

DISMISSAL OF CONSTITUTIONAL JUDGES IN THE INDONESIAN CONSTITUTIONAL SYSTEM

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ABSTRACT

The dismissal of Constitutional Court Judge Aswanto garnered significant public interest and ignited a discussion over the autonomy and fairness of the judicial system in Indonesia. This occurrence gives rise to apprehensions regarding the integrity and legitimacy of the Constitutional Court, a vital institution responsible for safeguarding the tenets of democracy and the rule of law in our nation. The study encountered legal complications due to the controversial removal of constitutional Judge Dr. Aswanto, S.H., M.Si., D.F.M by the House of Representatives, the body responsible for nominating constitutional judges. The study also examined the legality of the takedown and the resulting legal ramifications. This study seeks to ascertain the procedure by which constitutional judges are removed from their positions during their tenure in Indonesia, as well as the criteria employed to dismiss Indonesian Constitutional judges for violations and misconduct. This study use normative legal research as its methodology. The data utilized in this study is derived from secondary sources gathered from the research literature. The gathered data is further examined using a qualitative methodology, incorporating the principles of law, the study of regulatory systematics, and comparative law. The findings of this study indicate that the acts taken by the DPR RI in the removal of Judge Aswanto from the Constitutional Court are deemed detrimental to both democracy and the Constitution. Legislation should be enacted to grant the House of Representatives the authority to propose the removal of Constitutional Court judges, as now only the chairman of the Constitutional Court has this power.

Keywords: Aswanto, House Of Representatives, Judge, Constitutional Court, Constitutional

INTRODUCTION

As a constitution, the Basic Law of 1945 has been subjected to a number of revisions, which has led to the development of a new concept. Over the course of four separate years, specifically 1999, 2000, 2001, and 2002, the People's Consultative Assembly implemented a number of changes in a methodical manner. It would appear that the growth of democracy in Indonesia is progressing in a positive direction after four changes were made to the Constitution of 1945. In light of the fact that any suggestion to alter the 1945 Basic Law was considered subversive in the past, the reform represents a democratic advancement for the Indonesian nation (Moh. Mahfud MD 2006). A number of new ideas have been introduced into the Indonesian constitutional system as a result of amendments made to the Constitution of 1945. These new principles include the notion of separation of powers and checks and balances, which serve as an alternative to the paramount authority of Parliament. The Fourth Amendment to the Constitution of 1945 has a number of essential provisions, one of which is to strengthen democratic institutions within the structure of the constitution. More specifically, this amendment regulates the establishment of the Constitutional Court as one of the executors of judicial power.

The Constitutional Court is a state institution formed after the amendment of the 1945 Constitution (Titik Triwulan Tutik 2010). The Constitutional Court, in its capacity as a judicial institution, is required to exercise its independence in the performance of its duties. In theory, the existence of an independent judiciary in a country is vital. This is due to the fact that the judiciary also plays a significant role in ensuring that the balance of power relations between the executive branch, the legislative branch, and the citizenry is maintained. This indicates that the process of checks and balances will be effective in ensuring that the consolidation of democracy in the country is carried out. This is because the court will be able to function independently (Sri Pujianti/NRA 2020).

Within the Constitutional Court, the authority to exercise judicial power is vested in a judge who is specifically designated as a constitutional judge. The Constitutional Court law explicitly outlines the regulations for the selection procedure of constitutional justices to serve on the court, from a legal perspective. According to Article 4 of Law No. 7 of 2020, which amends Law No. 24 of 2003 regarding the Constitutional Court, the composition of constitutional judges consists of nine justices who are appointed by a Presidential Decree. This clause serves as the foundation for the provisions of the Constitutional Court. Article 18 outlines the process for appointing the nine constitutional justices. It states that three individuals from the Supreme Court, three individuals from the DPR, and three individuals from the President are responsible for making these appointments. According to Article 20 of the Constitutional Court statute, every authorized organization is responsible for establishing the procedures for selecting and appointing constitutional justices. Meanwhile, the processes for the selection of elections are governed by these institutions.

The Constitutional judges are considered to be state officials who are vested with the authority to exercise the judicial functions that are outlined in the legislation. The phrase "constitutional judges are state officials" is explicitly stated in Article 5 of Law No. 24 of 2003, revised by Law No. 7 of 2020. This law pertains to the Constitutional Court. It is so abundantly evident that constitutional judges are state officials who are tasked with the responsibility of exercising judicial power within the framework of the Indonesian Constitutional system. Regarding the management jobs available to judges, each nation has its own unique set of positions. However, in the context of treating judges in the context of the implementation of the duties of all states, the principle of judicial independence absolutely underlies and protects with a principle that is the principle of judicial independence. As a

result, this principle of independence is universally recognized for its existence. Judicial independence encompasses all positions of judges, including those appointed to constitutional posts. Constitutional judges must maintain their independence in carrying out their judicial responsibilities by ensuring that they are neither influenced or interfered with by any side, whether through active or passive interventions. In order to uphold law and justice, it is expected that a judge maintains their independence.

The DPR, on the other hand, is an institution of Representatives, which is a state entity that holds a prominent position in the constitutional structure of the state of Indonesia. The DPR has members from the political parties participating in the general election who can be submitted for the next election. Based on Article 20A paragraph (1) of the Constitution NRI Tahun 1945, DPR is a representative institution of the people as a state institution that has 3 (three) functions, namely: (1) legislative function is a function to design the formation of laws discussed with the president who then get a collective agreement; (2) budget function is a function to design the composition and determination of the state budget with the president, which does not escape the; and (3) the supervisory function is the function of conducting inspections to the implementation of the 1945 NRI Constitution, laws, and other implementing regulations. Constitutionally, the DPR also has the authority as the final determinant of a decision in the form of "approval" of the state agenda consisting of: (1) declaration of war, making peace, and agreements between countries; (2) making agreements between countries related to the economic problems of the country; (3) establishing government regulations instead of laws into law; (4) appointment of Supreme Court judges; and (5) appointment and termination of judicial commission members. Implementing the notion of judicial independence in Indonesia is not without flaws when put into practice. The House of Representatives (DPR) has recently drawn attention to the issue of the Constitutional Court's independence by removing constitutional Judge Dr. Aswanto, S.H., M.Si, D.F.M. The decision made at the internal meeting of Commission III of the DPR RI on September 28, 2022, was reported in the minutes of the Seventh Plenary Meeting of the DPR RI, held during the first session of the 2022-2023 session. The aforementioned conclusion has been reached by commission III:

1. The proposal to lengthen the term of office for constitutional judges, put out by Dr. Aswanto, S.H., M.Si, D.F.M., on behalf of the House of Representatives institution, will not be approved. Prof. Dr. Guntur Hamzah, S.H., M.H., is set to be designated as a constitutional judge for the House of Representatives of the Republic of Indonesia.
2. Additionally, on Thursday, September 29, Commission III of the House of Representatives convened an internal meeting to inquire about the interest in serving as a constitutional judge from within the House of Representatives institution. The outcome of the meeting was the acceptance of Prof. Dr. Guntur Hamzah, S.H., M.H., as a constitutional judge representing the House of Representatives.
3. Meeting for replacement consultation The Bamus meeting held on September 29 addressed the letter from Commission III and reached the following resolutions: five fractions were granted approval, one fraction was approved with a caveat based on the mechanism, one fraction was rejected, and two fractions were absent.

The removal or dismissal of constitutional Judge Dr. Aswanto, S.H., M.Si, D.F.M. is regarded as not being transparent and has the potential to cause significant controversy. Jimly Asshiddiqie, the former chairman of the Constitutional Court, has criticized the DPR RI's conduct as arbitrary and in contravention of the Constitutional Court's legislation. The reason for this is that the DPR required the capacity to dismiss constitutional judges. According to Article 23, paragraph 4 of the Constitutional Court Law, judges can only be removed from their seats by a Presidential Decree. Jimly asserts that this can only occur if the head of the Constitutional Court makes a formal request. The idea was put up by the DPR, the president, and the Supreme Court; however, they lack the power to remove constitutional judges.

A judicial system that is independent and independent is a requirement that must be present in a nation that identifies itself as a state of law. It is imperative that the judicial power's independence be preserved and established in the Constitution and national legislation of the country. The independence of the judiciary is directed not only against the institutional framework of the judiciary but also against judicial judges in the process of carrying out their tasks, which include judging and determining a case that they are confronted with (Suherman 2019).

Due to the fact that constitutional Judge Aswanto was fired, there is now a public debate and discussion about the matter. The question of whether or not the institution that has the authority to suggest constitutional judges (the DPR, the President, and the Supreme Court) also has the authority to withdraw the judges that it proposes is a different issue. What legal issues result from the removal of constitutional judges by the DPR, and how accurate is the legality of dismissing constitutional judges? Considering that the case of the firing of constitutional judges by the DPR is the first instance that has arisen after the establishment of the Constitutional Court in 2013, the subject offers a great deal of potential for investigation and study.

METHODS

In order to provide an answer to the formulation of the concerns mentioned above, the normative legal research approach is regarded to be acceptable. This technique places emphasis on the study of applicable laws, as the subject of study is the law, which is considered a societal standard or rule that serves as a reference for behavior. Normative legal research examines the application of positive legal provisions to specific legal events occurring in society. This method aims to ascertain the conformity of the application or execution of the law with the existing legislative provisions.

INDONESIAN CONSTITUTIONAL SYSTEM

In general, the state and the Constitution are two institutions that cannot be separated from each other. In fact, after the Middle Ages, which was marked by the idea of democracy, it can be said that the Constitution of the country could not have been formed. The Constitution is the Basic Law of a country. The foundations of the implementation of the state are based on the Constitution

as a basic law. A country based on a constitution is called a constitutional state. However, to be said to be ideally a constitutional state, the Constitution of the country must meet the properties and characteristics of constitutionalism. So the country should embrace the idea of constitutionalism. Constitutionalism itself is an idea, idea, or understanding. Therefore, the discussion about the state and the Constitution in this chapter consists of constitutionalism, the state constitution, the 1945 Constitution as the Constitution of the Republic of Indonesia, and the constitutional system of Indonesia.

Constitution literally comes from the French word *constituer* which means to form. The meaning of the word 'form' here is to form a country. In the sense of the Constituent also contains the initial meaning of all state laws and regulations (Ahmad and Nggilu 2020). The Constitution, as the supreme legal framework, governs the governance of the state according to democratic principles. One of its primary purposes is to safeguard the human rights enshrined within it, therefore establishing them as the constitutional rights of citizens. Hence, the Constitutional Court serves as a custodian of democracy, safeguarding the constitutional rights of individuals and protecting human rights (Nggilu 2014).

The Constitutional Court should be granted the power to participate as one of the entities capable of amending the Constitution in order to preserve the sanctity of the Constitution or the 1945 Constitution as the supreme fundamental law of the Republic of Indonesia. This represents a manifestation of true honesty in the Constitutional Court, which functions as a governmental entity responsible for upholding and protecting the constitution. During the period of change, the debate surrounding the constitutionalism of the 1945 Constitution of the Republic of Indonesia is critical. The outcome of this debate will have far-reaching consequences for all aspects of constitutional life, particularly in relation to the protection of human rights, which is a fundamental aspect of the rule of law (Ahmad and Nggilu 2020).

1. The revision to the 1945 Constitution resulted in the establishment of the Constitutional Court with the introduction of Article 24C, paragraph (1). The Constitutional Court has been constitutionally assigned four authorities, which are as follows:
2. To assess the compatibility of laws with the Basic Law.
3. To settle disputes regarding the jurisdiction of state institutions whose authority is granted by the Constitution.
4. To dissolve political parties.
5. To resolve disputes concerning election results.

Constitutional judicial mechanism (constitution adjudication) itself is a new thing that was adopted into the constitutional system of Indonesia with the establishment of the Constitutional Court. The purpose of the Constitutional Court is to guarantee the effective implementation of the Constitution in the routine operations of the State Administration. The presence of the Constitutional Court is a crucial aspect of its existence. In Indonesia, these demands are met through the establishment of the Constitutional Court. The Constitutional Court operates under the general principle of independent judicial power, ensuring that it is not influenced by other institutions in upholding law and justice. The Court's duties are guided by Law No. 24 of 2003 on the Constitutional Court (Dewi 2020).

THERE IS A MECHANISM IN PLACE FOR THE DISMISSAL OF JUDGES FROM THE CONSTITUTIONAL COURT FOLLOWING THE CONSTITUTIONAL SYSTEM.

The Republic of Indonesia is a nation that strictly adheres to the state system of law. This means that when carrying out a particular action, particularly in the administration of the state, everything is done in accordance with the rules or with the applicable legal provisions. According to R. Soerono, a legal act is any act of a legal subject (human or legal entity) whose consequences are regulated by law. This is because the outcomes of a legal act can be considered to be the will of the person who executes the action. Consequently, as a result of his actions that violate the laws outlined in the legislation, those who commit criminal crimes can be penalized or punished in accordance with his actions and liable for his actions.

The process of dismissing constitutional judges, as stipulated in Law No. 7 of 2020, which modifies Law No. 24 of 2003 concerning the Constitutional Court, can be conducted either with respect or with disrespect. Section 23, first paragraph The constitutional judge was terminated due to the following factors: death, voluntary resignation submitted to the chairman of the Constitutional Court, attaining the age of 70, removal, and sustained physical or mental illness for a duration of 3 months, as verified by a medical certificate. According to Paragraph (2), the constitutional judge will be terminated without due respect if the specified conditions are met. The judge has been incarcerated as a result of a court ruling that has acquired final legal validity for committing a criminal crime that is punishable by imprisonment. The judge exhibited deplorable conduct by consistently neglecting to attend five consecutive hearings without a justifiable cause, which is a fundamental responsibility and obligation of his position. Furthermore, the judge breached their sworn duty and deliberately impeded the Constitutional Court from issuing a timely verdict, as stipulated in Article 7 B paragraph (4) of the 1945 Constitution of the Republic of Indonesia. In addition, the judge breached the limitation on holding several positions, as outlined in Article 17. Consequently, the judge is now disqualified from serving as a constitutional judge and has also breached the rule of ethics and code of conduct (Hasanah 2016).

Referring to the statement of Bambang Wuryanto, the official who served as chairman of Commission III of the House of Representatives, giving reasons related to the dismissal of Judge Aswanto because the constitutional judge is considered to annul often the product of the law made by the House of Representatives (Yahya and Santosa 2022).

Reviewing the above reasons, there is certainly a possibility that constitutional judges can be replaced before the end of their term of office concerning the article, and it can be concluded that constitutional judges can be dismissed by one of two dismissal mechanisms, namely, respectfully dismissed or dishonorably dismissed. Moreover, explicitly from the above explanation, if there

is honorable dismissal, it means that the requirements of a constitutional judge have not been met, and if dismissed, it does not respectfully mean that a violation was committed. Reviewing Constitutional Court Regulation No. 4 of 2012 also mentions limitations on how to dismiss constitutional judges. However, the reasons raised around the removal of constitutional Judge Aswanto are because many annul the products of the DPR. In that case, these reasons are different from the requirements of the dismissed judges because there is no reason for the judge to be dismissed according to the relevant law with the DPR's reason for the dismissal of Judge Aswanto for annulling the DPR's product (Fernanda and Huroiroh 2023).

DISMISSAL OF CONSTITUTIONAL COURT JUDGES BY DPR: WHAT ARE THE LEGAL RESULTS AND EFFECTS OF THIS ACTION?

Within the state, there is always a law in the Constitution, directly or indirectly. At least, aspects in the rule of law, the existence of the law can and should work in Settings up to the society's effort to obey the law. The next aspect is that the existence of the law must have value and capacity with the purpose for its existence to be obeyed. Independence of the judiciary is essential as a prerequisite to enforcing the rule of law. Furthermore, a free and impartial judiciary must be in every state law (Asshiddiqie 2005). The Unitary State of the Republic of Indonesia (NKRI) implements a system of representative democracy through the House of Representatives (DPR), which serves as the citizens' representative body. The concept is being idealized to ensure that citizens' voices can be heard in a manner that is both effective and efficient for selecting the policies to be implemented. Similarly, when it comes to choosing constitutional judges, the populace or citizens place their aspirations and ambitions in the hands of the institution of elected representatives. According to Article 24C, paragraph 3 of the 1945 Constitution, the Constitutional Court consists of nine constitutional justices who are nominated by the president. The appointment process involves three nominations each from the Supreme Court, the House of Representatives, and the President. This clause grants the Constitutional Court the jurisdiction to render rulings. An intriguing aspect of the aforementioned article is the use of the term "proposed," which can be understood as the Indonesian word "adju," meaning "proposal" or "proposed." The etymology of the term or phrase "origin" refers to the idea or viewpoint that is proposed for consideration or adoption. In this scenario, the House of Representatives possesses the authority to nominate a judge for consideration or approval. Furthermore, Jimly Asshiddiqie reminded that the Constitutional Court law regulates Constitutional Court judges who are "submitted" by the DPR, submitted by, not submitted from. According to the dictionary, there is a significant distinction between "by" and "from," which means that the limit is only limited to recruiting, and not from within (which means that you have the right to remove) (Amnan 2023).

If the case of replacing Judge Aswanto is left without proper action, this can have various negative impacts. First, dismissing Judge Aswanto unfairly and without proper procedures can endanger the independence and integrity of the Constitutional Court and trigger a crisis of public confidence in the judiciary. Second, the appointment of Guntur Hamzah as a replacement for Judge Aswanto, which is strongly suspected to be motivated by political interests, can reduce the independence of the Constitutional Court in making decisions based on law and the Constitution. Third, changes in the substance of the case trial decision number 103/PUU-XX/2022 carried out by the Constitutional Court can also damage the public's image and trust in the judiciary. The ideal of a Democratic state is to create a government based on the will of the people. Power is in the hands of the people and exercised by democratically elected leaders. The election of fair and transparent judges is crucial in realizing the ideals of this democratic country, especially in maintaining the independence of the judiciary. After Aswanto's case, the process of selecting constitutional judges must be given more attention and ensured that the process of replacing and selecting constitutional judges is carried out transparently, fairly, and based on the qualifications and eligibility of each candidate. In selecting constitutional judges, the proposing institution must put qualification and eligibility criteria in proposing candidates for judges, not based on political recommendations from the relevant institution. It must be done through the correct procedure. By taking the process of electing constitutional judges seriously, the state can realize an independent and effective judiciary in resolving disputes related to the Constitution and law. This is certainly very important to realize a fair and just democracy so that the will of the people can be accommodated and run properly by the justice system (Farabi and Tanaya 2023).

Indeed, when referring to the exposure above, there is no room for any institution outside the Constitutional Court to intervene/interfere with the impartial nature of a constitutional judge. Similarly, when the DPR removed Judge Aswanto, according to the rules of law, there was no legal basis, and it means that it was contrary to the Constitution. See the position between the DPR and the Constitutional Court, which is a state institution with an equal position and is not mutually subordinate to each other. The trias politica should not act as if it has the most power over the others (Amnan 2023). In some countries, the position of the Constitutional Court is placed as the most important variable in the modern legal state system, especially in countries that are transforming from an authoritarian government system to a democratic government system, including the Indonesian state that is still as old as corn in fulfilling its duty to be a democratic country (Latif 2007). Therefore, as the guardian of the Constitution, the Constitutional Court should be used first as a mature institution with the condition of being kept away from political factors. So that on the way, the Constitutional Court can actualize its constitutional duties to uphold law and justice without the interference of other institutions so that the process of evolution to a more democratic country can be felt and celebrated by Indonesian citizens

CONCLUSION

The Constitutional Court plays a crucial role in upholding the notion of constitutional supremacy. In order to uphold the principles of a just and honorable legal system, it is imperative that judges of the Constitutional Court possess a strong sense of nationalism when executing their judicial authority. The objective of appointing Constitutional Court judges from the three branches of Power is to guarantee the integrity, autonomy, and multi-level oversight of the Constitutional Court as a judicial body that upholds the idea of constitutional supremacy. Nevertheless, the inclusion of the provision "evaluation of judges by the proposing institution" in the latest version of the Constitutional Court law could potentially compromise the autonomy of constitutional judges. The DPR's decision to remove former constitutional judge Aswanto was primarily motivated by his frequent nullification of laws

enacted by the DPR, which were intended to uphold the principle of autonomous judicial authority. The House distorted the interpretation of the phrase "filed by" with "filed from," and no criteria were satisfied based on the rationale. The process of removal and replacement also varies from that outlined in Article 23, paragraph (4) of the Constitutional Court statute. The procedure for choosing candidates for constitutional judges must also be conducted in an objective, transparent, and responsible manner. Nevertheless, the purported substitution of Aswanto with Guntur Hamzah was required to adhere to this criterion. The substitution of Aswanto with Guntur Hamzah may be contested in the State Administrative Court on the grounds of potential unconstitutionality. A dialogue platform should be established by the government, involving the DPR, the president, and the head of the Constitutional Court, to deliberate on the substitution of Judge Aswanto. The government has the responsibility to guarantee that each decision made by the Constitutional Court is grounded in the law and the Constitution, rather than being influenced by political interests or power. The Constitutional Court serves as the protector of the constitution, and the essence of the rule of law is rooted in the autonomy of the judiciary.

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