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Regulatory Problems of the Constitutional Court's Honorary Council in the Hierarchy of Laws and Regulations and the Principle of the Rule of Law

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ABSTRACT
The establishment of the Constitutional Court Honorary Council (Majelis Kehormatan Mahkamah Konstitusi or MKMK) constitutes a normative mechanism for enforcing the Code of Ethics and Code of Conduct for Constitutional Justices. However, the existence of a formal legal basis does not, by itself, resolve questions concerning the institution's normative legitimacy. This article examines the normative legitimacy of the legal framework governing the establishment of the MKMK from the perspectives of the hierarchy of laws and regulations and the principle of the rule of law. The study employs normative legal research using statutory and conceptual approaches. The findings demonstrate that the establishment of the MKMK is grounded in positive law, particularly Article 27A paragraph (2) of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 on the Constitutional Court, which is subsequently elaborated through Constitutional Court regulations. Article 8 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations also recognizes regulations issued by state institutions, provided that they are mandated by higher-level legislation or enacted pursuant to authority vested in those institutions. Nevertheless, such recognition does not preclude scrutiny of the appropriateness of their substantive content, hierarchical consistency, legality, and capacity to provide legal certainty. This article concludes that the normative legitimacy of the MKMK must be assessed at multiple levels. Its formal legitimacy is grounded in positive law, whereas its normative adequacy depends on the clarity of the attribution of authority, the limits of the substantive content of implementing regulations, and procedural safeguards consistent with the principle of the rule of law. This conclusion does not imply that the establishment of the MKMK is unlawful; rather, it underscores the need for a legal assessment that distinguishes formal validity from the quality of normative legitimacy.

Keywords:
Constitutional Court Honorary Council; normative legitimacy; hierarchy of laws and regulations; rule of law.

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1. Introduction

The Constitutional Court of Indonesia (Mahkamah Konstitusi or MK) holds a central position within Indonesia's constitutional system, exercising constitutional powers that include the authority to review statutes against the 1945 Constitution of the Republic of Indonesia. Because the Constitutional Court's decisions are final and binding, the integrity of constitutional justices is not merely a matter of individual morality; it is also a prerequisite for sustaining public confidence in the exercise of judicial power. Accordingly, the enforcement of ethical standards for constitutional justices requires a mechanism founded on a clear legal basis, accountable procedures, and well-defined limits of authority.

The establishment of the Constitutional Court Honorary Council (Majelis Kehormatan Mahkamah Konstitusi or MKMK) represents a normative response to this institutional need. Article 27A paragraph (2) of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 on the Constitutional Court (the Constitutional Court Law) provides for the establishment of the MKMK to enforce the Code of Ethics and Code of Conduct for Constitutional Justices. This statutory provision is further elaborated in Constitutional Court Regulation Number 11 of 2024 concerning the Constitutional Court Honorary Council, which replaced Constitutional Court Regulation Number 1 of 2023 concerning the Constitutional Court Honorary Council.

Although the establishment of the MKMK is grounded in positive law, a more fundamental question concerns whether the architecture of its legal framework provides adequate normative legitimacy. This inquiry is distinct from the question of whether the MKMK lacks any legal basis for its establishment. Rather, the analysis focuses on the relationship between the constitutive norm and the implementing norm, the consistency between the form of regulation employed and the authority of the institution that issues it, and the extent to which the regulatory framework as a whole satisfies the requirements of the rule of law. This distinction is necessary to prevent criticism of the normative design from being conflated with a claim that the institution itself is legally invalid.

Within Indonesia's legislative framework, Article 7 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, as amended several times, most recently by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations (the Law on the Establishment of Laws and Regulations), establishes the types and hierarchy of laws and regulations. Article 8, by contrast, recognizes regulations issued by certain institutions or officials that are not included in the hierarchy listed in Article 7, including regulations issued by the Constitutional Court, provided that the stipulated requirements are satisfied. (Rudy et al., 2024) This framework raises a doctrinal issue requiring careful examination. Recognition of a particular type of regulation does not amount to the conferral of unlimited authority, and the existence of delegated authority does not, in itself, determine whether every substantive provision has been placed at the appropriate normative level.

This issue is particularly relevant to the MKMK because its regulatory framework operates across multiple levels of legal norms. The statute establishes the legal basis for the council's formation and its principal composition, whereas Constitutional Court regulations further govern its institutional structure and the procedures for enforcing judicial ethics. (Indrati, 2007) Under the theory of the hierarchy of legal norms, this relationship must be examined with reference to the source of authority, the conformity of substantive provisions with the applicable normative framework, and the prohibition against lower-level norms deviating from higher-level norms. (Kelsen, 1967) From the perspective of the rule of law, the regulatory framework must also safeguard legality, legal certainty, fair treatment, and the limitation of public power through law.

This article undertakes a comprehensive diagnostic assessment of the normative legitimacy of the MKMK through three analytical steps: first, identifying the legal basis for the establishment of the MKMK; second, assessing the vertical

relationship between statutes and Constitutional Court regulations; and third, evaluating the adequacy of that legitimacy in light of the principle of the rule of law. Against this background, the article analyzes the normative legitimacy of the establishment of the Constitutional Court Honorary Council within Indonesia's hierarchy of laws and regulations and broader rule-of-law framework.

2. Method

This study employs normative legal research, which treats legal norms, principles, and concepts as its primary objects of analysis. (Setia Negara, 2023) The study applies both statutory and conceptual approaches.

The statutory approach is used to examine all laws and regulations relevant to the legal issues under investigation, namely the 1945 Constitution of the Republic of Indonesia; Law Number 24 of 2003 on the Constitutional Court, as amended several times, most recently by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 on the Constitutional Court; Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, as amended several times, most recently by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations; Law Number 48 of 2009 on Judicial Power; and Constitutional Court Regulation Number 11 of 2024 concerning the Constitutional Court Honorary Council.

The conceptual approach examines legal principles derived from scholarly thought and legal doctrines developed within the discipline of law. (Soekanto, 1985) It is used to analyze the theory of the hierarchy of legal norms, the principles of legality and legal certainty, and the principle of the rule of law. Primary legal materials are analyzed qualitatively through grammatical and systematic interpretation, followed by an examination of their vertical relationships in order to distinguish the existence of a formal legal basis from the adequacy of normative legitimacy. Secondary legal materials, consisting of books and scholarly works in constitutional law and legislative drafting, are used to provide conceptual clarification.

3. Results And Discussion

3.1. Normative Legitimacy: Distinguishing Formal Validity from Regulatory Adequacy

Normative legitimacy in legal research must be distinguished from sociological or political legitimacy. It concerns the legal grounds that justify the establishment, institutional position, and exercise of authority by a public organ. The central question, therefore, is not whether an institution is popular or enjoys public trust, but whether its existence is supported by valid legal norms, whether its authority derives from an identifiable legal basis, and whether the exercise of that authority remains within legally prescribed limits.

The establishment of the Constitutional Court Honorary Council (MKMK) may be assessed through at least two analytical layers. (Basyar, 2025) The first is formal validity, namely whether legal norms provide a basis for the establishment of the MKMK and its implementing regulations. The second is normative adequacy, namely whether the existing norms regulate the institution's fundamental elements with sufficient clarity, appropriately structure the relationship between establishing and implementing norms, and protect legal certainty. These two dimensions are related

but not interchangeable. An institution may possess a formal legal basis while remaining open to criticism where the delegation of authority, the limits of its powers, or its procedures are insufficiently clear.

This analytical distinction is important because it avoids two equally reductive conclusions. First, the existence of Article 27A paragraph (2) of the Constitutional Court Law and Constitutional Court Regulation Number 11 of 2024 does not, by itself, establish that every aspect of the MKMK's regulatory framework is normatively ideal. Second, deficiencies in the regulatory structure do not automatically imply that the MKMK was established without legal basis or that all of its actions are invalid. A legally accountable conclusion must therefore be based on an examination of the applicable norms, the scope of delegated authority, and the substantive content of each regulation.

From a normative perspective, Article 27A paragraph (2) of the Constitutional Court Law constitutes the specific statutory basis for the establishment of the MKMK. The provision identifies enforcement of the Code of Ethics and Code of Conduct for Constitutional Justices as the purpose for which the council is established and is subsequently implemented through Constitutional Court Regulation Number 11 of 2024. The legal basis of the MKMK therefore does not arise solely from a self-standing internal regulation; it is anchored in a statutory provision.

Accordingly, the benchmark for normative legitimacy adopted in this article is multilayered (Farida, 2006): the existence of an identifiable source of authority; the conformity of implementing regulations with higher-level norms; the appropriateness of substantive content in relation to the form of regulation; and the consistency of that content with the principle of the rule of law. These criteria permit a more precise assessment of the normative legitimacy of the MKMK than a binary characterization of the institution as simply valid or invalid.

3.2. The Position of Article 27A of the Constitutional Court Law in the Hierarchy of Norms Governing the Establishment of the MKMK

Article 27A of the Constitutional Court Law mandates the establishment of the MKMK to enforce the Code of Ethics and Code of Conduct for Constitutional Justices. This provision supplies a statutory-level legal basis for the establishment of the council. From the perspective of the principle of legality, this basis is significant because an organ empowered to conduct examinations and impose ethical sanctions should not depend solely on institutional practice or convention without an identifiable legal foundation.

Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia provides that judicial power is an independent power exercised to administer justice and uphold law and justice. Article 24C regulates the status and authority of the Constitutional Court, while Article 24C paragraph (6) delegates further regulation of the appointment and dismissal of constitutional justices, procedural law, and other matters concerning the Constitutional Court to statute. These constitutional provisions provide the relevant interpretive framework for assessing the regulation of the MKMK. They should not, however, be read as if the 1945 Constitution expressly recognizes the MKMK as a separate constitutional institution. Textually, the direct legal basis for the establishment of the MKMK is located at the statutory level.

Accordingly, the absence of an explicit reference to the MKMK in the 1945 Constitution should not be equated with an absence of legitimacy. The Constitution

does not necessarily specify every supporting organ or ethical mechanism required for the effective functioning of state institutions. The legislature may regulate implementing bodies, provided that such regulation has a constitutional basis, does not conflict with higher-level norms, and remains within the permissible scope of regulation. (Indrati, 2007) The central issue, therefore, is not merely that the MKMK is not expressly mentioned in the 1945 Constitution, but whether its statutory basis and implementing regulations are sufficiently clear and consistent with the limits of authority vested in each norm-making body.

Constitutional Court Regulation Number 11 of 2024 concerning the Constitutional Court Honorary Council entered into force on September 12, 2024 and simultaneously revoked Constitutional Court Regulation Number 1 of 2023 concerning the Constitutional Court Honorary Council. The existence of this regulation demonstrates that the MKMK is established through an interconnected hierarchy of legal norms rather than by a single provision detached from the broader legal system. This normative structure must be interpreted systematically: the statute provides the legal basis and fundamental elements, while the Constitutional Court Regulation operationalizes matters requiring more technical regulation.

Consequently, the assessment of a Constitutional Court Regulation should not be confined to the fact that it was enacted by the Constitutional Court. The analysis must determine whether each provision genuinely performs an implementing function, whether it clarifies procedures without altering statutory norms, and whether any matters with fundamental implications for rights, obligations, authority, or legal status should instead be regulated at the statutory level. Such scrutiny evaluates the quality of the hierarchy of legal norms rather than denying the formal legal basis of the MKMK.

3.3. The Hierarchy of Laws and Regulations and the Limits of Regulation through Constitutional Court Regulations

The theory of the hierarchy of legal norms (Stufenbau) conceptualizes legal norms as existing within a hierarchical structure in which lower-level norms derive their validity from higher-level norms and must be enacted in accordance with the provisions conferring the relevant authority. (Purbacaraka, 1979) In the Indonesian context, this conception is reflected in the rules governing the types and hierarchy of laws and regulations. Article 7 of the Law on the Establishment of Laws and Regulations sets out the hierarchy of laws and regulations, while Article 8 recognizes regulations enacted by state institutions or certain officials, including regulations issued by the Constitutional Court, provided that their existence is mandated by higher-level laws and regulations or that they are enacted pursuant to authority vested in the relevant institution.

Constitutional Court regulations are not included in the hierarchy expressly listed in Article 7 paragraph (1) of the Law on the Establishment of Laws and Regulations. Their existence may nevertheless be recognized under Article 8. The position of Constitutional Court regulations therefore cannot be assessed appropriately by attempting to place them within one of the hierarchical levels expressly enumerated in Article 7. The analysis must also consider Article 8 of the same law, the legal basis for their enactment, and their relationship with the statute from which their regulatory authority derives. Recognition under Article 8 is not a blanket authorization to regulate all matters; it is conditional recognition that must be interpreted in conjunction with the principle of legality and the principles of sound lawmaking.

With respect to the MKMK, Article 27A paragraph (2) of the Constitutional Court Law provides a specific legal foundation that is subsequently elaborated through Constitutional Court Regulation Number 11 of 2024 concerning the Constitutional Court Honorary Council. This arrangement may be understood as a relationship between statutory norms and implementing norms. From the perspective of the hierarchy of legal norms, however, the normative legitimacy of implementing regulations would be strengthened if the statute more clearly delineated the scope of delegated authority and identified the fundamental elements that should not be left entirely to regulations issued by the institution concerned.

The appropriateness of the regulatory form becomes particularly important when a provision extends beyond technical matters and determines an organ's institutional status, composition, investigative authority, procedures affecting persons under examination, and the types of ethical sanctions that may be imposed. (Ibad, 2026) Not every such detail must be incorporated fully into a statute. Nevertheless, the greater a norm's effect on legal certainty, procedural rights, and legal consequences, the stronger the justification for ensuring that its fundamental elements are established at an appropriate normative level. Implementing regulations may then govern technical procedures without altering or expanding the statutory mandate.

Article 5 of the Law on the Establishment of Laws and Regulations sets out principles of sound lawmaking, including clarity of purpose, identification of the appropriate institution or official responsible for enactment, conformity between the type, hierarchy, and substantive content of regulations, enforceability, effectiveness and efficiency, clarity of formulation, and transparency. Article 6 of the same law establishes principles governing regulatory content, including protection, humanity, justice, order and legal certainty, and balance, harmony, and alignment. These principles provide criteria for assessing whether the regulatory framework governing the MKMK employs an appropriate regulatory form and is situated at the proper normative level.

On this basis, a hierarchical analysis should not conclude that Constitutional Court Regulation Number 11 of 2024 is invalid merely because it takes the form of a Constitutional Court regulation rather than a statute. Instead, the relevant inquiry is whether its substantive provisions are sufficiently grounded in delegated authority or institutional competence, whether they are consistent with the Constitutional Court Law, and whether any fundamental matters require clearer specification at the statutory level. This approach balances respect for positive law with academic scrutiny of the quality of the regulatory framework.

3.4. The Principle of the Rule of Law as a Substantive Standard for Legitimacy

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a state governed by the rule of law. This principle cannot be reduced to a requirement that state officials merely cite a legal provision as the basis for their actions. The rule of law requires public power to be established, conferred, and exercised pursuant to laws that are accessible, comprehensible, and open to scrutiny. (Ismoyo et al., 2025) The existence of a legal basis is therefore an initial requirement, while clarity of authority and certainty in its application are integral to the quality of normative legitimacy.

First, the principle of legality requires both the establishment of the MKMK and the exercise of its authority to be grounded in legal provisions. Article 27A paragraph (2)

of the Constitutional Court Law performs this foundational function by providing for the establishment of the MKMK to enforce the code of ethics. Legality, however, also requires the limits of the council's authority to be identifiable with sufficient clarity. Normative ambiguity concerning who may take particular actions, which procedures must be followed, or what legal consequences may arise can generate uncertainty. Legality must therefore be understood as structured legality, not merely as the existence of a provision establishing an institution.

Second, legal certainty requires regulatory provisions to be clear, consistent, and predictable in their application. Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees recognition, protection, and certainty under a just law, as well as equal treatment before the law. In ethical proceedings, legal certainty requires the person under examination to be informed of the alleged violation, the applicable examination procedures, the right to provide statements or a defense, the standards of assessment, and the types of consequences that may be imposed. Procedural provisions are therefore not merely administrative accessories; they constitute integral safeguards of a fair process.

Third, the principle of limiting power requires that authority not be exercised arbitrarily. Such limitations operate through clearly defined legal grounds of authority, the separation of relevant functions, transparent procedures, and accountability mechanisms. In this article, the principle of limiting power is not invoked to draw an empirical conclusion that the MKMK has abused its authority. Rather, it functions as a normative standard for determining whether the regulatory framework provides adequate safeguards against the unrestrained exercise of power.

Fourth, transparency and accountability are integral to sound lawmaking. Article 5 of the Law on the Establishment of Laws and Regulations identifies transparency as a principle governing the formation of legislation, while Article 96 of the same law regulates public participation in the lawmaking process. The application of these principles to the MKMK's regulatory framework must take account of the type of regulation concerned. Not every decision or ethical proceeding constitutes a process for establishing generally applicable regulations. Nevertheless, where general norms are formulated or amended, transparency regarding the rationale for those norms and public access to the applicable provisions help ensure that legitimacy is not merely formal but also accountable.

Fifth, the rule of law requires coherence between regulatory objectives and the legal instruments employed to achieve them. (Todingrara & Natsir, 2026) Upholding the ethical standards of constitutional justices is a legitimate and important objective. A legitimate objective, however, cannot substitute for the obligation to employ an appropriate regulatory form and establish clear procedures. Conversely, deficiencies in legislative drafting do not automatically invalidate the legitimate purpose underlying the establishment of the MKMK. Normative assessment must consider the objective, source of authority, substantive content, and procedural safeguards as an integrated whole.

Under these criteria, the legitimacy of the MKMK is appropriately assessed as a multilayered concept. At the formal level, a statutory legal basis exists. At the systemic level, the relationship between the Constitutional Court Law and Constitutional Court Regulations (PMK) must be examined for consistency with Articles 7 and 8 of the Law on the Establishment of Laws and Regulations. At the substantive level, the norms

governing ethical proceedings must satisfy the principles of legality, legal certainty, clarity of formulation, relevant transparency requirements, and safeguards for a fair process. This framework produces a more balanced assessment than either assuming that a formal legal basis resolves every issue or, conversely, treating deficiencies in regulatory design as automatically invalidating the institution's legitimacy.

3.5. Formal Validity and the Challenges to the Normative Legitimacy of the Establishment of the MKMK

An examination of the relevant regulations demonstrates that the establishment of the MKMK is grounded in positive law. Article 27A paragraph (2) of the Constitutional Court Law expressly mandates the establishment of the MKMK to enforce the Code of Ethics and Code of Conduct for Constitutional Justices, while Constitutional Court Regulation Number 11 of 2024 concerning the MKMK provides further implementing regulation. Article 8 of the Law on the Establishment of Laws and Regulations also provides a basis for recognizing regulations issued by state institutions outside the hierarchy stipulated in Article 7 of the same law, provided that the prescribed requirements are satisfied. It would therefore be inaccurate to assert that the MKMK lacks any legal basis for its establishment.

Formal legitimacy, however, does not exhaust the analysis. The hierarchy of legal norms requires Constitutional Court Regulations to remain grounded in lawful authority and consistent with statutory provisions. The principle of the rule of law further requires the regulatory framework to extend beyond formal recognition by ensuring clarity of authority, procedural certainty, and effective limitations on the exercise of power.

This assessment requires a systematic interpretation of Article 27A paragraph (2) of the Constitutional Court Law, Constitutional Court Regulation Number 11 of 2024 concerning the MKMK, Articles 7 and 8 of the Law on the Establishment of Laws and Regulations, and the principles set out in Articles 5 and 6 of the same law. It must also take into account Article 1 paragraph (3), Article 24 paragraph (1), Article 24C, and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. These provisions need not be interpreted as requiring every ethics-related body to be expressly mentioned in the Constitution. Rather, they provide a constitutional and statutory framework for ensuring that the regulation of such a body does not exceed the limits of its authority and remains consistent with the principle of the rule of law.

These findings provide a basis for focused evaluation. Such evaluation may examine whether fundamental matters relating to institutional status, authority, procedures, the rights of persons under examination, and legal consequences have been adequately regulated by statute or validly delegated to implementing regulations. Where ambiguities or overlaps are identified, improvements may be pursued through the harmonization of legal norms, refinement of regulatory provisions, and clarification of the permissible limits of substantive content. The appropriate form of reform should be determined through examination of specific legal provisions rather than through an assumption that every institution responsible for examining ethical violations must necessarily be regulated by a separate statute.

The principal contribution of this article is therefore an evaluative framework that distinguishes formal validity from the adequacy of normative legitimacy. This approach allows the existing legal basis of the MKMK to be acknowledged while simultaneously subjecting the quality of its regulatory framework to critical assessment. Within a rule-

of-law framework, these dimensions must operate together: an institution requires a lawful basis of authority, while the rules governing and constraining that institution must be formulated consistently, clearly, and accountably.

4. Conclusion

The establishment of the Constitutional Court Honorary Council (MKMK) is grounded in positive law under Article 27A paragraph (2) of Law Number 24 of 2003 concerning the Constitutional Court, as amended several times, most recently by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court, and is further elaborated through Constitutional Court Regulation Number 11 of 2024 concerning the MKMK. Article 8 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, as amended several times, most recently by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, recognizes regulations issued by state institutions outside the hierarchy specified in Article 7, provided that those regulations are mandated by higher-level legislation or enacted pursuant to authority vested in the relevant institution. Accordingly, the formal legitimacy of the MKMK's establishment has a normative foundation and should not be denied merely because the MKMK is not expressly mentioned in the 1945 Constitution of the Republic of Indonesia.

Nevertheless, formal legitimacy does not, by itself, establish the adequacy of the regulatory framework as a whole. From the perspective of the hierarchy of laws and regulations, Constitutional Court Regulations must remain within the limits of lawful authority and permissible substantive content and must be consistent with the Constitutional Court Law. From the perspective of the rule of law, the regulatory framework governing the MKMK must ensure compliance with the principle of legality, clarity of authority, legal certainty, relevant transparency requirements, and fair examination procedures. The normative legitimacy of the MKMK must therefore be assessed at multiple levels: its formal validity rests on an established legal basis, while its normative adequacy requires continuing scrutiny of vertical consistency and the substantive quality of its regulatory framework.

On the basis of these conclusions, the regulatory framework governing the MKMK should be evaluated systematically by mapping statutory provisions and implementing regulations, distinguishing matters of a fundamental nature from those that are technical, and examining the consistency of their formulations with Articles 5, 6, 7, and 8 of the Law on the Establishment of Laws and Regulations. Any amendments should respond to specifically identifiable normative problems. Clarifying the limits of delegated authority, harmonizing terminology, ensuring procedural clarity, and safeguarding the rights of persons under examination are relevant measures for strengthening the quality of normative legitimacy.

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