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A NORMATIVE LEGAL STUDY OF THE INDEPENDENCE OF THE JUDICIAL BRANCH OF THE CONSTITUTIONAL COURT WITHIN THE SYSTEM FOR APPOINTING CONSTITUTIONAL COURT JUSTICES IN INDONESIA

^{*1}Tomi Agustian, ²Dinda Setiawati

^{*1,2}Institut Agama Islam Negeri Curup

Email: ^{*1}tomiagustian48@iaincurup.ac.id, ²dindasetiawati127@gmail.com

Abstract

Article 24, paragraph 1 of the 1945 Constitution states, “The judicial branch is an independent branch of government responsible for administering justice to uphold the law and justice,” However, Article 24C, paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that the Constitutional Court shall consist of nine constitutional justices appointed by the President, with three nominees each proposed by the Supreme Court, the People’s Representative Council, and the President,” and in Law No. 7 of 2020 on the Constitutional Court, Article 18(1) states that three Constitutional Court Justices are nominated each by the Supreme Court, the People’s Representative Council, and the President. Thus, the President, the Supreme Court, and the People’s Representative Council. This study aims to examine the independence of the Constitutional Court in Indonesia. It employs a normative legal approach. The conclusion is that the nomination process for the nine Constitutional Court Justices—proposed by the President, the House of Representatives, and the Supreme Court—may influence a judge’s decision-making, particularly regarding the review of legislative acts issued by the House of Representatives and the President, as well as the review of laws—which falls under the authority of the President and the Supreme Court—as well as adjudicating election disputes and the dissolution of political parties, all of which are within the Constitutional Court’s jurisdiction as stipulated in the 1945 Constitution, thereby undermining the intent of Article 24, paragraph 1, of the 1945 Constitution, which safeguards the independence of the judiciary in upholding justice in accordance with the ideals of the 1945 Constitution.

Keywords: Constitutional Court, Appointment of Constitutional Court Justices, Judicial Independence

Abstrak

Pasal 24 ayat 1 UUD 1945 “Kekuasaan kehakiman merupakan kekuasaan yang merdeka untuk menyelenggarakan peradilan guna menegakkan hukum dan keadilan”, Akan tetapi pada Pasal 24C ayat (3) UUD NRI Tahun 1945 membuat sebuah ketentuan bahwa Mahkamah Konstitusi mempunyai sembilan orang anggota hakim konstitusi yang ditetapkan oleh Presiden, yang diajukan masing-masing tiga orang oleh Mahkamah Agung, tiga orang oleh Dewan Perwakilan Rakyat, dan tiga orang oleh Presiden.”, dan dalam Undang-Undang Nomor. 7 Tahun 2020 Tentang Mahkamah Konstitusi pada Pasal 18 ayat (1) Hakim Konstitusi diajukan masing-masing tiga orang oleh Mahkamah Agung, Dewan Perwakilan Rakyat, dan Presiden. sehingga Presiden, Mahkamah Agung dan

Dewan Perwakilan Rakyat. Penelitian ini bertujuan untuk mengetahui Independensi Kekuasaan Mahkamah Konstitusi di Indonesia, Penelitian ini menggunakan pendekatan yuridis normatif, Kesimpulan bahwa usul pengangkatan hakim 9 Hakim Mahkamah Konstitusi yang di usulkan oleh Presiden, DPR dan MA dapat saja mempengaruhi Keputusan seorang hakim dalam membuat sebuah putusan khususnya yang berkaitan dengan produknya hukum DPR dan Presiden mengenai Pengujian Undang-Undang yang merupakan kewenangan Presiden dan MA yang nantinya mengadili berkaitan dengan Sengketa Pemilu dan juga Pembubaran Partai Politik yang semua itu merupakan kewenangan Mahkamah Konstitusi yang diatur dalam UUD 1945, sehingga hal ini dapat menghilangkan makna Pasal 24 ayat 1 UUD 1945 yang mempengaruhi independennya kekuasaan kehakiman dalam menegaknya keadilan sesuai dengan cita-cita UUD 1945.

Kata kunci: Mahkamah Konstitusi, Pengusulan Hakim Konstitusi, Independensi Kekuasaan Kehakiman

INTRODUCTION

The amendment to Article 1, paragraph (3), of the 1945 Constitution of the Republic of Indonesia, following the third amendment on November 9, 2001, states that Indonesia is a state governed by the rule of law (Agustian et al., 2020). This means that Indonesia is a constitutional state, and every state institution must carry out its functions in accordance with established law: the House of Representatives (DPR) as the legislative branch, the President and Vice President as the executive branch, and the Supreme Court and the Constitutional Court as the judicial branch (Sutiyoso & Hastuti, 2005). The mechanism for appointing Constitutional Court Justices is regulated in Article 24C, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the Constitutional Court consists of nine constitutional justices appointed by the President, with three nominees each proposed by the Supreme Court, three by the People's Representative Council, and three by the President. This provision makes it clear that the appointment process for Constitutional Court Justices is not carried out unilaterally by the President, but rather through three state institutions representing the three branches of government: the Supreme Court (the judicial branch), the People's Representative Council (the legislative branch), and the President (the executive branch). Each institution proposes three candidates, bringing the total number of Constitutional Court Justices to nine; thus, the President is only authorized to appoint the candidates nominated by these three institutions and has no authority to select candidates outside of those nominations (Agustian et al., 2023).

Montesquieu was the first to propose the theory of the separation of powers—namely, the separation of the legislative, executive, and judicial branches, each of which has its own authority and does not interfere with the authority of the other branches. Although Indonesia does not strictly adhere to this separation of powers, the Indonesian state is generally divided into several state institutions, thereby establishing limits on power that prevent it from being concentrated in a single political branch; rather, it must be distributed among multiple institutions (Ruhenda et al., 2020). The Constitutional Court, as a state institution with judicial authority, plays a crucial role in upholding the law and justice. Therefore, in exercising its authority as a judicial institution—as stipulated in Article 24C of the 1945 Constitution—it adjudicates cases related to its authority to

review legislative and executive acts, specifically by reviewing laws against the the 1945 Constitution—in upholding the law and justice, it must be free from interference by other institutions. Given the gravity of its duties and responsibilities in upholding justice, the realization of a judicial system that is independent of other institutions in carrying out its judicial functions—thereby ensuring equality before the law—is essential; consequently, justice can be upheld. To that end, it is imperative to pay close attention to the judicial branch—specifically the Constitutional Court and the judicial bodies under its authority—to ensure comprehensive justice for every citizen (Firdaus Ridwan Sutarta¹, Asri Widiatsih², 2021).

Confusion arises when considering the fact that the President, the House of Representatives (DPR RI), and the Supreme Court have the authority to propose the appointment of Constitutional Court justices, as stipulated in Article 24C(3) of the Constitution and Law No. 7 of 2020 on the Third Amendment to No. 24 of 2003 on the Constitutional Court, particularly Article 18 of the Constitutional Court Law, paragraph (1) “Three (3) candidates for Constitutional Court Justices shall be nominated by the Supreme Court, three (3) by the People’s Representative Council, and three (3) by the President, to be appointed by Presidential Decree.” The meaning of this provision is that the Supreme Court nominates 3 candidates for Constitutional Court Justices, the House of Representatives nominates 3 candidates for Constitutional Court Justices, and the President nominates 3 candidates for Constitutional Court Justices. There are a total of 9 (nine) Constitutional Court Justices, in accordance with Article 24C, paragraph (3) of the 1945 Constitution of the Republic of Indonesia. At this stage, the President does not select candidates from other institutions but appoints all candidates who have been nominated via a Presidential Decree. Article 18, paragraph (2): “The Presidential Decree referred to in paragraph (1) shall be issued no later than 7 (seven) working days after the President receives the nominations.” (Koswara et al., 2023)

This means that the President has an administrative obligation to promptly designate the candidates who have been nominated by these three institutions. Article 19 of the Constitutional Court Law: This article governs the principles of the selection of Constitutional Court Justices; the nomination of Constitutional Court Justices must be conducted in a transparent and participatory manner. This article emphasizes that each nominating institution is required to make the selection process open to the public so that it is not conducted behind closed doors. Article 20 of the Constitutional Court Law. This article governs the selection procedures of each nominating institution. Article 20, paragraph (1): Provisions regarding the procedures for the selection, election, and nomination of Constitutional Court Justices are governed by each respective authorized institution. This means that the Supreme Court has its own selection mechanism. The House of Representatives has its own selection mechanism. The President also has his own selection mechanism. Article 20, paragraph (2): “The election of Constitutional Court Justices shall be conducted objectively and accountably.” (Koswara et al., 2023)

Thus, in addition to being transparent and participatory, the selection process must also adhere to the principles of objectivity and accountability—a challenge, particularly when this issue is considered in light of Article 1, paragraph (1) of Law No. 48 of 2009 on

Judicial Power (*Judicial Power Law*). In this Law, “Judicial Power” refers to the independent state power to administer justice in order to uphold the law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of realizing the Rule of Law in the Republic of Indonesia (Law, 2009), which is also in line with the spirit of the 1945 Constitution, particularly in the explanatory notes to Article 24, which state that “The Judiciary is an independent branch of government.” (Kartika, 2017).

Regarding the judicial power—which constitutes the authority of the Constitutional Court—there are essentially two inseparable aspects: the core principles of the law on judicial power and the law on the Constitutional Court must not give rise to any conflict. When the judicial branch (the Supreme Court), the legislative branch (the House of Representatives), and the executive branch (the President) are still involved in the nomination of Constitutional Court Justices, the meaning of the independence of the judiciary becomes blurred. Consequently, the noble ideal of the 1945 Constitution—which seeks for the judicial branch (particularly the Constitutional Court, as the highest judicial body, and the Constitutional Court itself) has not yet achieved full independence due to interference from other institutions—must continue to be fought for so that justice for every citizen can be fulfilled, in accordance with Montesquieu’s theory of *Trias Politica*, which divides state institutions into three branches: *the executive, the judiciary, and the legislature*. (Kansil, 1993) To this day, the issue of judicial independence continues to spark interesting discussions and debates among academics, legal experts, and legal observers in Indonesia. Indeed, there are already many scholarly writings and academic works that address the independence of the judiciary, the Supreme Court, judicial authority, Islamic courts, and other related topics.

Another scholarly study that also discusses the independence of the judiciary is a paper by Mahfud MD., included in his book **Political and Legal Struggles in Indonesia** (MD, 1999). Based on an examination of these books, papers, and other scholarly works, most focus on describing the judiciary or judicial independence, and thus do not specifically address a thorough study of the Constitutional Court’s independence regarding the nomination and appointment of Constitutional Court Justices. Consequently, there has been little research on this topic to date. Based on the introduction outlined above, the main issue that will serve as the focus of this study can be formulated as follows: Based on this description, this research focuses on the following issues: What is the mechanism for appointing Constitutional Court Justices under the 1945 Constitution and the Constitutional Court Law of Indonesia?. Does the nomination of Constitutional Court justices have the potential to affect institutional independence or the individual independence of justices?.

METHOD

Type of Research This study is classified as *library research*, which is a type of research in which data is obtained from library sources, including laws and regulations, books, or other scholarly works relevant to the issue addressed in this paper. The author describes the judicial branch and the Constitutional Court of Indonesia as the highest institution

within the judiciary, drawing on this analysis to highlight the importance of the independence of the judiciary in Indonesia (Mardjono, 1997) Research Approach: In this study, the author employs two approaches: the Normative Juridical Approach. This approach is used to examine an issue based on the 1945 Constitution, the Law on Judicial Power, and the Constitutional Court Act to determine whether something is in accordance with the law or not, which is then analyzed based on existing norms; and the Juridical Approach, which is based on applicable laws and regulations. The data sources used by the author in writing this journal article were obtained through the documentation method, namely by reviewing and examining library materials related to the author's topic, including the the 1945 Constitution, Law No. 7 of 2020 on the Constitutional Court, Law No. 48 of 2009 on Judicial Power, general books, dictionaries, papers, and, most importantly, scholarly journal articles and other sources. Data analysis is a method used to process specific data from which conclusions relevant to the discussion at hand can be drawn. In this study, the author employed an inductive analysis method, which involves examining the existence, status, and authority of judicial institutions in Indonesia and then relating them to the legal norms within Islamic judicial institutions. Subsequently, the study assesses their compatibility.

RESULT AND DISCUSSIONS

A. Institutional Independence and Individual Independence

The independence of the judiciary has two main dimensions: institutional independence and individual independence. First, institutional independence relates to the status of the judiciary as an institution that must be free from interference by other branches of government, whether executive or legislative. In the context of the Supreme Court, institutional independence relates to institutional design, including provisions regarding appointments, removals, the budget, and judicial administration. Second, the individual independence of judges relates to a judge's personal freedom to examine, hear, and decide cases based on law and justice without pressure or influence from any party. Thus, the involvement of the Judicial Commission (KY), the House of Representatives (DPR), and the President in the process of appointing Supreme Court Justices cannot be directly viewed as a loss of judicial independence; rather, it must be analyzed whether these mechanisms—both factually and normatively—could create a dependency that has the potential to influence a judge's freedom in carrying out judicial functions.

B. The Status of the Constitutional Court is on Par with that of the President

In principle, the status of the Constitutional Court as a High State Institution is on par with that of the President as a High State Institution and is governed by the 1945 Constitution. However, in practice—whether legally, politically, or in practical terms—the Constitutional Court, as regulated in the 1945 Constitution and the Constitutional Court Law, has a selection mechanism in which its justices are nominated and appointed by the President (Arto, 2001). This is evident in the system governing the nomination, appointment, and confirmation of Constitutional Court justices, which involves interference from various other state institutions—including the executive branch (the President), the legislative branch (the House of Representatives), and the Supreme Court.

Thus, this issue reveals that, in practice—from legal, political, sociological, and psychological levels, the Constitutional Court remains subject to the influence of other institutions—whether psychologically, through automatic political processes, or via the politics of reciprocity: whoever is selected will naturally owe a debt of gratitude to those who nominated them. Thus, in the process of determining, nominating, and appointing Constitutional Court justices, (Utami, Trinity, & Rachnani, 2010). Thus, the 1945 Constitution—which governs the Constitutional Court, particularly Article 24C(3)—must be reconsidered. Given that such factors could influence future decisions by Constitutional Court justices, making them less objective toward the individuals or institutions that nominated and appointed them as Constitutional Court justices.

C. The Constitutional Court's Status Is on Par with the DPR RI

The Constitutional Court and the DPR RI are state institutions established under the 1945 Constitution of the Republic of Indonesia. The DPR performs legislative functions as stipulated in Article 20 of the 1945 Constitution of the Republic of Indonesia, while the Constitutional Court exercises judicial power as stipulated in Article 24(2) and Article 24C of the 1945 Constitution of the Republic of Indonesia. This equal status indicates that there is no subordinate relationship between the Constitutional Court and the DPR.

The Constitutional Court is not subordinate to the DPR, nor is the DPR subordinate to the Constitutional Court. Each performs distinct constitutional functions in accordance with the principle of the *separation of powers* and the *checks and balances* mechanism within Indonesia's system of government. As a legislative body, the DPR has the authority to enact laws jointly with the President. Meanwhile, the Constitutional Court has the authority to review laws for compliance with the 1945 Constitution of the Republic of Indonesia. Therefore, when the Constitutional Court declares a provision of a law to be in conflict with the 1945 Constitution of the Republic of Indonesia, this action does not constitute a form of the Constitutional Court's superiority over the DPR, but rather the exercise of its constitutional authority to uphold the supremacy of the Constitution. This relationship of equality is also evident in the mechanism for appointing Constitutional Court Justices.

The DPR has the authority only to propose three candidates for Constitutional Court Justices, as stipulated in Article 24C (3) of the 1945 Constitution of the Republic of Indonesia and Article 18(1) of Law No. 7 of 2020 on the Constitutional Court. This authority does not grant the DPR the right to control or interfere with Constitutional Court Justices after their appointment. Upon taking the oath of office, Constitutional Court Justices become independent state officials who are subject only to the Constitution, the law, and their conscience. Thus, the relationship between the Constitutional Court and the DPR must be understood as one between equal state institutions that mutually oversee and balance one another in the administration of the state. This equal standing embodies the principles of the rule of law (*rechtsstaat*) and *checks and balances* to prevent the concentration of power in a single state institution (Abdul et al., 2018).

D. The Status of the Supreme Court (MA) and the Constitutional Court

Pursuant to Article 24, paragraph (2) of the 1945 Constitution of the Republic of Indonesia, judicial power is exercised by the Supreme Court and the courts under its jurisdiction, as well as by the Constitutional Court. This provision indicates that the Supreme Court and the Constitutional Court are the two principal actors in the judicial branch, deriving their authority directly from the Constitution. The Supreme Court and the Constitutional Court are equal constitutional organs. There is no hierarchical relationship between the two; thus, the Supreme Court does not stand above the Constitutional Court, nor does the Constitutional Court stand above the Supreme Court. Both hold the same status as state institutions within the judicial branch but exercise different authorities in accordance with the division of functions established by the 1945 Constitution of the Republic of Indonesia. The Supreme Court is the highest court in the country, overseeing four judicial systems: the general courts, the religious courts, the military courts, and the administrative courts. The Supreme Court has the authority to hear cases at the cassation level, to review regulations below the level of law against the law (*judicial review*), and to exercise other powers granted by law.

In contrast, the Constitutional Court is not part of the judicial structure under the Supreme Court. The Constitutional Court possesses distinct constitutional powers, namely reviewing laws against the 1945 Constitution of the Republic of Indonesia, adjudicating disputes over the authority of state institutions whose powers are granted by the Constitution, ruling on the dissolution of political parties, adjudicating disputes over general election results, and rendering decisions on the House of Representatives' (DPR) opinion regarding alleged violations by the President and/or Vice President in the impeachment process. These differences in authority indicate that the Supreme Court and the Constitutional Court do not oversee one another nor overturn each other's decisions. Decisions of the Supreme Court cannot be overturned by the Constitutional Court, nor does the Constitutional Court have the authority to review decisions of the Supreme Court. The relationship between the two is one of coordination in the exercise of judicial power based on the principle of judicial independence. Thus, the existence of the Supreme Court and the Constitutional Court reflects Indonesia's constitutional design, which divides the functions of judicial power into two institutions with distinct competencies but equal standing. This division is intended to strengthen the rule of law (*rechtsstaat*), ensure constitutional protection, and prevent the concentration of power within a single judicial institution (Suhariyanto, 2016).

E. The Status and Authority of the Judiciary in Indonesia

To better understand the status of the judiciary in Indonesia, it is first necessary to understand the structure of state power in Indonesia (Sutiyoso & Hastuti, 2005). Given that the Constitutional Court is itself a component of the judicial branch, it is important to note that the concept of the judicial branch shares the same meaning and purpose as “judicial power,” namely the authority that exercises judicial functions and powers to uphold the law and justice—or the “rule of law”—within the Republic of Indonesia. Upon closer examination, this description implies that the status of the judiciary is synonymous

with the status of the Supreme Court (MA) and the Constitutional Court (MK) as judicial bodies. Thus, in addition to functioning as state institutions, the MA and MK also serve as the highest judicial bodies (Sutiyoso & Hastuti, 2005).

The status of the judiciary in Indonesia (Constitutional Court) is the same as that of other institutions, namely the Supreme Court, the President, the People's Representative Council (DPR), the People's Consultative Assembly (MPR), and the Supreme Audit Agency (BPK). However, the 1945 Constitution explicitly states that "The judicial branch is an independent branch of government responsible for administering justice to uphold the law and justice." The judicial power referred to here comprises the judicial institutions of the Constitutional Court and the Supreme Court, under which fall the general courts, religious courts, military courts, and administrative courts. (Law, 2009)

- a. These judicial institutions are tasked with upholding the law and justice.
- b. The judicial branch is an independent branch of government.

Thus, it is undeniable that the judicial branch is the body tasked with and responsible for upholding justice and the law. Given this heavy responsibility, anything that could hinder the realization of justice and the upholding of the law must be minimized. When discussing the separation of powers, it is always relevant to relate it to the theory of the *trias politica*. However, it must first be noted that Indonesia is not a country that adheres to the doctrine of the separation of powers. It is simply that the branches of government conceptualized by this doctrine are also found in Indonesia's system of separation of powers—namely, the executive, legislative, and judicial branches—which indicates that Indonesia's formulation was influenced by this doctrine. It is said that Indonesia is not a country that adheres to the *trias politica* because, in addition to the executive, legislative, and judicial branches, Indonesia also has the Supreme Audit Agency (BPK) and the People's Consultative Assembly (MPR) as a supreme institution (MD, 1999).

The judicial branch, which had been under the control of the ruling authority or the executive, was ultimately reformed through new policies, as evidenced by the enactment of the Judicial Power Law, Law No. 48 of 2009, particularly Article 1, which states: "Judicial power is the independent power of the State to administer justice in order to uphold the law and justice based on Pancasila, for the realization of the Rule of Law in the Republic of Indonesia." Based on the two articles above, it appears that further review is still needed to truly realize an independent judicial branch, given that the interference of the President or the executive branch remains very strong and dominant. Regarding all principles concerning the powers and authority of the Constitutional Court—whether as a high court or as the highest court in the judicial system—as long as they do not conflict with the 1945 Constitution, the author believes they can be applied. Take, for example, the differing opinions regarding the power to review legislation. In this regard, the author agrees with the views of legal experts based on the following reasons: (Arto, 2001)

1. The 1945 Constitution does not in any way prohibit or limit the authority of the judiciary to review legislation. Anything that is not prohibited can, of course, be done.

2. The 1945 Constitution has established that the judiciary is a free and independent branch in the exercise of its authority; therefore, it would be illogical for the legislature to restrict it.

3. The function of the judiciary is not merely to enforce statutes, but to uphold the law. The concept of “law” is broader than that of “statutes.” It is not impossible that the legislature has erred in drafting laws (by violating fundamental legal principles), as often happens. The author also adheres to the principle that the powers and authority of the Constitutional Court are similarly unrestricted, provided they do not conflict with the provisions of the 1945 Constitution.

Judicial power in Indonesia is held by the Constitutional Court and the Supreme Court as the highest judicial institutions, along with the courts under their jurisdiction. It is these courts that are tasked with realizing justice and upholding the law in society; therefore, all levels of the judiciary must be truly independent from the intervention of other institutions, including the President. It is no easy task for a judge when faced with a matter involving the executive branch (the President). This is especially true given that the President still plays a significant role in the nomination and appointment of Constitutional Court justices, as enshrined in the 1945 Constitution.

These provisions regarding the appointment and dismissal of judges are inseparable from the country’s system of government, which adopts certain presidential elements—including executive power vested in the President and the President’s authority to appoint and dismiss ministers (as the President’s aides). Furthermore, the President serves as both head of state and head of government. This means that the President holds the political power to actually run the government (B. Sagala, 1982).

Issues such as these can influence a judge’s mindset when making a decision, thereby hindering the realization of an independent judiciary. Upon examining the development of judicial power over these various periods, it has become evident that the amendments made by Law No. 4 of 2004 to the previous legislation have not yet achieved what was envisioned by the 1945 Constitution, particularly the explanatory notes to Article 24C(3), regarding the independence of the judiciary in Indonesia. Therefore, it is necessary to review the Law on Judicial Power, specifically the provisions regarding the mechanism for nominating and appointing Constitutional Court Justices, so that the judiciary can be truly independent and free from any form of interference.

The independence of the judiciary does not mean that the powers held by the judiciary are unlimited, as this is fundamentally intended to prevent the abuse of power by those in authority. What the drafters refer to regarding the powers and authority of judicial institutions in Indonesia is the power and authority of the Constitutional Court as the highest judicial body and a supreme institution of Indonesia. The authority of the Supreme Court is independent, so intervention by any party is not permitted, and anything that could influence a judge in making a decision must be eliminated. It explicitly states that judicial power is independent and free from the influence of other institutions; however, the provision above could potentially influence Constitutional Court justices in adjudicating a case if the parties involved are members of the House of Representatives

(DPR), the President, or the Supreme Court—entities that, in reality, play a significant role in selecting, nominating, and proposing candidates for Constitutional Court justices. Meanwhile, Article 24C, paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the Constitutional Court consists of nine constitutional judges appointed by the President, with three nominees each proposed by the Supreme Court,

three by the People’s Representative Council, and three by the President. This provision makes it clear that the appointment process for Constitutional Court Justices is not carried out unilaterally by the President, but rather through three state institutions representing the three branches of government: the Supreme Court (the judicial branch), the People’s Representative Council (the legislative branch), and the President (the executive branch). Each institution proposes three candidates, bringing the total number of Constitutional Court Justices to nine; thus, the President is only authorized to appoint the candidates nominated by these three institutions and has no authority to select candidates outside of those nominations (Agustian et al., 2023). Consequently, the nature of *ewuh pekewuh*—and the prevailing perception that the Supreme Court, the People’s Representative Council, and the President are the ones who appoint Constitutional Court Justices—means that the selected Justices are, in effect, chosen through a political process of reciprocity, which significantly influences their psychological state. Consequently, when faced with issues involving the Supreme Court, the House of Representatives, and the President, a judge’s resolve in adjudicating cases becomes compromised, undermining their independence in upholding justice—as evidenced in several cases where the House of Representatives was the defendant and received lenient sentences, with some even being acquitted in the Supreme Court’s rulings.

One such case is Supreme Court Decision No. 3681K/PID.SUS/2019, which convicted Idrus Marham, a politician from the Golkar Party, of allegedly committing corruption to secure the favor of witness Johannes Budisutrisno Kotjo in the procurement of that project. However, in the Supreme Court’s cassation ruling, the defendant received a reduced sentence from the previous ruling, and the legal reasoning provided by the judges in Supreme Court Ruling No. 3681 K/Pid.Sus/2019 regarding the corruption case involving defendant Idrus Marham.

The Panel of Judges at the Central Jakarta District Court ruled on the corruption case against defendant Idrus Marham, stating that defendant Idrus Marham had been proven legally and convincingly guilty of committing a joint act of corruption as set forth in the second count of the indictment, and consequently sentenced defendant Idrus Marham to 3 (three) years and a fine of Rp.150,000,000.00 (one hundred fifty million rupiah). Additionally, several Supreme Court rulings have been favorable to legislative candidates, such as Supreme Court Decision No. 46 P/HUM/2018. The judicial review of the KPU regulation removed the phrase “corruption cases” but left other phrases intact. By removing the phrase “corruption cases,” the Supreme Court’s ruling allows former convicts in corruption cases to run for legislative office (Muzayanah, 2020).

The case involving the dismissal of Constitutional Court Justice Aswanto and the appointment of M. Guntur Hamzah is one of the most controversial constitutional events

in the history of the Constitutional Court, as it sparked a debate regarding the independence of the judiciary and the limits of the authority of the body responsible for nominating constitutional court justices.

1. Chronology of Aswanto's Removal

On September 29, 2022, the Indonesian House of Representatives (DPR RI), through a Plenary Session, decided to recall Constitutional Court Justice Aswanto, who had previously been a Constitutional Court justice nominated by the DPR. The DPR then nominated M. Guntur Hamzah as his replacement, even though Aswanto's term had not yet expired. This decision sparked widespread criticism from academics and legal practitioners because it was deemed inconsistent with the mechanism for the removal of Constitutional Court Justices as stipulated in the 1945 Constitution of the Republic of Indonesia and the Constitutional Court Law.

2. The Appointment of M. Guntur Hamzah

After receiving the DPR's proposal, the President issued Presidential Decree No. 114/P of 2022 on the Removal and Appointment of Constitutional Court Justices Proposed by the House of Representatives. Based on this Presidential Decree, M. Guntur Hamzah was officially appointed as a Constitutional Court Justice on November 23, 2022, and took the oath of office before the President at the State Palace. After taking the oath, he immediately assumed his duties as a Constitutional Court Justice.

3. Why Is This Controversial?

The controversy arose because the House of Representatives replaced Aswanto before his term ended, whereas the Constitutional Court Law stipulates that the removal of a Constitutional Court Justice can only be carried out based on specific grounds, such as:

- a. death;
- b. resignation;
- c. expiration of term;
- d. permanent incapacity;
- e. no longer meeting the qualifications to serve as a Constitutional Court justice; or
- f. removal due to specific violations in accordance with the mechanisms prescribed by law.

In Aswanto's case, these grounds became a point of contention because the DPR based the replacement on an evaluation of Aswanto's rulings, which were deemed no longer aligned with the DPR's policies. This is what many experts subsequently viewed as a serious challenge to the principle of judicial independence.

4. Its Implications for the Independence of the Judiciary

This case is significant because it raises a constitutional question: Does the nominating body (the DPR, the President, or the Supreme Court) have the authority to recall a Constitutional Court justice it has previously nominated before the end of that justice's term? Opinions on this matter are divided into two camps: The first view, held by the DPR, argues that as the nominating body, the DPR has the authority to replace a judge it

originally nominated. The second view (widely held by academics) holds that once a nominee is officially appointed as a Constitutional Court Justice through a Presidential Decree and has taken the oath of office, their status changes to that of an independent public official. Therefore, the nominating body no longer has the authority to recall or dismiss them except for reasons specified in the 1945 Constitution of the Republic of Indonesia and the Constitutional Court Law (Yarni et al., 2024).

CONCLUSIONS

Based on the preceding discussion, particularly regarding the Judiciary and the Supreme Court, several conclusions can be drawn, namely: The judicial power of the Constitutional Court is an independent branch, free from interference by other institutions, including the executive branch (the President), the legislative branch (the House of Representatives), and the Supreme Court. The independence of the judicial branch is a crucial prerequisite for realizing a judicial system that is truly fair and impartial. Therefore, this institution—both structurally and functionally—must not be bound by other institutions to avoid their influence and intervention. This means that the nomination, appointment, and confirmation of a Constitutional Court justice by the executive branch (the President), the legislative branch (the DPR RI), or the judicial branch (the Supreme Court) is clearly inconsistent with the ideals of the 1945 Constitution, particularly the explanatory notes to Article 24.

The independence of the judiciary is, in essence, intended to uphold the law and realize justice; therefore, such a mechanism has the potential to raise issues regarding the principle of judicial independence as referred to in Article 24, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, particularly if there is a possibility that the interests of the State Institution proposing a Constitutional Court justice may conflict with those of the institutions possessing authority over the appointment or nomination process.” The system for the nomination and appointment of Constitutional Court justices, which involves the Supreme Court, the DPR RI, and the President, constitutes a form of checks and balances within Indonesia’s constitutional system. However, the involvement of these various branches of government still poses potential challenges to the independence of the judiciary if not accompanied by mechanisms capable of ensuring that the selection and appointment processes for judges are conducted objectively, transparently, and free from political interests. Therefore, the main issue lies not merely in the involvement of state institutions in the process of appointing Supreme Court Justices, but in how the design of this mechanism can maintain a balance between the principles of constitutional democracy and judicial independence.

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