

LEGALITY OF DISMISSAL OF CONSTITUTIONAL COURT JUDGES DURING THEIR TERM OF OFFICE BY THE HOUSE OF PEOPLE'S REPRESENTATIVES (DPR)

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ABSTRACT

Study This aiming to identify legality dismissal of a Supreme Court Judge Constitution within the term of office by the DPR, as well reviewing and analyzing models and patterns recruitment appointment and dismissal of Court judges Constitution. This type of research is normative. Normative legal research is the process of discovering legal rules, legal principles, and legal doctrines to address the legal problems faced. By identifying, describing and analyzing the legality of the dismissal of Constitutional Court judges during their term of office by the DPR, where the dismissal of Constitutional Court judges has been regulated in the law, and every action and authority of state institutions must be based on the applicable rules or norms. The approaches used in this research are the statuta Approach, Conceptual Approach and Comparative Approach. The legal materials used consist of Primary Legal Materials in the form of Legislation, Decisions, and other relevant legal documents and Secondary Legal Materials consisting of Books, Theses, Dissertations, Journals and other documents. Legal materials are collected using Literature Study techniques which are then analyzed qualitatively to obtain conclusions in the form of solutions to the problems studied. The results of this study indicate that the legality of the dismissal of Constitutional Court Judges during their term by the House of Representatives (DPR) is unconstitutional because there is no norm or authority granted to the DPR to dismiss Constitutional Court Judges it proposes. Future redesign of the appointment of constitutional judges is necessary to ensure that the loopholes for political intervention to erode the independence of constitutional judges by the proposing body, the House of Representatives.

Keywords: *supreme court; dismissal; constitutional judges*

A. INTRODUCTION

The application of the law to uphold the supremacy of law is an absolute requirement for the establishment of a democratic structure. There are six basic requirements for the implementation of a democratic government based on the rule of law, namely: Constitutional protection, an independent and impartial judiciary or judicial bodies, free general elections, freedom of expression, freedom of association/organization and opposition, and civic education.¹

One of the pillars supporting the establishment of state sovereignty is the existence of a sovereign judicial institution. According to the theory of judicial power, an independent and responsible judicial power embodies the principles of popular sovereignty, the rule of law, and the separation of powers. However, there is a diametric difference between the concepts of

¹Paulus E Lotulung, Paper, *Law Enforcement in the Era of Sustainable Development*, Department of Justice and Human Rights of the Republic of Indonesia, July, 2003

“independent” and “responsible” judicial power. The meaning of “independent” indicates the absence of ties and not being subject to anything, while the meaning of “responsible” indicates the opposite. In other words, “independent judicial power” means power that is not bound, free, and subject to other powers. Meanwhile, “responsible judicial power” actually means judicial power that is connected to and subject to other powers.²

On amendment to three UUD NRI 1945, power judiciary run by two different state institutions that is The Supreme Court and ranks below and the Court Constitution. The constitution is basically formed for implementation principle *checks and balances* of course put every state administrators have equal standing so that there is balance among the state power institutions.

Referring to Article 24 paragraph (1) of the 1945 Republic of Indonesia Constitution which confirms that in fact power judiciary is power of a nature independent in implementation enforcement justice for to uphold law and justice.³

Court Constitution has 9 (nine) constitutional judges appointed by the President, 3 (three) of whom are proposed by the Supreme Court, 3 (three) by the DPR and 3 (three) by the President.⁴ Who can be concluded by each proposer the originate from 3 (three) branches power that is judiciary, executive as well as legislative. The status of “state official” held by the Constitutional Court judge is due to the proposal and appointment directly by the people. Article 5 of Law No. 24 of 2003 (MK Law) states that “constitutional judges is state officials” who in matter this operate power judiciary in system Indonesian state administration. The filling process the position of Constitutional Court Judge from three branch power aiming for ensure integrity, independence as well as control layered the existence of the Constitutional Court as the judiciary that guards principle supremacy constitution.⁵ Every institution must submit three name of judge for guard balance power between branches state power and to ensure that the Constitutional Court remains neutral and fair in the relationship with other state institutions. In general juridical-normative, both DPR, President and also The Supreme Court did not own authority for replacing the Constitutional Court Judge who has proposed in a way unilaterally. This is due to the principle separation regulated power in The 1945 Constitution, which stipulates that power the judiciary, including the Constitutional Court, is independent power so that no can intervened by other powers. There are two provisions dismissal of MK judges regulated in Article 23 of Law No. 7 of 2020 concerning Change Third regarding Law No. 24 of 2003 concerning the Constitutional Court, namely in Article 23 paragraph (1) and Article 24 paragraph (2).

According to the article, a judge is dismissed due to two categories, namely honorably and dishonorably dismissed. Honorably dismissed if: a. dies; b. resigns at his own request submitted to the Chief Justice of the Constitutional Court; c. is 67 (sixty-seven) years old; d. his term of office has ended; or e. is continuously physically or mentally ill as evidenced by a doctor's certificate. The request for dishonorable dismissal as referred to in paragraph (2) letters b, c, d, e, f, and g, and/or h is made after the person concerned has been given the opportunity to defend himself before the Honorary Council of the Constitutional Court. Article 23 paragraph (4) The dismissal of a constitutional judge is determined by Presidential Decree at the request of the Chief Justice of the Constitutional Court.

²Aidul Fitriadi Azhari, “An Independent and Accountable Judicial Power in The Constitutional Court : An Effort to Find Balance”, Jurisprudence : Vol. 2. 1 (2005) : 96

³Ahmad Fadlil Sumadi, “Independence Court Constitution”, Journal Constitution 8, no. 5 (2016): 631. See also, Muhammad Fajar Sidiq Widodo, Munajad Munajad, and Bahru Rosyid Bazla, “Judicial Review Regarding Presidential Threshold in the Supreme Court Constitution in the Optics of Human Rights”, Verfassung : Journal of Constitutional Law 1, No. 2 (2022): 190

⁴See Article 24C paragraph (3) of the 1945 Constitution

⁵Ashari & Amalia, “Constitutionality Dismissal of Constitutional Judges by the Council”, Journal Scientific Education, page 2.

Likewise, in the next article which provides reasons for dishonorable dismissal, namely a. being sentenced to prison based on a court decision that has obtained permanent legal force for committing a crime that is threatened with imprisonment of 5 (five) years or more; b. committing a disgraceful act; c. not attending a trial that is his/her duty and obligation for 5 (five) times in a row without a valid reason; d. violating the oath or promise of office; e. intentionally preventing the Constitutional Court from giving a decision within the time as referred to in Article 7B paragraph (4) of the 1945 Constitution; f. violating the prohibition as referred to in Article 17; or g. no longer fulfilling the requirements as a constitutional judge

The DPR's steps to decide For remove judge Aswanto started with letter sent Court Constitution to the DPR dated July 22, 2022. Contents of the letter the explain about Decision Court Constitution with Number 96/PUU-XVIII/2020 concerning Review of Article 87 letters a and b of the Law Number 7 of 2020 concerning change third Constitution Number 24 of 2003 concerning Court Constitution .

As for in letter The Constitutional Court quoted one of the reason consideration law about rejected application for judicial review Article 87 letter b of the Constitutional Court Law. The considerations the law stated , “ considering that after clear for Court will intention in fact (*original intent*), from former Constitution in establishment of Law 7/2020, Court to argue the provisions of Article 87 letter b do not contradictory with Article 28D paragraph (1) of the 1945 Constitution”.

Based on the above decision Court to argue required action law For confirm meaning The legal action in question in the form of confirmation by the Court to the proposing institution that nominates the constitutional judge who is currently This currently in office . Confirmation related announcement about continue the term of office that was not Again know existence periodization to each proposing institution Good That The Supreme Court , the President , and the DPR. On the basis of this is it Court Constitution send letter containing limited to confirmation of its nature announcement No precisely For request the DPR's approval to dismiss one of the judges proposed by the DPR and not to request appointment of new Constitutional Justices .⁶

DPR interprets different and followed up by the President with publication Presidential Decree Number 114/P/ Year 2022 which contains dismissal of Judge Aswanto and followed by with was lifted Secretary General Court Guntur Hamzah's Constitution as substitute . Existence Presidential Decree Number 114/P/ Year 2022 in particular No direct hinting support institution executive that is President to dismissal of Judge Aswanto so that matter This is a step decline for independence institution justice at a time has violating Article 23 paragraph (4) of the Constitutional Court Law.

In general administrative , President only may emit Presidential Decree after existence request from chairman of the Constitutional Court, not by the DPR. Consequence the law that arises from the process of dismissing Judge Aswanto and appointing Guntur Hamzah as unconstitutional Because contradictory with Article 24 paragraph (4) of the Constitutional Court Law and Article 20 paragraph (2) of the Constitutional Court Law which mandates that the process of selecting Constitutional Judges must done through an objective , accountable , transparent selection process as well as open by each institution proposer .

Independence institution justice interpreted become as if the Constitutional Judge Aswanto is extension hand from institution proposer . Steps taken by the DPR and the President has contradictory with mark independence the justice that is stated in Article 24 paragraph (1) of the 1945 Constitution which states that power judiciary is independent power For to organize trial . From the facts that have been Writer described above , Author evaluate that between

⁶<https://www.beritasatu.com/news/983781/soal-surat-mk-3-mantan-hakim-sebut-dpr-salah-paham> , accessed May 23 , 2024.

institutions The proposer of the Constitutional Court judge is institution legislative (DPR) and institutions executive (President) has made a wrong and fatal step regarding the dismissal of Constitutional Justice Aswanto. Because procedurally, the dismissal was invalid because the Chief Justice of the Constitutional Court had never submitted an official letter containing request that Judge Aswanto dismissed during his term of office .

The bodies that propose Constitutional Court judges, namely the legislative body (DPR) and the executive body (President), have taken erroneous and fatal steps regarding the dismissal of Constitutional Justice Aswanto. Procedurally, The dismissal was invalid because the Chief Justice of the Constitutional Court had never submitted an official letter requesting that Justice Aswanto be dismissed during his term. For this reason, the aim of this research is directed at the legality of the dismissal of constitutional judges and the pattern of acceptance of constitutional judges.

B. RESEARCH METHOD

Type study This is type normative , research law normative (*normative legal research*) is a process for find rule law , principles law , and doctrines law use answer issue the law faced . ⁷Deep scientific logic study law normative built based on discipline scientific and methods Work knowledge law normative , namely knowledge law whose object is law That Alone . This research uses 3 (three) Approaches including Statuta Approach, Conceptual Approach and Comparative Approach. The legal materials used consist of primary and secondary legal materials. Primary legal materials include laws and regulations, decisions, meeting minutes, and other legal documents. Secondary legal materials include books, journals, theses, dissertations, and other documents relevant to the discussion. Data was obtained by means of literature study which was then analyzed using qualitative analysis methods. Study law normative is a process for find a rule law , principle law , and doctrines law For answer the problems faced . This is in line with characteristics prescriptive knowledge law , namely done For produce argumentation , theory or draft new as prescription in finish problem faced .⁸

C. DISCUSSION

1. Legality Dismissal Of A Supreme Court Judge Constitution In Office By The DPR

The Constitutional Court has a position as one of the state institutions that carries out independent judicial power to administer justice to uphold law and justice with the vision of upholding the constitution in order to realize the ideals of a state based on law and democracy in Indonesia. The independence of the Constitutional Court is very important in efforts to oversee the realization of democratic legislative legal products in accordance with the authority given to the Constitutional Court through provisions explicitly regulated in Article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Judicial institutions also serve as a benchmark for whether a country is democratic or authoritarian. Every country that is led in an authoritarian manner will tend to suppress the power of the holders of judicial power (judiciary).

The guarantee of the independence of the judicial institution is regulated in the constitution. The 1945 Constitution of the Republic of Indonesia uses the terminology “independence” as a constitutional guarantee to realize the independence of the judicial institution. This is stated in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states

⁷Peter Mahmud Marzuki, 2011 , *Legal Research* , Kencana Prenada Media Group, Jakarta, p. 35

⁸Peter Mahmud Marzuki, 2011, *Legal Research* , Kencana , Jakarta, p . 34.

that “judicial power is an independent power to administer justice in order to uphold law and justice.”

Constitution give guarantee independent power in frame organization justice use to uphold law and justice . This is certainly each other related that is when power judiciary No independent , then collapse existence of a state of law as Bagir **Manan** said that independent judiciary is a “ *condition sine quanon* “ for the realization of a state based on on law .⁹ With Thus , efforts arrangement law in frame put the position of judge must directed as effort realize organization power independent judiciary which is in essence is element important from a country of law .

Dismissal of Judge Aswanto during his term of office by the DPR as one of the institutions proposer naturally is a effort For to muzzle independence institution justice , in representation state institution that proposes constitutional judges the No can intervene Independence of the Constitutional Court. If seen from background behind behind proposal and recruitment ninth constitutional judge member own objective For ensure balance strength between branch state power and guarantee neutrality as well as MK’s impartiality in connection between the state institution .¹⁰

Representation state institution that proposes constitutional judges No can intervene existence Court Constitution . After He selected become a constitutional judge so after that is part from the MK which is not can affected or bound by the institution the power that has authority in propose a constitutional judge . However , in meeting The plenary session of the Indonesian House of Representatives held on Thursday , September 29, 2022 resulted in the decision issued by the DPR is decision For dismiss judge Aswanto although Not yet enter time pension as a constitutional judge . The next decision of the DPR appointed Guntur Hamzah as substitute constitutional judge Aswanto .¹¹

Steps taken by the DPR to dismiss judge Aswanto in term of office become a precedent bad for enforcement independence judiciary in Indonesia because contradictory with Law , no. in accordance with procedure , and a arbitrary action . Judge Aswanto Alone is a constitutional judge who started take office since March 21, 2014 and In the year 2019, Aswanto return chosen become a constitutional judge after his name proposed by the DPR which should be the period of implementation not quite enough answer as its Constitutional judge ends on March 21, 2029, as devotion 70 (seven) twenty) years and not exceeds 15 (fifteen) years from entire term of office .

However at the time Not yet enter time Judge Aswanto retires as a constitutional judge , the DPR has decide For dismiss judge Aswanto as a Constitutional Judge .¹²This is is confirmation from the DPR above letter announcement Court Constitution related with Decision Number 96/PUU-XVII/2020. The DPR was wrong in interpret letter sent by the chairman Court Constitution .

Letter addressed to to the chairman of the DPR who is the substance limited to confirmation or just announcement impact decision which is the decision the discuss regarding periodization position The previous constitution based on cycle period of 5 (five) years and amended with refers to the restrictions age . Because not Again existence term of office period , then Court Constitution look at need For give confirmation to institutions that have authority For propose constitutional judges .

According to provision The old law several Constitutional judges will end period his position so that If follow the old provisions of the institutions that proposed That must quick

⁹Bagir Manan, 1998, *Organization Justice in Indonesia* , Surabaya, Faculty of Law, Airlangga University, p. 7.

¹⁰ Jimly Asshidiqie , “ *Position Court Constitution in structure Indonesian Constitution* ”, <https://www.mkri.id/index.php?page=download.Artikel&id=5> , (accessed on November 14, 2024).

¹¹Indonesian House of Representatives , “ Plenary Session Approving Guntur Hamzah as Constitutional Judge from DPR Proposal ”, *Parliamentary Latest – House of Representatives (dpr.go.id)*, (accessed 18 November 2024).

¹²Indonesia Corruption Watch, “ Questioning Dismissal of Constitutional Judges by the DPR: Reckless Actions , Authoritarianism , and Systematic Efforts Subdue Court , ICW (antikorupsi.org), (accessed 7 October 2024)

do preparation For filling position in matter This is the DPR, President and MA as institution proposer , the DPR should understand substance letter from the Constitutional Court which only limited to confirmation but the DPR actually act differently, namely do dismissal of constitutional judges in term of office namely Judge Aswanto . A reason dismissal of judge Aswanto as a constitutional judge according to Bambang Wuryatno as chairman Commission III of the Indonesian House of Representatives assesses that Aswanto considered to annul products legislation carried out by the Indonesian House of Representatives.¹³

The DPR's efforts to weaken the judicial institution, including the Constitutional Court, by ratifying the revision of DPR RI Regulation No. 1 of 2020 concerning DPR Rules of Procedure, the revision of the DPR rules of procedure was proposed by the DPR Legislative Body with the addition of Article 228A between Article 228 and Article 229 in the regulation. Article 228A paragraph (1) reads "In order to improve the supervisory function and maintain the honor of the DPR regarding the results of the commission's discussions as referred to in Article 227 paragraph (2), the DPR may conduct periodic evaluations of candidates who have been determined in the DPR plenary session." Then paragraph (2) of Article 228A reads, "The results of the evaluation as referred to in paragraph (1) are binding and are submitted by the commission conducting the evaluation to the leadership of the DPR RI for follow-up in accordance with the applicable mechanisms."

Jimly Asshidiqie argues that the House of Representatives (DPR) has no authority to regulate other institutions. The rules of procedure are sufficient to regulate internal matters, except through laws. However, any regulation can be subject to judicial review by the Supreme Court or the Constitutional Court, depending on their respective authority. The DPR should instead revise all laws concerning recruitment to public positions, which already consume a significant amount of time and energy. As a result, the DPR's primary duties in the areas of legislation, budgeting, and oversight are neglected, and quality continues to decline. Currently, there are 36 institutions whose recruitment involves the DPR, totaling 1,787 officials. This is already excessive. It would be best to reduce the number of institutions explicitly mentioned in the Constitution. However, all institutions are intended to be independent from the all-powerful President. However, in practice, they should not become independent from the DPR. Moreover, the DPR is planning to expand its recall authority. This would have serious damaging consequences. The DPR has exceeded its authority.

Aswanto is also considered No carry out commitment as a Constitutional judge who has proposed by the DPR. Therefore , That researcher will to describe about :

a. Mechanism Dismissal of Constitutional Judges by the Proposing Institution

Dismissal carried out by the House of Representatives which is institution proposer against Judge Aswanto is actions that have been to injure independence power judiciary . Dismissal made is form arbitrariness carried out by the DPR, especially again judge of the Court Constitution is realm the justice that should be free from intervention other institutions .

Termination against Judge Aswanto which was carried out by the DPR was not in accordance with the procedure implementation is seen based on in Article 23 paragraph (4) of Law No. 7 of 2020 and as regulated in PMK No. 4 of 2012 concerning procedures dismissal of a court judge constitution . That in a way material for the process of dismissing judge Aswanto No including in termination in a way honorable or No respect , especially Again termination Aswanto Still in term of office , meanwhile the termination was carried out when Still in term of office only can implemented with reason if the judge to resign self on request submitted by himself to

¹³ Kompas, " Removal of Constitutional Judges Aswanto Rated Break the Law and Disturb Independence Courts " Removal of Constitutional Judges " Aswanto Rated Break the Law and Disturb Independence Justice (Kompas.com), (accessed 7 October 2024).

Chairman Court Constitution, beyond age 70 years, and Sick in a way physical and spiritual so that No can operate his duties. Provisions termination in a way No respect also for Judge Aswanto No including in it. Moreover Again reasons put forward by the DPR because of judge aswanto often to annul product laws proposed by the DPR.

Referring to Bambang Wuryanto's statement As incumbent official as Chairman Commission III of the Indonesian House of Representatives, provides reason related judge Aswanto was dismissed because of the Constitutional judge the considered often to annul product of the law proposed by the DPR.¹⁴ Bambang Wuryatno as Representatives of the Indonesian House of Representatives also said that judge Aswanto No own commitment with the DPR and the DPR's decision to remove Aswanto is decision politics.

Referring to Article 26 of the Law Number 7 of 2020 concerning change third on Law No. 24 of 2009 concerning Court The constitution states that, in the termination process carried out so Court Constitution moreover formerly to inform to institution authorized in matter This that is institution proposer related with dismissal of constitutional judges with the judge's reasons has entering the age limit. Next in term 14 days time since Court Constitution accept letter decision from president related with dismissal and appointment of substitute judges, Court Constitution will in writing return to institution proposer For propose a replacement judge to president for a maximum of 30 (three) years twenty days since received letter announcement from Court Constitution.

Presidential decree related with dismissal and appointment of constitutional judges determined no later than 7 (seven) days since received Name proposal replacement. The process of dismissing a constitutional judge is carried out by the institution the proposer also does not set up in provision Law no. 7 of 2020 concerning Change Thirdly, under the Law Number 24 of 2003 concerning Court Constitution or through PMK No. 4 of 2012.

termination process is carried out must through Chairman Court Constitution. That Court Constitution to inform to authorized institution namely the DPR, the President and the MA as institution proposer regarding the judge who will dismissed in term maximum period of 6 (six) months before age 70 (seven) twenty years, or in term maximum time 14 (four) days twelve days Work since Court Constitution accept the Presidential Decree.

Court Constitution to inform to the propos ing institution regarding the dismissed constitutional judges. Furthermore authoriz ed institution submit replacement from the dismissed constitutional judges to president in term maximum time 30 (three) days twenty days Work since accept announcement from Court The next constitution will approved through decision president related with appointment replacement. There are 3 (three) types dismissal of a judge of the Supreme Court The constitution is regulated through Regulation Court Constitution No. 4 of 2012, namely:

1. Dismissed with respect
2. Dismissed with No respect
3. Termination temporary

Before the judge is dismissed with No respect, the judge concerned dismissed temporary from his position by Presidential Decree on request MK chairman. Dismissal temporary the No applicable For reason sentenced criminal prison based on decision the court that has to obtain strength law still Because do act the criminal penalty that is threatened with punishment prison. Dismissal temporary done with objective For give opportunity to the judge concerned defend yourself in front Assembly Honor of Constitutional Judges. In the event that a judge is sentenced criminal prison, the judge concerned dismissed with No respect.

Termination No with respect the done in term maximum time 3 (three) days Work since

¹⁴Compass, "when former MK Judge opponent back to DPR after Aswanto removed" When Former Constitutional Court Judge Fights Back Against DPR After Aswanto Removed (Kompas.com), (accessed 19 November 2024).

decision the court that obtained strength law remain , and in term 7 (seven) days Work since Court Constitution receive the Presidential Decree about termination No with respect the judge , Court Constitution notify the President's Decree the to authorized institution submit a judge to replacement of constitutional judges .

Reviewing the reasons above , of course There is possibility if the Constitutional judge can replaced before end of his term of office with referring to the rules said , and can concluded that the Constitutional Judge can dismissed with one of from three mechanism termination that is , dismissed with respect , dismissed No with respect , and termination temporarily . In explicit from Exposure the If happen termination in a way dear means terms and conditions as a constitutional judge Already No fulfilled and if dismissed No with respect indicates there is violation the law that has been done .

Before case dismissal of constitutional judges Aswanto, which was carried out by the DPR, was recorded there is several judges of the Court The constitution that was dismissed during his term of office Because stumble case bribery , including case bribery that ensnared a Court judge The Akil Mochtar Constitution which occurred in 2013 , the President of the Republic of Indonesia who at that time That is Mr. Susilo Bambang Yudhoyono who is official dismiss Akil Mochtar from his position as Chief Justice of the Constitutional Court. This decision taken after Assembly Honor Court Constitution decide that Akil Mochtar proven violate code ethics of constitutional judges . In the trial the verdict in the MKMK building stated that Akil Mochtar proven do action despicable , violating code ethics of constitutional judges . Akil Mochtar stated guilty Because accept bribe in taking decision dispute election head area .¹⁵

Bribery cases also ensnare former Constitutional Judge Patrialis Akbar, at the time take office As a Constitutional Court judge, Patrialis Akbar was proven accept bribe For influence case number 129/PUU-XIII/2015 related application for judicial review Constitution Number 41 of 2014 concerning Animal Husbandry and Animal Health so that MKMK decided termination No with respect as a Constitutional judge .¹⁶

From various the criteria listed in paragraphs (1) , (2) and (3) above , judge Aswanto Of course just No fulfill one of from existing criteria . With Likewise , neither did Judge Aswanto can dismissed in a way respect and also No respect or through termination while , because No There is none of them criteria that can be causing Judge Aswanto dismissed . Then , in Article 23 paragraph (4) Law no. 7 of 2020 states that “ Dismissal of constitutional judges set by Presidential Decree on request Chairman Court Constitution ”.

Necessary clauses underlined is “ discontinuation only set on request Chairman Court Constitution ”, no there is phrase on DPR request . with Thus , it is clear that DPR's actions in dismissing the judge of his choice (Aswanto) is unconstitutional action , because No There is sound from rule legislation stating that the DPR can request dismissal of a Constitutional Court Judge, even though the judge is is a proposed judge from the DPR Alone.

b. Domination Politics in the Dismissal of Court Judges Constitution

Political is road in reach a product law in frame operate power . Law is results from product politics . Politics law is a wisdom law (*legal policy*) that will or has implemented in a way rational by the government , also includes ways political influence law with method see configuration the power that exists behind creation and enforcement law That itself . The¹⁷resulting law from product political which will be later will become a source power , which becomes immunity from every organ of government in operate task his authority . Power is the power that will used in operate interest politics .

¹⁵Tempo, “ MKMK Decision Read Out , Here's a Flashback to the Dishonorable Dismissal of MK Chief Justice Akil Mochtar ”, (accessed November 18, 2024)

¹⁶Detik news, “MKMK Decides Patrialis Akbar Dismissed with Disrespect”, (accessed 18 November 2024)

¹⁷Mahfud MD, 2012 , Legal Politics in Indonesia , Depok, 2013 Edition Revision , Fifth Edition , Rajawali Press, p. 26.

In concept politics, law in his feet is product political from interest ruling class.¹⁸ **John Ferejon** share into 3 (three) forms definition of power judiciary . First, power judiciary is required conditions For maintaining the rule of law . Second, independence power judiciary is the need for the court own independence For cancel rule a country. Third, independence power judiciary intended for the court own strong autonomy in reject temptation from holder power economics and politics .¹⁹

In line with guarantee independence above, if correlated with Republic of Indonesia Law No. 30 of 2014 concerning Administration Government, which explains about base authority held by the agency and/ or institution government namely a authority Can obtained through attribution, delegation, and mandate, which can be Writer describe as following :

- a. Attribution²⁰ is giving authority to the body and/ or official government by the 1945 Constitution of the Republic of Indonesia and the Law . Granting the authority obtained through attribution the direct authority granted by law namely Good in matter, authority president as institution executive, authority DPR in operate duties and functions as institution legislative, authority Power Justice For operate role judiciary, as well as other state institutions in operate task government Good level central and regional .
- b. Delegation²¹ is delegation authority from the body and/ or official more government tall to the body and/ or official more government low with not quite enough responsibility and accountability sue switch completely to recipient delegation . Namely an agency and/ or official the government that gets authority through delegation is the authority granted from level center (president) to level region (governor) in operate development government in implementation autonomy area . That every area given authority in operate their respective governments according to with the program from government center . The authority granted between government province to government regency in development the next infrastructure budget development the direct through budget government regency .
- c. Mandate²² is delegation authority from the body and/ or official more government tall to the body and/ or official more government low with not quite enough responsibility and accountability sue stick to the giver mandate . In case giving authority through mandate, can We take for example, when a leader in one of the agency government that orders his subordinates For operate the work that becomes authority giver mandate For executed by the recipient mandate only in limited to implementation, regardless from its implementation direct become not quite enough answer giver mandate .

According to economical Author, dismissal of constitutional judges Aswanto in term of office contradictory with Republic of Indonesia Law No. 30 of 2014 concerning State Administration especially in the provision of authority through direct attribution granted by law Good in matter authority president as institution executive and also DPR's authority in operate duties and functions as institution legislative .

Authority the should based on the applicable legal corridors (rules) . as set up in Regulation Court Constitution No. 4 of 2012 concerning Dismissal of a Supreme Court Judge The constitution regulates about the procedure dismissal of constitutional judges consists of from termination in a way respect, no with respect and dismissal temporary that the judge can dismissed in a way No with respect if the judge is concerned dismissed in a way temporary from his position with decision president on request Chief Justice of the Constitutional Court.

¹⁸Umar Sholehudin, 2011, *Law and Social Justice*, Malang, Setara Press, p. 40.

¹⁹Farid Wajdi, Imran, Ilham Hasanudin, 2019, *Supervision of Judges and Enforcement of the Code of Ethics at the Commission Judicial*, Jakarta, Rays Graphics, p. 14.

²⁰See Article 1 paragraph 22 of Law of the Republic of Indonesia No. 30 of 2014

²¹See Article 1 paragraph 23 of Law of the Republic of Indonesia No. 30 of 2014

²²See Article 1 paragraph 22 of Law No. 30 of 2014

Termination temporary the No applicable if the judge is concerned sentenced criminal prison based on decision the court that has to obtain strength law still Because do act the criminal penalty that is threatened with criminal prison . Dismissal temporary done with objective For give chance to the judge concerned defend yourself in front Assembly Honor of the Constitutional Court. Dismissal No with respect set with the PRESIDENTIAL DECREE above request Chief Justice of the Constitutional Court, request termination No with respect the done with term maximum time 3 (three) days Work since decision the court that has to obtain strength law still .

In terms of This DPR has do action violation administration because of judge Aswanto No do a violation law and also violation ethics in term of office so that must dismissed in the middle of the term of office , and there are none a provisions of the law that regulate about dismissal of Constitutional Court judges during their term of office on base evaluation subjective institution proposer .

The authority of the DPR in nominate Constitutional Judge is direct authority given to order law . However in rule said , no arrange more carry on related with to what extent DPR's authority in the supervision process as well as termination the proposed MK judges This is . Then become the problems that occur when Judge Aswanto's dismissal was carried out by the institution proposer (DPR), that in matter This is not the House of Representatives have authority in dismiss the Constitutional Court judges.

One of things of a nature essential from formation A policy is concerning the foundation . The foundation in question such as “ footing ”, “ limitation ”, “ reason ”, and/ or “ background ”. behind ” why a policy That must formed . ²³In case judge Aswanto's dismissal , no there is arguments law about the foothold used For stop him . The reasons put forward by the institution that proposed judge Aswanto namely the DPR does not can understood based on logic law . The only one reasons that can be known concerning background behind decision dismissal of judge Aswanto because of “ non-compliance ”. The reason is not own base law , foothold constitutional , especially mark morality .

According to M. Shepherd, that mechanism *check and balance* Can confirmed walk like should if institution judiciary nature independent and impartial . In line with matter According to Paul Scholten , that law when No run with should so in fact matter the No can Again it is said as law . In case This is the DPR's decision to dismiss Judge Aswanto can confirmed No in accordance with existing legal norms . Because the authority the is with the President not in the DPR, then decision unilaterally taken by the DPR is not Can it is said as law Because policy the done No in accordance with applicable law .

In line with description above , Author based on the Theory of the Rule of Law Where supremacy law upheld height , equality in front of equality before *the law* is guaranteed and its implementation power judiciary restricted with law so as not to misused and become arbitrariness . In the construction of a state of law , both citizens and State administrators must bow down to rules and enforcement applicable law .²⁴ Proposal the position of constitutional judge who comes from from 3 (three) branches power important For ensure independence Constitutional Court institution . In theory separation power created by Montesquieu is called separation power It means third power each of them must separated Good his institution and the organs that handle it .²⁵

²³Ellydar Chaidir and Sudi Fahmi, 2010, *Comparative Law Constitution* , Yogyakarta: CV. Kreasi Total Media, p. 74.

²⁴Widati , *Law Enforcement in a Democratic Legal State in Indonesia* , in Answers et al ., *Transcendental Law : Development and Law Enforcement in Indonesia* , (Yogyakarta: Genta Publishing, 2018), p . 511.

²⁵Moh. Kusnardi and Hermaily Ibrahim, *Introduction to Indonesian Constitutional Law* , (Jakarta: Center for Constitutional Law Studies , Faculty of Law, University of Indonesia, 1983), p. 141.

If reviewed from Montesquieu's theory that power judiciary That must separated , because if He united with power legislative so life and liberty citizens do not will protected from control arbitrary because the judge at a time as maker law . On the contrary If power judiciary That united with power executive so a judge is will open For do action violence and oppression . And in the end will become very sad thing when the same person or the same institution operate third power that is , that is set law , run decision , decision public and prosecute crime or disputes between individuals ,²⁶ so that in matter This is the MK which includes in the judiciary No can interfered by the institution the proposer (DPR) and the Constitutional Court must also free from impartiality (impartial).

2. Purification of Judicial Independence Through Redesign of Appointment of Constitutional Court Judges

The judge has such a role big in matter realize an ideal country. Therefore that , integrity , independence as well as accountability of judges must be always protected for the purpose power judiciary will still be on the right track for the realization a just and certain decision law . Prevent and minimize existence violation rule as well as code the ethics of judges are very necessary rules that are strict in matter effective judicial oversight so that honor as well as nobility the dignity of the judge can awake . With existence effort protect the integrity of the judge , then naturally No may someone intervened principle independence power judiciary .²⁷

Practice abuse authority that occurs in institutions justice result in the damage system law as well as No fulfillment of a sense of justice , avoiding matter the so required solution real For return the dignity of the judge is the main pillar in institution justice . One of the solutions that can attempted that is with method do evaluation implementation system recruitment that has been There is moment This . Supervision is very necessary as meaning that the judge as executor power judiciary avoid from existence other influences such as socio-cultural in operate his/her duties . In line with matter said , the view *the idiosyncrazy wing of realism* claims that “ the thing that determines judge's response to fact from a case special is specific facts about psychology or personality from the individual concerned ”. Conditions the prove that the judge as executor power the judiciary is also influenced by other things such as history life , tradition cultural , views politics , even ideology science .

System recruitment of constitutional judges own diverse characteristics as set up in regulation legislation . The provisions of Article 24C paragraph (3) of the 1945 NRI Constitution state that the Constitutional Court has nine members of the constitutional judges appointed by the President , three of whom are proposed by the Supreme Court , three by the People's Representative Council , and three by the President .²⁸

Arrangement about selection of constitutional judges has also regulated in Constitution Power Justice that elements submission of constitutional judges consists of on draft nominations carried out in a way transparent and participatory , as well as draft the election was held in a way objective and accountable .²⁹ Then , in Article 35 of the Law on Power Justice confirmed that Provision advanced about terms and conditions appointment of constitutional judges set up in Constitution .

Mandate of the Law of Power Justice the No let go from derivative of Article 24C paragraph 6 of the 1945 NRI Constitution which states that regarding appointment of constitutional judges and its requirements set up in Law . On the basis of that's it , the law regarding the Constitutional Court should be to reinforce the norms that regulate about selection of Constitutional Court

²⁶Baron de Montesquieu, 2007, *The Spirit of Laws: Basics of Legal and Political Science* (translated by M. Khoiril Anam), (Bandung: Nusa Media), 2007, p. 62.

²⁷*Ibid.*

²⁸Look The 1945 Constitution of the Republic of Indonesia .

²⁹Look article 34 paragraphs 2 and 3 of Law no. 48 of 2009 Concerning Power Justice

judges . However , in Article 20 of the Constitutional Court Law only set the same norms as stated in the Constitutional Court Law, where provision regarding procedures selection , election and nomination of constitutional judges regulated by each authorized institution in submission of constitutional judges and implemented in a way objective and accountable .³⁰

There is a number of mistake in practice mandate legal and mandate constitutional in draft appointment of constitutional judges . *First* , the mandate of the Constitutional Court Law Justice on elements submission of constitutional judges consisting of on the nomination process and the election process No lowered return in the Court Act Constitution . *Second* , the Constitutional Court Constitution in a way direct bestow arrangement in the manner selection , election and nomination of constitutional judges to each institution proposer . Even though in a way bright loaded in Article 24C paragraph (6) of the 1945 NRI Constitution that about appointment , conditions as well as provision other about the Constitutional Court is regulated with the law. This matter furthermore giving birth to two faces mixed settings as a draft together where is the one to wish a standard standard , while the others to wish flexibility in implementation . Second face arrangement the furthermore blend in without become complete unity so that influential to level organizer appointment of constitutional judges in a way socio-juridical .³¹

There are differences in these norms clear cause uncertainty laws that lead to incompatibility arrangement selection of constitutional judges . In fact with mandate of the Law of Power Justice open gap to The President , DPR and MA formulate a standard standard that can made into guidelines together in do selection of constitutional judges . Provisions standard standard the should be set in Constitution Court The constitution which is specific arrange in a way institutional . However , the gap law the denied by the former Constitution in revise Constitution Court Constitution .

Until birth Constitution Number 7 of 2020 concerning Court Constitution , issues mechanism selection of constitutional judges Not yet become important thing For done changes , and only related with the term of office of the constitutional judge . This is prove that during This effort For to renew Court Constitution in a way institutional only concentrated in the downstream only , while at the upstream Not yet become priority . Mechanism selection become key formation integrity of constitutional judges but No get attention of the formers Constitution .

Quoting What have you expressed by Satjipto Rahardjo, that making The law in Indonesia gives the impression of “ *legal speed making* “, meaning from statement the is that making the law in Indonesia seems so fast so that strength coming into effect A Constitution only fulfil what is called with *legal geltung* . In fact , the power coming into effect A Constitution No only concerning *legal sluggish* only , but also concerns *philosophical slang* and *suziological confused* .³²

Selection of constitutional judges cause trifurcation mechanism selection in 3 (three) state institutions in matter This is the DPR, MA and the President . Trifurcation mechanism selection of constitutional judges This No Can released from construction of norms in the Court Law The constitution regulates about selection of constitutional judges who have level flexibility tall so that can interpreted in a way free and appropriate the tastes of each regime by the institutions that have authority constitutional For nominate a constitutional judge .

Condition trifurcation the cause three branching mechanism selection of constitutional judges . Trifurcation mechanism selection of constitutional judges This No Can released

³⁰See Article 20 of Law No. 24 of 2003 concerning the Constitutional Court.

³¹Mira Fajriyah , “ Reflection and Analysis Appointment of Constitutional Judges ”, Journal Constitution , Volume 12, Number 2, June 2015, Jakarta: Secretariat General Court Constitution , p. 244.

³²Eddy Os Hiarej , 2012, *Building Legal Facilities and Infrastructure that are Just* , Anthology Commission Judicial , *Dialectics Updates Indonesian Legal System* , Jakarta: Secretariat General Commission Indonesian Judicial Review , p. 97.

from construction of norms in the Court Act The constitution regulates about selection of constitutional judges who have level flexibility tall so that can interpreted in a way free and appropriate the tastes of each regime by the institutions that have authority constitutional For nominate a constitutional judge . Conditions trifurcation the cause three branching mechanism selection of constitutional judges including :

a. Mechanism Selection Done Internally and Privately .

Mechanism selection made internally and privately , as is done by the Supreme Court , whose mechanism the selection done internally by the institution said , no done publication , no existence participation public as one of the mechanism control social regarding the selection process carried out , even mechanism recruitment of constitutional judges by the supreme court all originate from judges to career judges or non- career and not open room for registration candidate for constitutional judge for public general .

selection process carried out internally and privately This making the selection process for constitutional judges at the Supreme Court potentially the occurrence *conflict of interest* , as well as objectivity and accountability at stake , as it once was occurred in the selection of constitutional judges during the period final Where The Supreme Court remains submit The Suhartoyo as a constitutional judge from The Supreme Court , even at the time That The Suhartoyo temporary investigated by the Commission Judicial on suspicion violation code ethics .³³

b. Mechanism selection made with method appointment and extension of the term of office of constitutional judges .

Mechanism selection of constitutional judges with method extension This Once occurred in two state institutions , namely President and DPR. Submission from President for example , extension done against constitutional judge Maria Farida Indrati For period second . Condition the No open room for public other For register self as candidate for constitutional judge through institution presidency . Even in the institution this has also happened happen election of constitutional judges through mechanism appointment , as is the case with appointments Patrialis Akbar as a constitutional judge by the president based on a proposal submitted by the Ministry of Law and Human Rights which is institution the government that ever led by Patrialis Akbar, who That cause opinion public that appointment Patrialis Akbar is compensation politics given by the president on step *reshuffle* carried out by the president . Meanwhile, in the DPR institution , the mechanism submission of constitutional judges done with method extension of Akil Mochtar's term of office For period second without open registration candidate for constitutional judge .

c. Mechanism Selection Made With Forming a Team of Experts or a Team of Specialists.

Mechanism selection of constitutional judges carried out with method formation team expert or team expert Once carried out by the DPR and the President . The formation of team expert the Once One of the things that was done was when the DPR carried out selection of constitutional judges during the period to six , where chairman team expert at the moment That is Syafi'i Maarif. Mechanism like This is not without problem , but open problem others , including openness recruitment by the DPR only For legitimize allocation of constitutional judges for a number of member Commission III (2003, 2008, 2009, and 2013). Recruitment judiciary experience politicization in form co-optation judiciary by coalition and distribution interest in accordance configuration politics in Commission III of the DPR.³⁴

³³Indramayu , et.al , “ *Reconceptualization Selection of Constitutional Judges As an Effort to Realize Constitutional Judges Qualified* ”, Lentera Journal , Volume 4, No. 1 , 2017, p. 5

³⁴Ni'matul Huda, “ *Problems Substantive Government Regulation in Lieu of Law Number 1 of 2013 Concerning Court Constitution* ”, *Journal Constitution* , Volume 10, Number 4, December 2013, pp. 568-569.

There is politicization in the process of selecting judges is very dangerous thing because in essence the position of Judge may it is said is close position very with temptations worldly.³⁵ Mechanism kind of this has also happened done by the president with to form team expert or team expert in the period fourth Where team expert the chaired by Harjono and produced candidate for constitutional judge selected is Isra's Balance . At least there is three scheme selection of constitutional judges involving team expert or selection panel team , whether carried out by the DPR or by the President .

In general In general , there are two dominant factors influence trifurcation selection of constitutional judges , namely ; *first* , the issue in level implementation diverse and varied selection , based on factors law or Constitution about Court The constitution that does not arrange rigidly about system selection of constitutional judges , or at least there is minimum standards that must be met carried out by the state institution so that reflects 4 (four) principles recruitment of constitutional judges . *Second* , is institutions that implement system recruitment of constitutional judges in matter This are the DPR, MA and President utilise room open interpretation wide in Article 19 and Article 20 of the Court Law Constitution , thing that's it as reflected from description of the data that has been exposed previously , where selection of constitutional judges done with the mechanisms are varied , and not seldom used standard double in the selection of constitutional judges in institutions and regimes the same leadership.

Redesigning the constitutional judge recruitment process is things to do arranged back to the Constitutional Court Law. This is intended to ensure the independence and impartiality of constitutional judges can come true use guard credibility Court Constitution .

Trust public to institution guard constitution start experience decline since case constitutional judge revealed and proven guilty in court . Justification to phenomenon *judicial corruption* in vortex Court Constitution difficult For was attacked , because case corruption involving constitutional judges result in collapse institution Court Constitution .

Referring to the problems selection of constitutional judges that has been researcher describe above , then in matter This Two models for selecting constitutional judges were formulated which can be done For forward . Both models is as following :

a. Formation of a Selection Team or Selection Panel by the Institutions Respective of the Proposers of Constitutional Judges

Model Formation First is Formation of a team of experts or a kind of selection panel as stated in Perppu No. 1 of 2013 which then canceled through Decision Court Constitution No.1-2/PUUMK/2014. However Now with position Commission Judicial entry in Selection Panel Membership Formation of the selection panel formed by each institution proposer of the Supreme Court Judge Constitution (DPR, MA, and President) . implied and explicit that the DPR as institution proposer of Constitutional Judge must forming a selection panel mentioned . Likewise with Supreme Court and the President . Formation of the Selection Panel No appointed directly by the leader institution but also opens receptacle proposal from public wide in matter filling Selection Panel Composition the in polling form . With consider proposal from public wide related composition from the selection panel , the principle transparent , participatory , objective and accountable No only there is in the recruitment process Candidate for Constitutional Judge only , but also in the charging process Selection Panel composition .

Composition from the Selection Panel the very much reflect the ideal proportion where consists of from 1 (one) person (each a former Constitutional judge , professor knowledge law , figures community), as well as 2 (two) people from institution proposer. This ideal proportion

³⁵wan Satriawan , Tanto Lailam , “ *Implications Mechanism Selection To Independence and Integrity of Constitutional Judges in Indonesia*”, Ius Journal of Law and Justice Studies , Volume 9, Issue 1, April 2021, p. 117

reflected from existence representative former constitutional judge who of course Already own background behind adequate as a constitutional judge previously , and composition more amount from representative institution proposer , thing This intended so that the authority from institution proposer No fully taken transferred by members of the Selection Panel who come from from outside institution proposer . In addition , it will happen balance between each member of the Selection Panel so as not to bringing each of their interests to bear .

Term of work of the Selection Panel lifted for a working period of 3 (three) months counted since date appointment , as well as stand in a way independent without intervention institution proposer . Announcement and recruitment process until determination Selection Panel Composition must be published in the media mass Good print and also electronic so that public have chance For follow the recruitment process candidate for judge of the Supreme Court Constitution since beginning formation of a selection panel that will to select Candidate for Constitutional Judge the .

b. Formation of a Selection Panel in the Form of a Joint Agreement between the Institution Proposing Constitutional Judges

Idea Formation of the Selection Panel in the recruitment process in principle different with the substance of the selection panel that was set up in PERPPU Number 1 of 2013 in conjunction with Law Number 4 of 2014 concerning Stipulation of PERPPU No. 1 of 2013 concerning Change Second on Law No. 24 of 2003 concerning Court Constitution . In Perppu said , the existence of Commission The judiciary then become problem important because each institution in a way literally subject to the selection panel formation commission judicial . Therefore that , if the PERPPU is issued with No give room absolute for Commission Judicial in to form in a way The personal selection panel in question , but with still to form One Selection Panel fixed and only give authority its formation to each institution proposer through Regulation the standard that is poured in the Court Act Constitution to front so will happen novelty very effective law .

Formation of the selection panel formed through a form cooperation between institution the proposer who started from the institution that will propose constitutional judges said . As example , in filling of constitutional judge positions through President , then president in matter it also proposes representative from the DPR and the Supreme Court , as well on the contrary if the DPR or President will propose Candidate for Constitutional Judge so the president must also send representative in Selection Panel Composition . Selection Panel Composition consists of of the 2 (two) retired Constitutional Judges , 1 (one) professor knowledge law , 1 (one) person community , 1 (one) internal representative from each institution proposer .

Announcement and recruitment process until determination Selection Panel Composition must be published in the mass media Good print and also electronic so that public have chance For follow the recruitment process candidate for judge of the Supreme Court Constitution since beginning formation of a selection panel that will to select Candidate for Constitutional Judge In this case . determine personal selection panel No appointed directly by the leader institution but also opens receptacle proposal from public wide in matter filling Selection Panel Composition In addition , for the position of two people who come from from the professor knowledge law and figures public and two retired constitutional judges determined by the Institution that will propose prospective constitutional judges required Court Constitution. Determination this is also a must based on proposal active from public in a way direct .

Composition This is the ideal proportion where consists of from 1 (one) person (each a former Constitutional judge , professor knowledge law , figures community), as well as 1 (one) internal representative from each institution proposer . This ideal proportion reflected from existence representative retired constitutional judge who of course Already own background behind adequate as a constitutional judge previously , besides That there is element from public as well as the composition of each is the same between each institution proposer .

This matter will make balance between each member of the Selection Panel so as not to bringing each of their interests to bear . Endorsement Selection Panel Composition handed over fully to the institution that will propose constitutional judges , determined by the number of input public as well as plenary meeting of the leadership the state institution . For the president whose position as institution However only stand myself , proposal the prospective judge can consult with the Advisory Board President or Vice President , while That For Supreme Court , Chief Justice The Supreme Court can consult with secretariat The Supreme Court Alone start from the Administration Agency , Supervisory Agency or other bodies under scope secretariat Supreme Court .

Determination composition from the selection panel based on principle transparent , participatory , objective and accountable No only there is in the recruitment process Candidate for Constitutional Judge only , but also in the charging process Selection Panel composition . In addition , there is representative institution other proposers besides institution the proposer who will propose constitutional judges the will the more add characteristics selection as well as will happen each other control between each state institution .

3. Formation Supervisor External Court Judge Constitution

In the judicial power, judges are guaranteed their freedom in issuing decisions. This is because the judicial power is a separate branch of power (judicial) outside the government (executive) and the DPR (legislative). Therefore, the supervision that occurs must continue to be able to guarantee the freedom of judges, especially constitutional judges, to continue to be able to issue decisions that are free from intervention by other branches of power, namely independent judges whose freedom in deciding cases they handle. Such conditions must be maintained because all supervisory efforts that suppress the independence of judges in deciding cases mean alienating the efforts of justice seekers (*justice bellen*) and unable to achieve justice itself. Therefore, judges in deciding cases, in addition to adhering to the applicable rules, also interpret the law and the context of the case with the values or beliefs of the judge.

The independence and freedom of judges in the judicial institution is essentially a safeguard of the rule of law .³⁶This principle is also universally adopted as reflected in the *Basic Principles on the Independence of the Judiciary* adopted by the *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders* , in Milan on 26 August to 6 September 1985, and ratified by UN General Assembly Resolution Number 40/32 dated 29 November 1985 and Number 40/146 dated 13 December 1985.³⁷

The independence of judges in the judicial institution is essentially a basic prerequisite for the realization of the ideals of a state based on law and is a guarantee for the upholding

³⁶About This concept of the rule of law can read in a way complete in Sri Soemantri , “ System Government of the Republic of Indonesia ”, Journal Law Chamber Vol. X No. 3 November 2002, p . 190; Yance Arizona, “ *The Constitution in Spy Neoliberalism* ”, Journal Constitution Vol. I No. 1 November 2008, Constitutional Court Constitution of the Republic of Indonesia, p . 27; RM Ananda B. Kusuma, “ *Constitutional Theory and the 1945 Constitution* ”, Journal Constitution , Vol. III No. 2 May 2006, p . 152; and Abdul Latif, “ Presidential Election in Perspective Coalition Multiparty ”, Journal Constitution , Vol. VI No. 3 September 2009, pp . 25-26

³⁷Point Quarterly Tutik , 2012. “ *Supervision of Constitutional Judges in the Judicial System* “ *Supervision of Judges According to The 1945 Constitution of the Republic of Indonesia* ”, Journal Dynamics of Law Vol 12 No. 2, FH Universitas Jenderal Sudirman, <http://dx.doi.org/10.20884/1.jdh.2012.12.2.51> p . 299

of law and justice. This prerequisite is parallel and reflected in the process of examination and decision-making on each case and is related to the independence of the court and the impartiality of judges.

Primarily, supervision of judges is often interpreted *absurdly* with the meaning that such supervision will reduce the independence of judges in carrying out their duties. In fact, the independence of judges should not be interpreted absolutely. According to Paulus E. Lotulung, the limitations or guidelines that must be remembered and observed in the implementation of this freedom are primarily the legal rules themselves.³⁸

It must be realized that freedom and independence are also bound by responsibility or accountability, where both are basically two sides of the same coin. There is no absolute freedom without responsibility. In other words, it can be understood that in the context of judicial freedom, it must be balanced with its partner, namely judicial *accountability*.³⁹

Supervision carried out on judges can be divided into two things, namely internal and external supervision. Internal supervision is supervision carried out by the ethics council or honorary council whose membership is formed by the institution or is still included in the scope of the government. For example, internal supervision in the Constitutional Court is carried out by the ethics council of the Constitutional Court and the Honorary Council of the Constitutional Court (MKMK). While external supervision is supervision carried out by organizations or bodies outside the institution. This supervision is carried out as a form of *check and balances* for the institution if it is suspected that internal supervision has a conflict of interest so that its supervision is not effective and optimal. In the context of supervision of the judicial body (*judicial control*), the body authorized to do this based on Article 24 B paragraph (1) of the 1945 NRI Constitution is the judicial commission (hereinafter referred to as KY). Article 24 B paragraph (1) of the 1945 NRI Constitution reads:

“that the Judicial Commission is independent, has the main authority to propose the appointment of Supreme Court Justices, and also has other authorities in order to maintain and uphold the honor, dignity, and behavior of judges. With the phrase in order to maintain and uphold the honor, dignity, and behavior of judges “

The actualization of Article 24 B paragraph (1) is through Law of the Republic of Indonesia Number 22 of 2004 concerning the Judicial Commission. However, the supervision carried out by the KY is considered to interfere too much with judges, especially Supreme Court judges, so that 31 Supreme Court judges on March 10, 2006 filed a judicial review of the law to the Constitutional Court against the KY Law and Law Number 4 of 2004 concerning power.⁴⁰ Discussion regarding the role of KY supervision was also debated, including the most controversial discussion regarding the word “judge” in KY supervision. This is because the Constitutional Court is of the opinion that the meaning of the word “judge” in Article 24 B paragraph (1) only applies to Supreme Court judges and not to Constitutional Court judges. This is in the consideration of the Constitutional Court based on Constitutional Court Decision Number 005/PUU-IV/2006, namely as follows: “ *First*, systematically the formulation of provisions regarding the KY is not related to provisions regarding the Constitutional Court (the article regarding the KY is placed before the article regarding the Constitutional Court);

³⁸ Eid al -Rishan, 2013, *Commission Judicial (An Effort to Realize the Authority of the Judiciary)* , Yogyakarta: Genta Press, p . 73

³⁹Paulus E. Lotulung , 2003, Judicial Freedom in System Law Enforcement , Paper presented in the VIII National Legal Development Seminar, organized by the National Legal Development Agency of the Department Justice and Human Rights Human RI), Denpasar, 14 -18 July , p . 7

⁴⁰https://www.komisiyudisial.go.id/frontend/news_detail/15526/akademisi-berharap-ky-kembali-berwenang-awasi-hakim-mk accessed on December 26, 2024.

second, the function of supervision of the behavior of Constitutional Judges is carried out by the Honorary Council; *third*, the meaning of a Constitutional judge is different from an ordinary judge, because a constitutional judge is basically not a judge as a permanent profession, but a judge because of his position; *fourth*, in the entire mechanism for the selection and appointment of Constitutional Judges regulated in the 1945 Constitution, there is no involvement of the KY's role at all; and *fifth*, substantively, if the behavior of a Constitutional judge becomes the object of KY supervision, then the authority of the Constitutional Court as the arbitrator of the constitutional authority of state institutions is disrupted and trapped into a party that cannot act impartially."

The interpretation of the Constitutional Court annulled several articles in its ruling, including Article 1 number 5, Article 20, Article 21, Article 22 paragraph (1) letter e and paragraph (5), Article 23 paragraph (2), paragraph (3), and paragraph (5), Article 24 paragraph (1), and Article 25 paragraph (3) and paragraph (4) of the Republic of Indonesia Law No. 22 of 2004 concerning the Judicial Commission (State Gazette of the Republic of Indonesia 2004 Number 89, Supplement to the State Gazette of the Republic of Indonesia Number 4415), as well as Article 34 paragraph (3) of the Republic of Indonesia Law Number 4 of 2004 concerning Judicial Power (State Gazette of the Republic of Indonesia 2004 Number 8, Supplement to the State Gazette of the Republic of Indonesia Number 4358), because they were deemed to be in conflict with the 1945 Constitution of the Republic of Indonesia and did not have legally binding force.

In contrast to the Constitutional Court, the Supreme Court is included in the word "judge" in Article 24 B paragraph (1) so that it has the right to be supervised by the KY for the following reasons: "*First*, from a broader social context, the general understanding and constitutional principles of supreme court judges are included in the category of judges; *second*, the mechanism for appointing supreme court judges involves the existence of the KY, so that the KY has a role to maintain the integrity and quality of their behavior; third, in fact, Supreme Court Judges are members of the Indonesian Judges Association (IKAHI) and that supreme court judges are judges has never been questioned." This creates a dichotomy between the Supreme Court and its judges and scope of duties with the Constitutional Court.

The dichotomy in question is that the Constitutional Court cannot implement an external monitoring mechanism or there is no state institution or agency mandated by the Law or the 1945 Constitution of the Republic of Indonesia to oversee the continuity of Constitutional Court judges. This has implications for all monitoring mechanisms being carried out internally, namely through the Constitutional Court's ethics council and the Constitutional Court's Honorary Council (MKMK) which are passive in nature, waiting for reports from the public.

The incident prompted the Constitutional Court to issue PMK No. 2 of 2013 concerning the Constitutional Judges' Ethics Council to become a tool that maintains and enforces the Constitutional Judges' Code of Ethics and Guidelines for Conduct (KEPPH). As a result of PMK No. 2 of 2013 not yet having a legal basis, the government issued Government Regulation in Lieu of Law Number 1 of 2013 (Perppu No. 1 of 2013) which became Law no. 4 of 2014 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2013 concerning the Second Amendment to Law No. 24 of 2003 concerning the Constitutional Court to become Law No. 4 of 2014. However, the law was again revoked with the Constitutional Court decision No. 1-2 / PUU-IX / 2014 and the latest one currently in effect is Law No. 7 of 2020.

The effort made is to make the MKMK permanent, which was previously only *ad hoc*. In fact, supervision through the MKMK is nothing new because its formulation is already contained in the Latest Amendment to the Constitutional Court Law, namely Article 27 paragraph (2) of Law Number 7 of 2020. Derivative regulations regarding the MKMK are located in the

Constitutional Court Regulation Number 1 of 2023 concerning the Honorary Council of the Constitutional Court (hereinafter referred to as PMK 1/2023). Where the MKMK consists of three people consisting of 1 (one) Constitutional Justice; 1 (one) community figure; and 1 (one) academic with a background in law. As of January 8, 2024, after previously being decided on December 29, 2023, to form a permanent MKMK, I Dewa Gede Palguna was elected as chairman of the MKMK with members Jimly Ashiddique and Bintan Saragih. ⁴¹The term of office of the inaugurated MKMK is 1 (one) year.⁴²

Even though the MKMK has been formed permanently and has its own secretariat and chairman for one year. The supervisory mechanism in the Constitutional Court only applies internally and an external *check and balances mechanism is needed* for supervision of Constitutional Court judges. This urgency is because the object of the MKMK examination contained in Article 11 of PMK No. 1 of 2023 concerning the Honorary Council of the Constitutional Court is reports and findings. A report is a letter of alleged report submitted by the Reporter to the Honorary Council regarding alleged violations of the Code of Ethics and Guidelines for the Conduct of Constitutional Judges committed by the Reported Judge. ⁴³While findings are allegations of violations of the provisions of the Code of Ethics and Guidelines for the Conduct of Constitutional Judges obtained through mass media coverage, both print and electronic and/or from the wider community. ⁴⁴Therefore, the presence of the MKMK permanently still cannot cover up the weaknesses of internal supervision to conduct investigations or fact-finding of the behavior of constitutional judges who are suspected of violating ethics.

Investigations need to be carried out, especially on external supervision, so that clean trials can be carried out and free from corrupt, collusive, and nepotistic practices. Investigations are not an attempt to castrate the independence of judges or the independence of the judiciary, but an attempt to carry out *checks and balances* from internal supervision so that the purpose of supervision, in particular, is to create honor, nobility, dignity and the Code of Ethics and Behavior of Constitutional Judges. The institution or agency that has the right to supervise the Constitutional Court is the Judicial Commission as mandated by Article 24 B paragraph (1), the KY Law and the Judicial Power Law. Furthermore, this is because the KY is a state institution that has a function as *judicial accountability*.

Furthermore, *the international court of jurists* stated that “ *Independence does not mean that the judge is entitled to act in an arbitrary manner* “ this is in line with Benny Ramdhany’s opinion that the ethics council and the MKMK as internal supervisors still have problems so that they cannot work effectively and are formed by the Constitutional Court itself through the PMK. ⁴⁵The absence of supervision and control tools outside the Constitutional Court creates conditions *for abuse of power* as in previous cases. ⁴⁶In addition, external supervision is also needed to minimize the possibility of a repeat of the incident in the form of an attempt to suppress the independence of the judicial institution, especially the Constitutional Court institution, which was the incident of dismissing a Constitutional Court judge during his term of office that occurred with Judge Aswanto, seen from the judge recruitment process that does

⁴¹<https://news.detik.com/berita/d-7131278/i-dewa-gede-palguna-ditunjuk-jadi-ketua-mkmk> accessed on December 28, 2024.

⁴²<https://www.mkri.id/index.php?page=web.Berita&id=19882&menu=2> accessed on December 28, 2024.

⁴³Look Article 12 paragraph (1) of PMK 1/2023

⁴⁴Look Article 13 paragraph (1) of PMK 1/2023

⁴⁵<https://nasional.tempo.co/read/1128832/cegah-abuse-of-power-perlu-lembaga-pengawas-untuk-mk> accessed December 28, 2024

⁴⁶Wahyu Aji Ramadan, et all, 2022, “ *Reformulation Supervision Court Constitution For Improvement Effectiveness Enforcement of the Code of Ethics for Constitutional Judges* ”, *Studia Legalia Journal : Journal Legal Science*, Volume 3 Number 2, November, p . 38

not yet have clear parameters that will open up opportunities for the proposing institution to do the same thing in the future, so that the existence of an external supervisory institution is important to be formed so that efforts like this can be minimized because on the one hand the Constitutional Court judge can be supervised more measurably because they are supervised internally and externally on the other hand that the existence of these two supervisions is also to strengthen the legitimacy of the judge concerned if in the future there is a proposing institution that tries to dismiss “midway” the Constitutional Court judge. These two institutions can serve as a reinforcement to the public that the judge has not committed any criminal acts or reprehensible actions as regulated by the Constitutional Court Law and also the PMK.

External supervision of judges also takes place in several countries, especially countries that already have a Constitutional Court. These countries are South Korea, South Africa and Macedonia. These countries have a judicial supervisory institution as a control system, namely the National Assembly ⁴⁷ of South Korea, the Judicial Service Commission (JSC) ⁴⁸ of South Africa and the Republican Judicial Council of Macedonia. ⁴⁹ This functions as explained previously for a control system that cannot be influenced and preventive investigation efforts for ethical violations by Constitutional Judges, especially in testing the Law. Of course, this supervision must return to the principle of judicial power, namely not disturbing the independence and impartiality of constitutional judges.

It is important to examine the return of the KY to become an external supervisory institution for Constitutional Court Judges according to researchers must be done through an Amendment to the 1945 NRI Constitution. This is because the efforts made if passed through the law can be canceled again as in the Constitutional Court Decision No. 005 / PUU-XII / 2006 and PMK No. 1-2 / PUU-XII / 2014. Furthermore, the amendment was made so that the KY is legally-philosophically interconnected between the Supreme Court and the Constitutional Court and explicitly states that the KY is an independent supervisor of Constitutional Judges. This is to patch up the weaknesses of internal supervisors such as the potential for a spirit of compassion for others (*sprit de corps*) ⁵⁰ and subjective assessments are minimized by the presence of the KY as an external supervisor of the Constitutional Court and run more effectively. Furthermore, the KY's supervision of Constitutional Court judges is intended as an enforcement of the Judge's Code of Ethics in conjunction with the internal supervisor of the Constitutional Court. Furthermore, this is also important as a form of preventing *judicial corruption* ⁵¹ and presenting the same independent institution between Supreme Court and Constitutional Court judges.

Writer emphasizing the theory of the rule of law , that a *condition sine qua non* while in the country of Indonesia which adheres to it principle of rule of law must There is a power judiciary or an independent and authoritative judicial body that is capable of to uphold authority law , protecting law , certainty / justice law , if happen violation or dispute law in public .⁵² In connection with power judiciary , doctrine separation power No allow branch area encroachment other powers .

⁴⁷Explanation of Article 65 paragraph (1) of the South Korean Constitution

⁴⁸Article 177 The Constitution of South Africa, Amended on 11 Oct 1996 in force since: 7 Feb 1997

⁴⁹Article 104 The Constitution of Macedonia, Adopted on: 17 Nov 1991, effective since: 20 Nov 1991, amended on: 6 Jan 1992

⁵⁰Sarif, HA, & Firdaus, SU 2018, *Regulation Function Internal Supervision of Constitutional Judges As an Effort to Realize Power Independent Judiciary (Study of Judgments) Court Constitution Number 1-2/PUU-XII/2014* . Res Publica, 2(1). Pg . 63

⁵¹Wahyu Aji Ramadan, et all. *Op. cit* p . 37

⁵²Purwoto Gandasubrata , 1998, *Legal Reflections* , Jakarta: Indonesian Judges Association , p. 65.

D. CONCLUSION

The legality of the dismissal of Constitutional Court judges during their term by the House of Representatives (DPR). The representative of the state institution that proposed the Constitutional Court judge cannot intervene in the Constitutional Court's existence. Once elected as a constitutional judge, the judge is then part of the Constitutional Court and cannot influence or be bound by the authority that has the authority to recommend constitutional judges. The DPR's action to dismiss a Constitutional Court judge during his term is unconstitutional, arbitrary, and constitutes an administrative violation. The creation of regulations regarding the prohibition of arbitrary dismissal of Constitutional Court Judges by the proposing institution must be a serious concern in order to close the gap for intervention by the proposing institution, as well as the model and pattern of recruitment for the appointment of Constitutional Court Judges in the future, it is important to be redesigned and also the existence of an institution to carry out external supervision of Constitutional Court judges so that in the future the system of dismissal, appointment of judges, and supervision is more measurable and guaranteed as an effort to prevent political interests by the proposing institution, because it feels entitled to carry out evaluations of the constitutional judges it proposes.

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