ See Mahkamah Konstitusi Republik Indonesia, *Putusan Majelis Kehormatan Mahkamah Konstitusi Nomor 02/MKMK/L/11/2023*; Mahkamah Konstitusi Republik Indonesia, *Putusan Majelis Kehormatan Mahkamah Konstitusi Nomor 03/MKMK/L/11/2023*; Mahkamah Konstitusi Republik Indonesia, *Putusan Majelis Kehormatan Mahkamah Konstitusi Nomor 04/MKMK/L/11/2023*; Mahkamah Konstitusi Republik Indonesia, *Putusan Majelis Kehormatan Mahkamah Konstitusi Nomor 05/MKMK/L/11/2023*.

of the legal system. Ethics may be analogized as the ocean on which the law navigates. As former Supreme Court Chief Justice Earl Warren (1953–1969) once said, “in civilized life, law floats in a sea of ethics.”⁴² Law cannot uphold justice if the ethical ocean does not flow or function properly. In the context of the state, the role of ethics and morality cannot be separated from the basic values that shape the spirit of national and state life. These basic values serve as the foundation and guidelines for the life of the nation and the state.

To integrate ethics into judicial validity, this study offers a doctrinal redefinition of finality and bindingness through the concept of conditional finality. Traditionally, finality is understood as an absolute attribute inherent in institutional authority, particularly the MK, and is intended to ensure legal certainty and prevent endless litigation. From the perspective of constitutional integrity, however, finality should not be understood as blanket immunity that shields decisions from fundamental moral defects.⁴³

This theoretical repositioning challenges the orthodox paradigm that treats finality and binding force as absolute doctrines designed solely to guarantee legal certainty. Instead, conditional finality places moral integrity as a constitutive element of judicial validity. Under this conceptual framework, finality is no longer a shield of blanket immunity but a contingent attribute dependent on the ethical integrity of the adjudication process. Decisions produced through fundamental moral defects may therefore be reviewed in order to uphold substantive constitutional justice.

The concept of conditional finality argues that the binding force of a decision is conditional on the relationship between the state and justice seekers. The state assigns the attribute of finality to a decision on the assumption that the decision was produced through an honest process, or fair trial, and by an impartial judge. If these integrity prerequisites are found to have been grossly violated, as confirmed by decisions of authoritative ethics institutions, the final attribute becomes defeasible. The decision has then lost the moral authority that underpins public compliance with the law.

Under this doctrine, the Constitutional Rehearing mechanism is not a threat to legal certainty but a means of restoring it. Genuine legal certainty cannot be built on ethically corrupt decisions. Rehearing therefore functions as a constitutional safeguard that ensures that the finality of the Court's decision remains consistent with the principles of independent judicial power and integrity. Refusing correction in the name of legal certainty would degrade judicial authority by allowing formal law to substitute for substantive justice.

⁴² Jimly Asshiddiqie, *Peradilan Etik dan Etika Konstitusi: Perspektif Baru tentang Rule of Law and Rule of Ethics & Constitutional Law and Constitutional Ethics*, rev. ed. (Jakarta: Sinar Grafika, 2022).

⁴³ Resopijani and Neonbeni, “Ethical Violation by the Chairman of the Constitutional Court.”

2. Judicial Harmonization Model Through the Constitutional Rehearing Mechanism: Resolving Fragmentation of Authority

The existence of an ethics court as an institution for enforcing the code of ethics is a positive step toward upholding moral values and realizing a long-standing societal ideal: law enforcement that delivers justice. The essence of a code of ethics may also be understood as an expectation that legal professionals will treat law as a noble value embedded in society. However, as Satjipto Rahardjo stated, courts remain vulnerable to the buying and selling of verdicts.⁴⁴

The implementation of ethical justice is therefore essential to ensuring fair judicial decisions amid increasingly complex problems and obstacles in the justice system.⁴⁵ Jimly Asshiddiqie also argues for the need to conceptualize an ethical justice system. According to Jimly, state administration requires regulations that normatively address issues specifically related to ethics, especially within judicial institutions. This view rests on the idea that ethical infrastructure can complement legal infrastructure. Referring to Jimly's idea of a Court of Ethics that works alongside the Court of Law to support a healthy democracy, not only procedurally and formally but also substantively, institutions responsible for ethics enforcement should also develop structured rules of ethics.

Given the separation between the judiciary and the ethics court in Indonesia, the integration of judicial power is an important issue. It relates to the need for a system that upholds justice and ethics simultaneously and thereby fosters public trust in the judiciary. How can law enforcement be pursued when violations occur within the enforcement process itself? Ethical enforcement is currently treated largely as a procedural formality when ethics violations occur, regardless of the extent to which it falls within the scope of judicial power. This study argues that the limited influence of ethical justice on judicial products tainted by ethics violations demonstrates the need to integrate the two systems.

Viewed from the concept of judicial power, efforts to integrate legal and ethics adjudication are closely related to the legal paradigm adopted in Indonesia, namely positivism. According to Soetandyo, critiques of positivist and legalistic approaches seek to overcome the gap between the legal order and the social order, while continuing to accept the need to review and renew legislative products from time to time, rather than imposing controlled changes in society through consequential law enforcement.⁴⁶

⁴⁴ Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Kompas, 2011), 209.

⁴⁵ Sivana Amanda Diamita Syndo, "Menyoal efektivitas kode etik hakim dalam menjaga marwah kualitas putusan yang berkeadilan," *Verfassung: Jurnal Hukum Tata Negara* 1, no. 2 (2022): 114, <https://doi.org/10.30762/vjhtn.v1i2.178>.

⁴⁶ Soetandyo Wignjosoebroto, "Apa dan mengapa Critical Legal Studies: Sebuah penjelasan ringkas," in *Bahan Kuliah/Handout Program Doktor (S3) Ilmu Hukum UII*, 16.

A critical analysis of positivist discourse in the Indonesian legal system confirms that national law incorporates cultural and humanistic dimensions that go beyond formalist-positivist limits. This conception should not be reduced to a merely instinctive or biological reality, but should instead be understood as a comprehensive set of psychological, spiritual, and physical realities. The implication is that legalistic positivism cannot be implemented absolutely in Indonesia because it fails to articulate substantive justice in harmony with the legal consciousness of the community (*volksgeist*). Moreover, positivism does not open itself to other dimensions or norms beyond those contained in laws and regulations.⁴⁷

According to O. Notohamidjojo, an Indonesian philosopher and legal scholar, legal science requires assessment in two aspects: the content of legal regulations and the implementation of law. Both aspects of jurisprudential work, however, are bound by moral norms, justice, *aequitas*, truth, and goodness. The more jurists feel bound by these moral norms, the higher their quality as legal scholars and legal authorities, and the greater their contribution to the development of law, society, and the state. This view strengthens the argument that legal positivism in Indonesia cannot stand alone, but requires another dimension to harmonize legal certainty and justice.⁴⁸

In response to schools of legal thought that criticize positivist legal theory, this study agrees with Satjipto Rahardjo's view that Hans Kelsen's positivist thought is not without value, but must be enriched with new perspectives and approaches. According to Gustav Radbruch, law has three aspects: justice, utility, and certainty. Justice concerns equality before the law. Utility reflects the purpose of justice, namely the advancement of human welfare. Certainty refers to assurance that law, which embodies justice and progressive norms, actually functions as a rule that is obeyed. Radbruch later sharpened this triad into what is now known as the Radbruch formula: where the contradiction between positive law and justice reaches an intolerable degree, the unjust statute must yield, so that extreme injustice is not law at all. This formula supplies the jurisprudential bridge the present argument requires, because it permits a grossly tainted decision to be treated not as valid law that merely happens to be immoral, but as a product that falls outside the concept of law itself. In the current Indonesian legal system, it remains difficult to obtain law that provides substantive justice rather than merely procedural justice. This difficulty arises because the study of positive law has generally sought to separate law from values such as morality, even though positive law is created within an order bound by space and time and inevitably influenced by particular values.

⁴⁷ Islamiyati, "Kritik filsafat hukum positivisme sebagai upaya mewujudkan hukum yang berkeadilan," *Law & Justice Journal* 1, no. 1 (2018): 670.

⁴⁸ O. Notohamidjojo, *Demi Keadilan dan Kemanusiaan: Beberapa Bab dari Filsafat Hukum* (Jakarta: BPK Gunung Mulia, 1975), 39.

Some positivists therefore view law as superior to religion as a value system and approach ethics through a paradigm built on the assumption that legal norms are hierarchical and that ethics is subordinate to them. In fact, ethics and legal norms are different. Violations of law are necessarily ethics violations, whereas ethics violations are not necessarily legal violations.⁴⁹ As a way out of this problem, the first step is to build a legal paradigm that can be juxtaposed with other developed legal paradigms, including those developed by Indonesian legal scholars through development legal theory, progressive legal theory, and integrative legal theory. These theories correct the paradigm of legal positivism so that the legal system can be implemented in accordance with the purpose of law itself.

From the perspective of judicial power, the integration of legal adjudication and ethics adjudication aims to ensure that the judicial system operates not only on the basis of positive law, but also with due regard to ethical and moral considerations. In this context, judicial power must include the supervision and enforcement of ethical standards among judges and judicial officers. This integration can be realized in the following ways:

a. Clear Legal and Ethical Framework

A legal framework should be established to integrate legal rules with ethical principles. For example, regulations governing judicial conduct should contain a clear and strict code of ethics. Laws and regulations should be formulated and implemented not only to support law enforcement but also to enforce ethical standards through clear sanctions for violators. Thus, the administration of justice and legal regulation should not be based solely on legal texts, but should also take into account the relevant social and moral context. Similarly, in Islam, sharia serves not only as a legal foundation for Muslims but also as a moral and ethical guide in daily life.

b. Institutions and Procedures

An independent institution should be established or strengthened to supervise the conduct of judges and other judicial officials while ensuring that it operates in parallel with legal procedures. A transparent judicial process, in which decisions and their reasons are published, helps the public understand that law and ethics are administered with integrity. This institution should have authority to investigate ethics violations and impose disciplinary sanctions. Within the judicial structure, a special unit may also be established to focus on ethical supervision, including supervision of judicial decisions, to ensure that decisions are not only lawful but also ethical.

⁴⁹ Ahmad Hakim and M. Thalbah, *Politik Bermoral Agama: Tafsir Politik Hamka* (Yogyakarta: UII Press, 2005), 97.

c. Adoption and Implementation of New Concepts

Adopting and implementing concepts that integrate the judiciary and the ethics court in Indonesia may offer one solution for connecting the two systems. Certain Western legal systems, particularly the United States, recognize the concept of mistrial, which may serve as a useful reference. In brief, a mistrial is an important part of the United States justice system because it protects defendants' rights and ensures that legal proceedings are conducted fairly. When certain circumstances obstruct justice, such as a jury deadlock or procedural error, the declaration of a mistrial allows the case to be retried properly. If the case is retried after a mistrial is declared, the trial begins anew, including the selection of a new jury.⁵⁰

In the United States, the jury system may result in a mistrial because of jury misconduct or bias. In Indonesia, because there is no jury, the center of gravity of adjudicative integrity lies entirely with the judge. Integrity defects among judges in Indonesia therefore have the same force as, if not greater force than, jury bias in the United States.

Although Indonesia does not use a jury system, the essence of mistrial lies in the recognition that a tainted process cannot produce a fair legal outcome. From an integrative perspective, this concept can be incorporated into Indonesian procedural law as a ground for seeking annulment through a defined legal procedure. The contextual difference lies in the relevant actors: while the United States focuses on contamination of the jury, including through improper information or bias, Indonesia must focus on conflicts of interest involving judges.

The following table compares the jury-based mistrial model in the United States with Integrity-Linked Rehearing in Indonesia:

Table 2.
Comparison between the Mistrial Model and Integrity-Linked Rehearing

Comparison Dimension	<i>Mistrial (Jury System/ United States)</i>	<i>Integrity-Linked Rehearing (Indonesia)</i>
Main Actors	Jury (laypersons)	Career judge/constitutional justice
Nature of Violation	Misconduct, bias, or improper information	Gross ethics violations or conflicts of interest
Functional Objective	Ensuring the integrity of the fact-finding process	Ensuring constitutional integrity

⁵⁰ Aditiawarman, *Terminologi Hukum Amerika*, 6.

Comparison Dimension	<i>Mistrial (Jury System/ United States)</i>	<i>Integrity-Linked Rehearing (Indonesia)</i>
Basis of Adaptation	Fair trial (Sixth and Fourteenth Amendments)	Independent and integrity-based judicial power (Article 24 of the 1945 Constitution)

Source: *Authors’ synthesis (2025)*

The use of the concept of mistrial from the common law system, particularly the United States, is not intended as a direct legal transplant but as a functional analysis of the principle of a fair trial.⁵¹ The more precise comparators, however, are not the mistrial but the doctrines that allow a final judgment to be set aside for a defect of impartiality. In *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), the United States Supreme Court held that a judge’s failure to recuse where there was a serious, objective risk of bias violated due process and required the resulting decision to be vacated, irrespective of whether its outcome was substantively correct. The closest functional analogue to the mechanism proposed here is the Indian curative petition recognized in *Rupa Ashok Hurra v. Ashok Hurra*, (2002) 4 SCC 388, through which the Supreme Court of India may reopen its own final judgment to cure a gross violation of natural justice, including adjudication by a biased judge. These authorities anchor the present proposal more securely than the mistrial analogy, because they concern precisely the reopening of a concluded decision rather than the interruption of an ongoing trial. This study recognizes a fundamental contextual difference: in the United States legal system, mistrials often arise from jury misconduct or exposure to improper information that undermines the objectivity of lay jurors. By contrast, Indonesia follows a judicial system without a jury, in which judges serve both as judges of law and as judges of fact.

At the substantive level, however, a common rationale links the two systems. If, in a jury system, a mistrial is declared to prevent injustice caused by jury bias, then, within the Indonesian constitutional framework, a similar mechanism is needed when judicial integrity is compromised. This systemic difference actually strengthens the argument. If lay juries are subject to strict standards of insulation from improper information through mistrial procedures, then, *a fortiori*, constitutional justices, as authoritative interpreters of the constitution, must be subject to an even more rigorous standard of integrity.

⁵¹ See *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Rupa Ashok Hurra v. Ashok Hurra*, (2002) 4 SCC 388; Coffey, “Evaluating the Common Law Principle against Retrials,” 26–56.

Integrity failures, such as conflicts of interest, may have more serious consequences in Indonesia than jury bias in the United States because Indonesian judges have authority to interpret legal norms. Therefore, adapting the essence of mistrial into the Constitutional Rehearing model does not mean adopting jury procedures. Rather, it means adopting the principle that defects in the adjudication process can nullify the validity of judicial decisions. This comparative reference therefore serves as an integrative and substantive basis for reinforcing the argument that integrity is a universally applicable pillar of validity, regardless of technical differences in judicial structure.

The following table presents the legal analogy between the common law system of the United States and the civil law system of Indonesia:

Table 3.
Legal Analogy between Mistrial, Judicial Power, and Judicial Harmonization

Dimension of Analysis	Mistrial Concept (United States)	Concept of Judicial Power (Indonesia)	Integration Proposal (Judicial Harmonization)
Philosophical Foundations	Due process of law: a fair process is a condition for the validity of a decision.	Res judicata and legal certainty: a judge's decision is deemed correct once rendered.	<i>Judicial integrity as a condition for the constitutionality of a decision.</i>
Correction Triggers	Procedural defects or unethical conduct (for example, jury or judge bias) during the trial.	Ethics violations affect only the judge's personal sanctions (MKMK/KY).	Gross ethics violations established by the MKMK constitute evidence of a constitutional procedural defect.
Status of the Decision	The verdict is annulled or the case is retried.	The decision remains final and binding even though the judge was found to have violated ethical rules.	The decision may be subjected to special constitutional rehearing.
Reviewing Actor	The same judge or an appellate tribunal.	The MKMK, as an ethics institution, is separate from the judicial function.	The MKMK's ethics decision triggers Constitutional Rehearing.

Source: *Authors' synthesis (2025)*

Although mistrials in the United States are often associated with the jury system, their doctrinal essence lies in the integrity of the process. In the Indonesian context, the MKMK's inability to affect the validity of MK Decision Number 90/PUU-XXI/2023 reveals a normative lacuna in the relationship between ethics findings and legal validity⁵².

This concept, however, is difficult to implement in practice. The difficulty stems from differences in paradigms or understandings of the proper role of law in Indonesia. Courts of law often focus on formal legal aspects, whereas ethics courts emphasize moral and ethical norms. If implementation is not first grounded in the principles and foundations of the legal system, conflicts may arise in the execution of decisions⁵³. In addition, the lack of ethical awareness is one reason such integration remains difficult. Many judges and state officials do not fully understand the importance of ethics in carrying out their duties; therefore, more intensive education and training on professional ethics are needed⁵⁴. Nevertheless, these challenges do not make integration impossible. Integrating legal adjudication and ethics adjudication is an important step toward ensuring that the justice system is based not only on positive law but also on moral and ethical principles. By adopting a clear legal and ethical framework, establishing strong oversight bodies, providing ethics education and training, increasing transparency and accountability, and enforcing effective sanctions, the justice system can maintain integrity and fairness in law enforcement. This integration not only increases public trust in the justice system but also helps ensure that justice is upheld in its true sense.

The Integrity-Linked Adjudication model serves as an antithesis to the Pure Procedural Adjudication model, under which the validity of a decision depends solely on compliance with formal legal procedures. Integrity-Linked Adjudication treats judicial integrity not as an external variable but as a constitutive element that determines the legal validity of a decision. In this model, adjudication is no longer the mere technical application of law; it is a process intrinsically bound by the internal moral standards of law.

To make the theory easier to understand, this model can be described through the following functional logic:

$$V = (L+S) \times I$$

⁵² See Republik Indonesia, Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi, art. 10(1), as amended; Maulidi, "Menyoal kekuatan eksekutorial," 339.

⁵³ Ishmah Purnawati, "Pembaruan peradilan sebagai ikhtiar mewujudkan court excellence," Mahkamah Agung Republik Indonesia, December 10, 2021, <https://www.mahkamahagung.go.id/id/artikel/4965/pembaruan-peradilan-sebagai-ikhtiar-mewujudkan-court-excellence>.

⁵⁴ See Purnawati, "Pembaruan peradilan sebagai ikhtiar mewujudkan court excellence"; Syndo, "Menyoal efektivitas kode etik hakim," 114.

Where:

- V **(Validity)** : the validity of a final decision.
- L **(Legality)** : formal legality or conformity with procedural law.
- S **(Substance)** : the accuracy of legal reasoning and considerations of justice.
- I **(Integrity)** : integrity, including independence and the absence of conflicts of interest.

In this logic, Integrity (I) serves as a heuristic multiplier. If a serious ethics violation occurs, such as a conflict of interest, the value of I is treated as zero for validity analysis. Regardless of how strong the legality (L) and substance (S) of a decision may be, multiplying them by zero integrity produces a final result of zero validity, meaning that the decision forfeits its claim to unqualified validity. As a matter of legal consequence, the decision is not void of its own accord but voidable: it remains operative until it is annulled through the Constitutional Rehearing mechanism. This formulation preserves orderly process and prevents the doctrine from destabilizing decisions that have already produced legal effects.

The main characteristics of this model are: (1) ethical-legal interdependence, meaning that a decision is not considered valid merely because it is issued by an authorized institution, but because it is rendered through an honest process; (2) procedural linkage, meaning that findings of ethics violations by supervisory agencies, such as the MKMK or KY, operate as a trigger for reviewing the legal status of the decision, not only for the fate of the individual judge; and (3) substantive restoration of justice, meaning that the model provides a legal exit when formal legal certainty is used to protect injustices produced by corrupt processes.

The Integrity-Linked Adjudication model positions integrity as a procedural-substantive requirement. The absence of integrity in adjudication is therefore treated as equivalent to a defect of authority or a procedural defect. This model seeks to replace the classical adjudication paradigm, which often separates the subject, namely the judge, from the object, namely the decision. In this model, the relationship between the two is symbiotic-constitutional: a defect in the subject creates a rebuttable constitutional impairment of the object. This provides the technical justification for re-examining a decision through the Constitutional Rehearing mechanism.⁵⁵

The application of this model provides a normative basis for treating integrity as a procedural-substantive requirement rather than as an external element. By incorporating integrity into procedure, every serious ethics violation is treated as an absolute procedural

⁵⁵ Jimly Asshiddiqie, "Memperkenalkan peradilan etika," *Jurnal Konstitusi & Demokrasi* 1, no. 1 (June 25, 2021): 1–14, <https://doi.org/10.7454/JKD.v1i1.1101>.

defect. This evaluative standard ensures that judicial independence is maintained through an integrity-preserving adjudication process and that substantive justice is achieved by preventing the law from protecting judicial products generated through corrupt processes. The following table compares the classical adjudication paradigm with the Integrity-Linked Adjudication model:

Table 4.
Comparison between Classical Adjudication and Integrity-Linked Adjudication Models

Analysis Features	Classical Adjudication Model (Procedural Positivism)	Integrity-Linked Adjudication Model
Definition of Validity	Validity (V) is absolute and depends only on the fulfillment of formal legality (L) and substance (S).	Validity (V) is relative-conditional and determined by the integrity multiplier factor (I): $V = (L + S) \times I$.
Integrity Position (I)	External variable affecting only the judge's personal conduct.	Constitutive variable determining the validity of legal products.
Nature of Finality	Absolute; cannot be challenged by ethics findings.	Conditional finality if $I = 0$.
Consequences of Gross Ethical Violations	Administrative or personal sanctions against judges; the decision remains valid.	Constitutional procedural defect; the decision becomes subject to rehearing.
Evaluative Standard (Benchmark)	Procedural legal certainty.	Constitutional integrity and substantive justice.

Source: *Authors' synthesis (2025)*

The Integrity-Linked Adjudication model serves as a legitimacy bridge for the Constitutional Rehearing mechanism. If validity (V) is treated as zero through an authoritative ethics decision, the decision becomes legally impaired and its final and binding status becomes defeasible. Under this condition, the Court has a constitutional basis to readjudicate the case to restore the lost integrity value, so that the resulting legal certainty is genuine rather than forced.

Having established the doctrinal foundation for conditional finality, the next challenge is to design a procedural mechanism capable of overcoming the fragmentation between ethics

findings and legal validity. This study proposes the institutionalization of the Constitutional Rehearing mechanism as a response to that legal impasse.⁵⁶

This mechanism is designed to follow strict protocols that maintain the standards of judicial independence:

- a. **Verification of ethics decisions as legal triggers.** Decisions of ethics institutions, particularly the MKMK in the context of the MK, that establish serious integrity violations in specific cases and impose severe sanctions, such as dismissal or suspension, should be statutorily designated as *Constitutional Novum*.⁵⁷ This reduces debate over whether ethics findings may enter the legal realm; legislatively, they are recognized as evidence of a serious procedural-integrity defect.
- b. **Readjudication by a special panel.** Re-examination is not carried out by an ethics institution, but remains within the Court, namely the MK. To maintain objectivity, however, the panel handling the rehearing must consist of judges who were not involved in the previous decision, such as substitute or ad hoc judges.⁵⁸ This ensures that correction is carried out by judicial power itself through judicial self-correction.
- c. **Measurable scope of examination.** Re-examination is not intended to revisit all facts, but only to assess the extent to which integrity defects, such as conflicts of interest, affected the legal reasoning in the previous decision. If the ethics defect is proven to have undermined substantive justice, the initial decision is annulled.

Through the institutionalization of this mechanism, fragmentation of authority can be overcome because a clear legal bridge is established between ethics findings and the legal status of decisions. This is not a form of external intervention in the judiciary, but a mechanism of institutional self-correction that allows the judiciary to cleanse itself of judicial products tainted by violations of the internal morality of law. To ensure that this corrective power does not itself become a source of instability, the mechanism must be confined by strict safeguards: a short and non-extendable time bar running from the date of the ethics decision; standing limited to the original parties and directly affected persons; a high materiality threshold, so that only integrity defects capable of distorting the impartial constitution of the tribunal qualify; a single, non-repeatable opportunity for rehearing;

⁵⁶ Hamid Chalid and Arief Ainul Yaqin, "Menggagas pelembaraan constitutional question melalui perluasan kewenangan Mahkamah Konstitusi dalam menguji undang-undang," *Jurnal Konstitusi* 16, no. 2 (July 2019): 363, <https://doi.org/10.31078/jk1628>.

⁵⁷ The term Constitutional Novum is used here as the authors' proposed doctrinal label for an ethics decision that functions as a triggering fact for Constitutional Rehearing. It is not presented as an existing procedural category under current Indonesian constitutional procedural law.

⁵⁸ This is a proposed procedural design. Its implementation would require express statutory or regulatory authorization because the current Constitutional Court framework does not provide an ordinary substitute or ad hoc panel mechanism for rehearing final decisions.

and prospective relief for decisions that have already produced erga omnes effects, so that completed legal and constitutional acts are protected even where the impugned decision is annulled. So bounded, conditional finality narrows rather than dissolves the very certainty that the doctrine of finality is meant to secure.

The Constitutional Rehearing mechanism proposed in this study has an organic relationship with the discourse on the Court of Ethics pioneered by Jimly Asshiddiqie. Asshiddiqie argues that ethics enforcement should no longer be understood conventionally as a matter of individual conduct, but should be institutionalized within the judicial legal system, namely through the Court of Ethics, to maintain the authority of democratic institutions.⁵⁹

This study expands the scope of that idea by offering a procedural bridge that has not been explicitly formulated in the discourse on the Court of Ethics. The relationship between the two can be understood from two main perspectives:

- a. **Upstream and downstream integrity enforcement.** Jimly Asshiddiqie's idea organizes the upstream aspect through the standardization of ethical procedural law and the institutionalization of ethics bodies such as the MKMK and KY. The Integrity-Linked Adjudication model, by contrast, organizes the downstream aspect, namely determining the legal implications of ethics court decisions for the validity of judicial decisions. Without a rehearing mechanism, ethics court decisions risk becoming ineffective instruments that punish judicial personnel while allowing morally defective decisions to remain in effect.
- b. **Convergence of law and ethics.** In line with Asshiddiqie's view that "ethics is the ocean, while law is the island in it," this study develops that convergence through the doctrine of Conditional Finality. This study does not refute Asshiddiqie's thesis that integrity is a pillar of judicial power; rather, it goes further by asserting that gross ethics violations must be recognized as substantive legal defects that paralyze the binding force of a decision.

This study recommends adding specific clauses to the Constitutional Court Law, particularly provisions concerning legal remedies and decisions, to provide a legal basis for the Constitutional Rehearing mechanism.

a. **Addition of provisions concerning "integrity defects"**

It is proposed that a new article, for example Article 47A, be added to the Constitutional Court Law as follows:

⁵⁹ Asshiddiqie, "Memperkenalkan peradilan etika."

Article 47A

- (1) The decision of the MK shall be final and binding from the time it is pronounced, unless an authoritative ethics decision establishes a gross integrity defect in the decision-making process.*
- (2) A gross integrity defect as intended in paragraph (1) exists when a constitutional justice is proven to have a conflict of interest, to have received improper intervention, or to have otherwise compromised the impartial constitution of the tribunal, as declared through a decision of the MKMK.*
- (3) The MKMK decision as intended in paragraph (2) shall, by operation of law, constitute Constitutional Novum and the basis for the applicant or related parties to apply for Constitutional Rehearing.*

b. Addition of a re-examination mechanism clause

It is proposed that a new article, for example Article 47B, be added to regulate the technical procedures as follows:

Article 47B

- (1) The Court shall conduct Constitutional Rehearing within no more than 30 (thirty) working days from the date the application is registered.*
- (2) The Panel of Judges examining the case, as intended in paragraph (1), shall consist of Constitutional Justices who were not involved in the previous decision and have no connection with the ethics violations in the previous case.*
- (3) If the Court finds that the ethics breach materially affected the impartiality of the adjudication or the legal considerations, the Court is authorized to annul the previous decision and issue a new decision.*

The Constitutional Rehearing mechanism must be institutionalized as an instrument of judicial correction that treats ethics decisions as triggers for reviewing the validity of decisions tainted by integrity defects. Thus, the finality of the Court's decision is no longer understood as an absolute dogma that closes the door to justice, but as a form of dynamic legal certainty that remains subject to the principle of the internal morality of law.

C. CONCLUSIONS

This study concludes that the legitimacy crisis following Constitutional Court Decision Number 90/PUU-XXI/2023 reveals a structural fragmentation between ethical accountability and judicial validity in Indonesia's constitutional adjudication. The dominant legal-positivist reading of final and binding decisions has preserved formal certainty, but it leaves no procedural bridge when an authoritative ethics body establishes a serious integrity defect in the decision-making process. To address this gap, the study proposes the doctrine

of conditional finality: finality remains binding in ordinary circumstances, but becomes defeasible when a gross integrity defect, such as conflict of interest or compromised impartiality, is authoritatively proven. This doctrine should be operationalized through a Constitutional Rehearing mechanism as a limited form of judicial self-correction. Such rehearing must be bounded by strict safeguards, including statutory authorization, limited standing, a short time bar, a high materiality threshold, and prospective protection for completed legal effects. Accordingly, Indonesia should revise the Constitutional Court Law and relevant procedural regulations to recognize ethics decisions as constitutional triggers for reassessing finality. This model harmonizes law, ethics, legal certainty, judicial independence, and substantive justice while preserving the dignity of constitutional adjudication.

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