

THE AUTHORITY OF THE HOUSE OF REPRESENTATIVES IN THE DISMISSAL OF CONSTITUTIONAL COURT JUDGES BASED ON THE CONSTITUTION OF THE REPUBLIC OF INDONESIA

Brendah Veldrin Pua^{a*)}, Jeane Neltje Saly^{a)}

^{a)} Universitas Tarumanagara, Jakarta, Indonesia

^{*)}Corresponding Author: brendahpua5@gmail.com

Article history: received 31 November 2023; revised 02 December 2023; accepted 04 January 2024

DOI: <https://doi.org/10.33751/jhss.v7i3.8228>

Abstract. This study aims to analyze the authority of the House of Representatives (DPR) regarding the dismissal of Constitutional Court (MK) judges based on the constitution of the Republic of Indonesia. This research focuses on the impeachment mechanism, which is the legal basis for removing Constitutional Court judges who have seriously committed violations. The research method used normative legal research with a document analysis approach. The data consists of the constitution, laws, and regulations related to the House of Representatives authority regarding removing Constitutional Court judges. Data were collected from decisions of the Constitutional Court regarding previous cases involving the dismissal of Constitutional Court judges. The analysis showed that the House of Representatives authority in removing Constitutional Court judges is based on Article 24B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. House of Representatives has an important role in the impeachment process, where the election of Constitutional Court judges requires the approval of the House of Representatives. In addition, the dismissal of Constitutional Court judges can be carried out by 2/3 of the total House of Representatives members. This research provides a better understanding related to the mechanism of the House of Representatives' authority over the removal of Constitutional Court judges, with a focus on the impeachment process. The implication of this research is the importance of maintaining the independence of the Constitutional Court and ensuring that the impeachment process is carried out fairly based on applicable legal provisions concerning democratic principles and the rule of law. This research contributes to the understanding of the House of Representatives authority in monitoring the powers of the constitutional judiciary. It underlines the importance of maintaining the balance of power within the constitutional system of the Republic of Indonesia.

Keywords: authority of the house of representatives; dismissal of judges; constitutional court

I. INTRODUCTION

In the constitutional system of the Republic of Indonesia, the Constitutional Court (MK) has an important role as a constitutional judicial institution tasked with examining the applicability of laws on the 1945 Constitution of the Republic of Indonesia [1]. The Constitutional Court also has the authority to decide disputes over the authority of state institutions and election results [2], [3]. In carrying out its functions and authorities as an independent institution, the Constitutional Court needs to be protected and maintained to carry out its duties objectively and fairly [4], [5], [6]. In addition, the Constitutional Court also has the authority to decide authority disputes between state institutions. This means that the Constitutional Court can resolve disputes or conflicts that arise between the executive, legislative, or judicial institutions regarding the limits of their powers. This is important to maintain the balance and division of powers stated in the Constitution [7], [8].

Furthermore, the Constitutional Court also has the authority to resolve disputes over general election results. The Constitutional Court can examine and decide on disputes

related to general election results, including presidential, legislative and regional head elections [9]. In this context, the Constitutional Court functions, as an independent supervisor, ensure that the election process takes place fairly and in accordance with applicable regulations. The Constitutional Court must maintain its existence as an independent institution to carry out its duties and authorities objectively and fairly [10], [11]. The independence of the Constitutional Court is an important principle that guarantees the decisions taken by the Constitutional Court that are not influenced by political interests or external forces. This ensures that the Constitutional Court can play its role as a neutral and objective protection of the constitution in carrying out its duties. In order to protect the independence of the Constitutional Court, the 1945 Constitution and other laws and regulations provide protection mechanisms, such as guarantees for the continuation of the position of Constitutional Court judges, the mechanism for selecting Constitutional Court judges which involves the House of Representative, as well as impeachment procedures that can be used in cases of gross violations by Constitutional Court judges [12], [13], [14].

These aim to ensure that the Constitutional Court can carry out its functions and powers without inappropriate intervention from other institutions or certain political interests. By maintaining the independence of the Constitutional Court, the constitutional system of the Republic of Indonesia can ensure that the constitution is respected, the law is enforced, and justice is realized in the decision-making process related to the interpretation of the constitution. One important aspect related to the existence of the Constitutional Court is the authority of the House of Representatives to dismiss Constitutional Court judges. Even though Constitutional Court judges have a term of five years, there is a possibility to remove Constitutional Court judges if they are proven to have committed serious violations. In this context, the House of Representatives has a significant role in overseeing the performance of Constitutional Court judges and ensuring the independence and sustainability of this institution [15]. This study aims to analyze the authority of the Constitutional Court to dismiss Constitutional Court judges based on the constitution of the Republic of Indonesia. Regarding the purpose of this research, it is expected that this research can provide a better understanding of the House of Representatives' authority in supervising the powers of the constitutional judiciary and maintaining the independence and sustainability of the Constitutional Court. In addition, this research is also expected to contribute to the development of the law and constitutional system of the Republic of Indonesia.

II. RESEARCH METHODS

Research Approach is normative Legal Research [16], [17]. The research method used is normative legal analysis with a case study approach. This approach analyzed the governing legal framework authority of the House of Representatives to dismiss Constitutional Court judges based on the constitution of the Republic of Indonesia. Furthermore, case study was used to describe and analyze the application of the House of Representatives authority in concrete cases of the dismissal of Constitutional Court judges [18].

III. RESULTS AND DISCUSSION

The constitution of the Republic of Indonesia regulates the authorities and procedures related to the dismissal of the Constitutional Court judges. In accordance with Article 24C paragraph (1) of the 1945 Constitution, members of the Constitutional Court can only be dismissed through an impeachment process conducted by the House of Representatives (DPR). The House of Representatives here has the authority to initiate the process of removing Constitutional Court judges if there are allegations of ethical violations, legal violations, or violations of other provisions [19], [20]. The process of removing Constitutional Court judges started with the formation of an Examining Team by the House of Representative. The Examining Team is responsible for investigating alleged violations committed by the judge concerned. After going through the inspection and

discussion process in the House of Representatives institution, the next step is to hold a plenary session to discuss the examination results and determine whether the judge will be removed. A majority of the House of Representatives [21], [22] members must approve the decision to remove the Constitutional Court judge. However, it is important to note that the process of removing Constitutional Court judges must concern to the principles of judicial independence and maintaining the balance of power between state institutions. Therefore, provisions regarding removing judges from the Constitutional Court must be carried out carefully and regarding the principles of justice and applicable legal requirements.

1. The House of Representatives' authority to remove Constitutional Court judges raises questions about the separation of powers. Some experts argue that the dismissal of judges must be the domain of the Constitutional Court as an independent judiciary, while others argue that the House of Representatives has an important role in maintaining the accountability of judges.
2. The decisions of the Constitutional Court regarding this issue show a variety of approaches. Some decisions affirm the House of Representatives authority in removing judges by strengthening aspects of accountability and integrity, while others limit the House of Representatives authority to prevent abuse of power and protect judges.
3. Concerning the consequences of the examination, the guidelines for the rule of law that are free have changed into the soul of selecting word for word in the guidelines for administering the District Court. This is reflected in the decision "*disatukan oleh*" and not "*disampaikan dari*" in Article 18 paragraph 1 of the Established Court Regulations. This decision of words has enormous consequences as very important changes can occur.
4. The implication is that the President, House of Representatives, and the Supreme Court will only propose constitutional judges if necessary. Established judges are autonomous and can be relied upon by the foundation that documents them.

The meaning of the article would be reversed if the word "*diserahkan oleh*" is changed to "*diserahkan dari*", which would make the constitutional judge part of the organization that filed it. The addition of the provision of "assessment of judges by the proposing institution" to the draft fourth revision of the Constitutional Court Law also seems to attempt to shift the principle of an independent judicial power [23]. As it is tied to the institution nominating them, the independence of constitutional judges will be disrupted if this clause is approved. It is feared that there will be a political manipulation, in which constitutional judges become guardians of the proposed institution or even the proposed institution deliberately assesses constitutional judges who are deemed not to accommodate their interests. Due to the fact that the majority of governments and parliaments often perceive the Constitutional Court as a minority right in countries with a Constitutional Court, such

as the United States, where Thomas Jefferson, the former president, criticized the court and considered it to have undermined the constitution, the probability is high. The problems of controversy surrounding the legal power, which should be an independent authority, cannot be distinguished from the episode of the removal of the established judge, Aswanto, by the proposing organization. According to Jimmy Asshidiqie, as the first Chief Justice of the Constitutional Court, the House of Representative's lack of understanding of the decision letter from the Constitutional Court regarding the dismissal of the periodization of the term of office of constitutional judges was exemplified by its removal.

In fact, it is expressly stated in Article 87 of the Law concerning the Third Amendment to Law Number 24 of 2003 concerning the Protected Court that sacredly appointed officials who are in office at the time the law was promulgated are deemed to fulfill the requirements so that they can remain in office until they are 70 years old, with an unlimited term more than 15 years. Discussing to article 23 of the Establishment Judicial Regulations, no conditions can be met. A speculative error in that explanation is satisfied by distorting the importance of being "*disatukan oleh*" with "*diserahkan dari*." Jimmy Asshidiqie emphasized that legislators can be seen positively or negatively. In this case, the House of Representatives is a high-minded official whose job is to draft laws, while the Supreme Court is a legislator with a negative-minded law-shaping institution, thus leading to ongoing conflicts between the two. As a result, it can be concluded that the House of Representatives only dismissed him from his position because he carried out his responsibilities as a constitutional judge. Not only were the reasons for his dismissal unconstitutional, but the methods used to replace him. "The dismissal of constitutional judges is stipulated by a Presidential Decree at the request of the Chief Justice of the Constitutional Court," reads article 23 of the Constitutional Court Law, article 23 paragraph 4. The submission of the RI Presidential Decree Number/114/P/Year 2022 by the House of Representatives regarding the Dismissal and Appointment of Constitutional Judges turned out to be the basis for his dismissal from his position. Its decision is not required for the president to issue a Presidential Decree, and the requirements for issuing a Presidential Decree in the form of a request from the Chief Justice of the Constitutional Court have never existed. The most common way to choose the possibility of an appointed sacred authority must also be carried out with purpose, openness and responsibility.

The violation of the change in the substance of the MK 103/PUU-XX/2022 judicial review decision actually caused the problem even more complicated. There is a contrast in publication between the choices uttered by the jury and duplicate choices scattered on the Constitutional Court's website regarding the legal audit of Regulation Number 7 of 2020 concerning the Constitutional Court [24]. The word "*demikian*" was used by Judge Saldi Isra to reflect his decision. However, the phrase was changed to "*ke depan*" in a copy of the decision which was uploaded to the MK website on page 51. This change in phrase is suspected to have a major change in meaning and could have an impact on other things,

such as whether the new judge is right or not. Therefore, the Constitutional Court Honorary Council (also known as *MKMK*) named Constitutional Justice M Guntur Hamzah as the party allegedly responsible for changing the substance of the decision in the judicial review case number 103/PUU-XX/2022, which investigated the contents of the law. and its relation to the dismissal of the Constitutional Justices. Because he seems to have violated the code of ethics and integrity, the judge who was suspected of being sanctioned was in the form of a written warning.

First, the independence and integrity of the Constitutional Court could be threatened and public trust in the judiciary that could be damaged if judges were dismissed unfairly and without proper procedures. Second, the independence of the Constitutional Court in making decisions based on laws and the constitution can be reduced if Guntur Hamza is appointed to replace a judge who is strongly suspected of having political ties. Third, changes to the substance of the Constitutional Court's review decision in case number 103/PUU-XX/2022 can also hurt public trust in the judiciary. The standard of the majority state is to create a government based on individual wishes. Power rests with the people and is exercised by democratically elected leaders. The selection of fair and transparent judges is very important in realizing the ideals of this democratic country, especially in maintaining the independence of the judiciary. After the Aswanto case, more attention must be paid to the process of selecting constitutional judges, and ensuring that the process of replacing and selecting constitutional judges is transparent, fair, and based on the qualifications and eligibility of each candidate judge. In the process of selecting constitutional judges, the proposing institution must put forward qualification and eligibility criteria in proposing candidate judges, not based on political recommendations from related institutions, and must be carried out through the correct procedures.

By concerning the process of selecting constitutional judges seriously, the state can create an independent and effective judiciary in resolving disputes related to the constitution and law. This is very important to create a fair and just democratic country so that the justice system can accommodate the people's desire and carry out properly. Intervention in the dismissal and appointment of judges can harm the independence and integrity of the judiciary [25]. If a judge is dismissed or appointed only based on political interests or group interests, then the independence of the judiciary can be compromised. This can raise public doubts about a fair legal process and can reduce public trust in the judiciary. In addition, intervention in the dismissal and appointment of judges can threaten the integrity of the judiciary because it can influence the judge's decision. If a judge feels that the continuity of his position is threatened, then the judge may decide a case based on political interests or certain groups, not based on law and justice [26]. Therefore, it is very important that the process of dismissing and appointing judges is carried out transparent, objective, accountable, according to procedures, and not influenced by political interests or certain groups. This process must ensure

that judges appointed or dismissed meet the requirements and competencies set by law and are consistent with democratic values and the rule of law [27].

IV. CONCLUSION

This study concludes that the House of Representatives can remove Constitutional Court judges based on constitutional provisions and applicable laws and regulations. In exercising its powers, the House of Representatives must comply with established procedures and consider valid reasons for dismissal. However, its authority must be in line with the principle of separation of powers and the independence protection of the Constitutional Court as a judicial institution. The discussion in this study reveals that there is a conflict between the authority of the House of Representatives and the principle of separation of powers. This emphasizes the need to find the right balance between legislative and judicial powers and protect the independence of the Constitutional Court. The implication of this research is the importance of evaluating and reviewing the authority of the House of Representatives in removing Constitutional Court judges in order to strengthen a proportional oversight mechanism and maintain the integrity of the constitutional system. An analysis of constitutional provisions, laws and regulations, Constitutional Court decisions, and relevant academic literature supports this conclusion. It is expected that this conclusion will contribute to understanding and improving the legal framework governing the House of Representatives authority to remove Constitutional Court judges based on the constitution of the Republic of Indonesia.

REFERENCES

- [1] M. Fauzan, "Juridical Problematic On Supervision Of Judges In The Constitutional System Of Republic Of Indonesia," *Jurnal Dinamika Hukum*, Vol. 16, No. 2, 2016, Doi: 10.20884/1.Jdh.2016.16.2.615.
- [2] N. Huda, D. S. N. Heriyanto, And A. F. G. Wardhana, "The Urgency Of The Constitutional Preview Of Law On The Ratification Of International Treaty By The Constitutional Court In Indonesia," *Heliyon*, Vol. 7, No. 9, 2021, Doi: 10.1016/J.Heliyon.2021.E07886.
- [3] Rudy, R. Perdana, And R. Wijaya, "The Recognition Of Customary Rights By Indonesian Constitutional Court," *Academic Journal Of Interdisciplinary Studies*, Vol. 10, No. 3, 2021, Doi: 10.36941/Ajis-2021-0086.
- [4] M. Kovalčík, "The Instrumental Abuse Of Constitutional Courts: How Populists Can Use Constitutional Courts Against The Opposition," *International Journal Of Human Rights*, Vol. 26, No. 7, 2022, Doi: 10.1080/13642987.2022.2108017.
- [5] W. Reutter, "Subnational Constitutional Courts And Judicialization In Germany," *European Political Science*, Vol. 20, No. 4, 2021, Doi: 10.1057/S41304-020-00293-8.
- [6] M. A. Safa'at, "The Roles Of The Indonesian Constitutional Court In Determining State-Religion Relations," *Constitutional Review*, Vol. 8, No. 1, 2022, Doi: 10.31078/Consrev815.
- [7] C. Kelliher, S. Isra, Yuliandri, Z. Daulay, H. Tegnan, And F. Amsari, "Unconstitutional Authority Of Indonesia's Constitutional Court: The Resolution Of Pilkada Result Disputes," *Election Law Journal: Rules, Politics, And Policy*, Vol. 18, No. 3, 2019, Doi: 10.1089/Elj.2018.0535.
- [8] L. Karjoko, I. Handayani Gusti Ayu Kettut Rachmi, A. S. Sudarwanto, D. W. Winarno, A. K. Jaelani, And W. N. Hanum, "The Consequence Of The Decision Of The Constitutional Court In Forestry On The Recognition Of Traditional Forests In Indonesia," *Journal Of Legal, Ethical And Regulatory Issues*, Vol. 24, No. 5, 2021.
- [9] A. K. Jaelani, I. G. A. K. R. Handayani, And L. Karjoko, "Executability Of The Constitutional Court Decision Regarding Grace Period In The Formulation Of Legislation," *International Journal Of Advanced Science And Technology*, Vol. 28, No. 15, 2019.
- [10] I. Satriawan And K. A. Mokhtar, "The Role Of Indonesian Constitutional Court In Resolving Disputes Among The State Organs," *Hasanuddin Law Review*, Vol. 5, No. 2, 2019, Doi: 10.20956/Halrev.V5i2.1669.
- [11] B. Kamolane-Kgadima *Et Al.*, "Constitutional Court Statistics For The 2019 Term," *South African Journal On Human Rights*, Vol. 37, No. 3, 2021, Doi: 10.1080/02587203.2022.2043401.
- [12] Rudy, U. Meylina, And R. Ritonga, "From State Sovereignty To People Sovereignty: A Case Study Of Indonesia's Constitutional Court," *Journal Of Legal, Ethical And Regulatory Issues*, Vol. 24, No. 7, 2021.
- [13] M. Fondevila Marón, "A Constitutional Court For The 21st Century: The Challenges Of The Constitutional Jurisdiction In Spain.," *Revista De Derecho Politico*, No. 111. 2021. Doi: 10.5944/Rdp.111.2021.31061.
- [14] P. Hastuti, "Shifting The Character Of The Constitutional Court Decision Influenced By Political Constellation In Indonesia," *Constitutional Review*, Vol. 5, No. 2, 2019, Doi: 10.31078/Consrev526.
- [15] I. Satriawan And K. A. Mokhtar, "The Role Of Indonesian Constitutional Court In Resolving Disputes Among The State Organs," *Hasanuddin Law Review*, Vol. 5, No. 2, 2019, Doi: 10.20956/Halrev.V5i2.1669.
- [16] I. G. K. Ariawan, "Metode Penelitian Hukum Normatif," *Kertha Widya*, Vol. Vol. 1, No. Nol. 1, 2013.
- [17] S. Soekanto, Soerjono; Mamudji, *Penelitian Hukum Normatif*, 1st Ed. Jakarta: Rajawali Press, 2019.
- [18] R. Indonesia, "Uu No. 7 Tahun 2020 Tentang Perubahan Ketiga Atas Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi," 2020.

- [19] M. A. Muqsith, "Uu Omnibus Law Yang Kontroversial," *Adalah*, Vol. 4, No. 3, 2020, Doi: 10.15408/Adalah.V4i3.17926.
- [20] D. B. Kharisma, "Urgency Of Financial Technology (Fintech) Laws In Indonesia," *International Journal Of Law And Management*, Vol. 63, No. 3, 2021, Doi: 10.1108/Ijlma-08-2020-0233.
- [21] M. Lutfi And A. Ibrahim Nur, "Reconstruction Of Norm In Selection System Of Constitutional Court Judge Candidates From The Perspective Of The Paradigm Of Prophetic Law," *Legality: Jurnal Ilmiah Hukum*, Vol. 30, No. 1, 2022, Doi: 10.22219/Ljih.V30i1.20744.
- [22] I. Rishan, "Doubting The Impartiality: Constitutional Court Judges And Conflict Of Interest," *Jurnal Jurisprudence*, Vol. 12, No. 1, 2022, Doi: 10.23917/Jurisprudence.V12i1.1058.
- [23] J. Lamataro, C. W. T., Bire, C. M. D., & Ermalinda, "Mahkamah Konstitusi Dalam Mozaik Kerapuhan," *Jurnal Manajemen, Ekonomi, Hukum, Kewirausahaan, Kesehatan, Pendidikan Dan Informatika (Manekin)*, Vol. 1, No. 2, 2022.
- [24] L. Anjarsari, "Mkkm Berikan Teguran Tertulis Terhadap Hakim Konstitusi M. Guntur Hamzah," 2023.
- [25] F. Fahmiron, "Independensi Dan Akuntabilitas Hakim Dalam Penegakan Hukum Sebagai Wujud Independensi Dan Akuntabilitas Kekuasaan Kehakiman," *Litigasi*, Vol. 17, No. 2, P. 3467, 2016, Doi: 10.23969/Litigasi.V17i2.158.
- [26] J. Sörensen And E. J. Olsson, "Shadow Management: Neoliberalism And The Erosion Of Democratic Legitimacy Through Ombudsmen With Case Studies From Swedish Higher Education," *Societies*, Vol. 10, No. 2, 2020, Doi: 10.3390/Soc10020030.
- [27] J. Sörensen And E. J. Olsson, "Shadow Management: Neoliberalism And The Erosion Of Democratic Legitimacy Through Ombudsmen With Case Studies From Swedish Higher Education," *Societies*, Vol. 10, No. 2, 2020, Doi: 10.3390/Soc10020030.