

# **Analysis Of The Law On The Authority Of The House Of Representatives (Dpr) On The Removal Of Constitutional Court Judges In Indonesia (The Case Of The Removal Of Judge Aswanto)**

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**Abstract.** This research focuses on analyzing the authority of the Indonesian House of Representatives (DPR) 's authority in dismissing Constitutional Court judges, particularly in the case of Judge Aswanto. The research methodology used is normative legal research, utilizing library research and the statute approach, and analyzed through juridical-normative analysis. Based on your research, you have found that the DPR's authority in dismissing Constitutional Court judges contradicts the provisions stated in Article 24 Paragraph (1) of the 1945 Constitution and Article 23 of the Constitutional Court Law. Furthermore, you discovered that in the case of Judge Aswanto's dismissal, the Constitutional Court ruled that the DPR had violated the law by not following the correct procedures established by the law. From these findings, you conclude that the DPR's authority in dismissing Constitutional Court judges should be conducted according to the procedures set forth in the law. Failure to adhere to these procedures can be considered a violation of the law and can have detrimental consequences for the parties involved. To prevent the abuse of power and violations of individual rights guaranteed by the constitution, you emphasize the importance of strict law enforcement and supervision of the DPR's authority in dismissing judges of the Constitutional Court. Overall, your research highlights the need for adherence to legal procedures and the significance of upholding the rule of law in the context of the DPR's authority in dismissing judges of the Constitutional Court.

**Keywords:** parliament's authority; judge dismissal; constitutional court

## **I. INTRODUCTION**

In an article or previous researcher Sunarto entitled "The Legislative Function of the DPR After the Amendment of the 1945 Constitution" said that with the amendment of the 1945 Constitution there has been a shift in the application of the legislative function of the DPR. The power to form laws was previously the power of the President, with the amendments it became the authority of the DPR. Although for a law to occur there must be joint approval between the DPR and the President. The implementation of the legislative function after the amendment of the 1945 Constitution was also colored by the arrival of the Constitutional Court. The arrival of the Constitutional Court with its authority to carry out judicial review, produces a new situation, if the law is not an inviolable legal product but can be corrected by the Constitutional Court through the mechanism of judicial review. The Constitutional Court is only authorized to report if the content of the law is contrary to the basic law and has no legal force. On the other hand, the formulation of improvements is always the authority of the legislator. In other words, the authority of the Constitutional Court is only a negative legislative authority [1]. The principle of judicial independence has been injured, this is due to the case of the dismissal of a judge named Aswanto at the Policy of the House of Representatives (DPR) and then as a replacement Guntur Hamzah was appointed during the term of office. As a legislative body, the DPR does have an important role in

formulating and proposing policies, one of which is the dismissal of Constitutional judges who are considered not to reflect the wishes of the institution itself. On September 29, 2022, the House of Representatives held a plenary meeting to remove constitutional judge Aswanto. The House of Representatives argued that judge Aswanto had disappointed the House of Representatives, which very often annulled the products of the House of Representatives. Meanwhile, as explained earlier, the House of Representatives does not have the authority to change the constitutional judges it nominates before the end of the term of office because this would violate the principles of impartiality and independence of the Constitutional Court and undermine Indonesia's commitment to the concept of the rule of law. However, this seems to have been "justified" by the President by producing Presidential Decree No. 114/P/Year 2022 on the Dismissal and Appointment of Constitutional Judges proposed by the DPR. Based on the Presidential Decree, Judge Aswanto was dismissed and replaced by Guntur Hamzah. Normatively, this dismissal is flawed because it does not have a legal foundation that corrects and can interfere with judicial independence. Therefore. An independent judiciary is an important aspect of a system of law and good governance [2]. From another point of view, according to most people, this action has a negative impact on the institution of the Constitutional Court, which is essentially not subject to political intervention, including the DPR. The replacement during the ongoing position of MK

Judge Aswanto is a big sign that there is a political cartel [3], this was mentioned by Herlambang Wiratraman. I Gede Dewa Palguna caught this as an impromptu attack from the Senayan. Then they agreed that what the DPR had done, especially aimed at Judge Aswanto and the Constitutional Court, was a big mistake.

The House of Representatives (DPR), whose members are selected by the people through general elections, is the institution that represents the people in Indonesia's democratic system. In this institution, the people have high hopes that what the DPR tries to do will meet the people's expectations. On the contrary, citizens feel very disappointed when members of the House of Representatives display behavior and attitudes that are only oriented towards individual, group, or party interests, which are far from the concerns of the citizens. Moreover, there are members of the House of Representatives who show open conflict among themselves, arguing, especially to the point of physical fighting with each other, without heeding the ethics as representatives of the people. Normatively, as stipulated in the Basic Law, the House of Representatives has three functions, namely the legislative function, the budgetary function, and the supervisory function. The legislative function is the function to make laws; the budgetary function is the function to participate in setting the State Budget (APBN); and the supervisory function is the function of the DPR to oversee government policies. The dismissal or removal from office of the Constitutional Court (MK) judges cannot be equated with the removal of company directors. The Constitutional Court is a judicial institution that has a position and function regulated in the constitution of a country, while a company is a legal entity that operates in the business sector. Different views regarding the dismissal or removal of Constitutional Court judges are commonplace in the context of a democratic system. Different views on the DPR's action in removing the judge are reflections of different interpretations of the principles of democracy, separation of powers, and judicial independence. Bivitri Susanti argues that the action is an attempt to undermine judicial power and threaten the principle of the rule of law, that the dismissal of judges should be based on objective reasons and based on a clear mechanism that guarantees independence, without undue political interference. Meanwhile, Sufi Dasco Ahmad [4], as the DPR party, argued that the dismissal was in accordance with the laws and regulations and was part of the DPR's authority to evaluate judges. The mechanism has been regulated in law and does not contradict the principles of democracy. [5]

In carrying out their duties, a judge must decide cases based on the existing legal basis, not based on the wishes or pressure of other parties. The principle of legal reasoning is a basic principle in the justice system that requires judges to base their decisions on the applicable law. Judges must objectively analyze the facts presented, interpret and apply the relevant law, and reach a conclusion based on sound legal reasoning. Judges must be independent and not beholden to the interests of any party. The principles of judge independence and the validity of neutral decisions are fundamental to the existence of an independent judicial power.

Therefore, it is important to safeguard the independence of judges and protect them from pressure or intervention that could affect objective legal decisions. If a judge decides a case without considering the applicable legal provisions, it can be considered an ethical violation and can have legal consequences for the judge. The differences in views and opinions between experts and figures regarding the rule of law, political intervention in law, and the removal of judge Aswanto show the complexity and challenges in maintaining the rule of law and the independence of the judiciary in practice. Munir Fuady's view Rule of law, or the rule of law, is an important principle in the legal system that emphasizes that state power must be subject to the law, not to the policies or personal interests of the leadership. This principle guarantees legal certainty, fair treatment, and protection of individual rights in society. However, its implementation is not always easy and there can be political intervention or interference that affects the independence of the law. Meanwhile, Mahfud MD believes that the law is often subject to political intervention. The DPR dismissed judge Aswanto through a letter from the Constitutional Court to the DPR on July 22, 2022. The Constitutional Court's Decision Number 96/PUU-XVIII/2020 on the Examination of Article 87 letter a and letter b of Law Number 7 of 2020 concerning the third amendment to Law Number 24 of 2003 concerning the Constitutional Court was explained.

There is an excerpt from one of the legal considerations regarding the disallowance of the petition for judicial review of Article 87 letter b of the Constitutional Court Law. On consideration of the legal aspects said, as well as considering after the clarity for the Court on the actual persistence (original intent), the Court issued an opinion regarding Article 87 letter b does not contradict Article 28D paragraph (1) of the 1945 Constitution. For the above incident, it is important to understand through two directions, namely because the performance is not maximized and the values that exist in the constitutional judges are not implemented or more towards the politics regarding the dismissal of Judge Aswanto. Indonesia is a Democratic State of Law, this is stated in (Article 1 paragraphs 2 and 3 of the 1945 Constitution) naturally in practice involves the values contained therein. For example, checks and balances, independence funds the judicial power, and the law is upheld. The dismissal of Judge Aswanto while his term of office was still ongoing resulted in legal problems. The end of Judge Aswanto's term of office was completed in March 2029 but before his term expired he had to end his profession by the decision of the DPR. The purpose of this study is to describe the authority of the DPR in relation to the nomination and dismissal of Constitutional Court (MK) judges. Then regarding this, it will discuss the causes that cause Constitutional Court Judges to be dismissed/retired early, as well as the legal issues of the dismissal of Judge Aswanto from the point of view of positive law and norms.

## II. RESEARCH METHODS

The research used a statutory approach involving library research. This method involves analyzing various laws,

regulations, policies, and other legal documents relevant to the case being researched. In the research, the author uses literature sources such as books, journals, legal documents, and other relevant research to comprehensively understand the issue under study. The author will analyze and interpret the information found in the literature to provide a deeper understanding of the case under study. By using a statutory approach and juridical-normative analysis, this research aims to investigate whether the case under study is considered correct by positive law and in accordance with societal norms.

### III. RESULTS AND DISCUSSION

#### *The Important Role of the House of Representatives in the Legal System of Legislation Formation as well as the Duties and Authorities of the House of Representatives*

The amendments to Article 5 paragraph (1) and Article 20 of the 1945 Constitution of the Republic of Indonesia have brought about striking changes in Indonesia's constitutional order regarding the power to formulate laws. Prior to these changes, the power to make laws was vested in the President. However, the amendments shifted the power to the DPR. This change was the result of a four-stage constitutional reform process. Each stage of constitutional reform regulated a variety of different constitutional content. These changes are significant in that the increased responsibility and role of the DPR in lawmaking can have important implications for the role and function of the DPR. Qualitatively, the DPR has a more active and authorized role in the lawmaking process. It can initiate legislation, deliberate, amend or reject draft laws submitted by the government. This gives the DPR greater control over the lawmaking process. Quantitatively, these changes have also had an impact on the number of laws produced by the DPR. As the institution holding the power to form laws. The DPR is expected to produce quality laws that meet the needs of society. This change shows that the role of the DPR in the Indonesian constitutional system has been strengthened in the field of lawmaking. With the increased roles and responsibilities of the DPR, it is expected to create a more democratic legislative process that is responsive to the interests of society.

The figure, C.F. Strong [6] has a view, the legislative part has power in government related to lawmaking, especially laws that require regulation (statutory force). In this case, the legislature is responsible for taking care of making laws that have binding legal force. Furthermore, Hans Kelsen added his perspective regarding the legislative function. According to Kelsen, the legislative function is not the establishment of all general norms. General norms made by the legislature are called "statutes" which distinguish them from general norms made by organs other than the legislature [7]. Amendments to the 1945 Constitution give greater authority to the House of Representatives of the Republic of Indonesia (DPR) in the law-making process. The DPR is the main key to the power to form laws, which has the main political function in determining the direction of the constitutional policy of the Republic of Indonesia [8]. These

changes occurred through amendments to the 1945 Constitution by the People's Consultative Assembly (MPR) from 1999 to 2002. Changes to the 1945 Constitution through amendments resulted in the restructuring of the relationship between the executive and legislative institutions in Indonesia. One of the significant implications is the shift in power in the legislative process, where the legislative body, namely the DPR, gets a larger portion of authority in the formation of legislative policies. This is a logical result of the application of the trias politica principle, in which the legislature has the authority in the field of legislation as one of the fundamental elements. This change also indicates a shift towards a more democratic and participatory government, where legislative power is more evenly distributed between the executive and legislative branches. Stronger legislative powers give the DPR RI a significant role in determining state policy.

As a legislative body, the DPR holds a key role in the political development of modern states. The legislature is the first branch of power and represents the sovereignty of the people [9]. Prof. Jimly Asshiddiqie explains that the legislature has the authority to regulate and make rules (regelung) and the structure of our parliament after the fourth amendment is not appropriate to be called a two-chamber parliament according to the principle of "strong bicameral". The system that we adopt can only be referred to as "soft bicameral" because of the two chambers of DPR and DPD. However, because the MPR itself also can not be called only as a "joint session" between DPR and DPD, then our parliamentary building also can not be called as "soft bicameral" though. In a democratic system, the principle of popular sovereignty is one of the principles underlying the existence of legislative institutions. This principle emphasizes that the supreme power rests with the people, and the elected representatives of the people in the legislature have exclusive authority to determine the fixed rules and cannot be restrained or limited in each individual citizen. In the context of the DPR, the legislative body in Indonesia, the 1945 Constitution attributes three main functions to the DPR: legislation, budget, and supervision. In carrying out its functions, the DPR acts as the people's representative. The legislative function of the DPR is one of the main pillars of a democratic system of government and aims to create laws that represent the interests of the people and regulate the life of the country in a fair and equitable manner. [10]

[11] In relation to the legislative function, the DPR has several main powers in the process of forming laws in Indonesia. The first is the formation of laws: The DPR has the authority to form laws. Draft laws can be proposed by the President or by members of the DPR. Joint approval between the DPR and the President is required for the law to be passed. Second, Approval of Perppu: The DPR also has the authority to approve or disapprove a Government Regulation in Lieu of Law (Perppu) proposed by the President. Perppu is a regulation issued by the government in an emergency or if there is an urgent need that cannot be handled through the regular legislative stage. Parliamentary approval is required for a Perppu to become law. The third is as a legislative body,

[12] In addition to its authority, the DPR also has duties related to its legislative function. Here are some of the duties of the DPR related to legislation:

- a. The DPR has the task of preparing a legislative program, which is a list of plans for the formation of laws in one DPR membership period. This national legislation program covers various policy areas that will be regulated through laws. The DPR is also responsible for discussing and enacting the national legislation program.
- b. The DPR has the task of drafting bills that reflect the interests of the people and the needs of national development. These bills will then be discussed in the legislative process in the DPR. After going through the discussion and approval process, the DPR is also tasked with disseminating the passed bills to the public.
- c. The DPR also has the task of receiving (bill) submitted by the Regional Representative Council (DPD) on regional autonomy. The bill will be discussed and decided with DPR and DPD.

In addition to these duties, Law No. 17/2014 gives each member of Parliament the right to propose bills. This gives members of Parliament the opportunity to propose bills that they consider relevant and important in the context of legislation. Each member of the House of Representatives has the right to propose bills that are relevant to the current legislation. This right gives members of the House the opportunity to initiate bills that they deem important and relevant to the formation of policies and legislation. In carrying out the duties of the DPR, the support of each faction also plays a very important role. Factions in the House of Representatives are a forum for members of the House of Representatives who share certain views or political interests. The support of factions in the discussion of bills can strengthen the position of DPR members in gaining wider support from other DPR members. Factions also have a strategic role in forming a common view and coordinating steps in the discussion of the bill. Based on Law No. 17/2014 on the People's Consultative Assembly, the House of Representatives, the House of Regional Representatives, and the House of Regional Representatives, the main task of the commissions in the DPR is to handle draft laws. The deliberation of draft laws by commissions, joint commissions, special committees, or the Legislative Body is usually completed within three session periods, which can be extended by the decision of a plenary meeting of the DPR. The discussion process involves various stages such as discussions in commission meetings, consultations with relevant parties, public hearings, working visits, and so on. The purpose of the deliberation process is to ensure that the draft law has gone through a careful process and received input from various related parties, so that it can reflect the interests of the people and the needs of national development.

In the event that a law is challenged at the Constitutional Court, the DPR's representative to provide an explanation at the Constitutional Court hearing is the DPR organ that discussed the bill, involving the commission in charge of law and legislation. In the event that the DPR organ that discussed the bill no longer exists at the time the law is

tested at the constitutional court, the commission in charge of law and legislation becomes the DPR's proxy. In certain cases, the DPR may summon any person involved in the drafting or discussion of the bill under review to provide testimony as a witness and/or expert. The DPR proposes candidates to fill a position based on the provisions of laws and regulations through a plenary session of the DPR. The DPR gives approval or consideration to candidates to fill a position based on the provisions of laws and regulations through a plenary meeting of the DPR. The plenary meeting of the DPR appoints the Musyawarah Body to schedule and assign the discussion to the relevant DPR organs and the discussion by the DPR organs is carried out in accordance with the provisions of laws and regulations.[13]

#### *The Authority of the House of Representatives over the Removal of Constitutional Court Judges*

The DPR as the people's representative institution is one of the basic principles in the representative democracy system implemented in the Unitary State of the Republic of Indonesia (NKRI). This concept aims to ensure the political participation of citizens in decision-making and the formation of state policies. As such, the concept of representative democracy implemented through the DPR allows for wider participation and representation of citizens in policy formation and political decision-making in Indonesia. It is also an attempt to achieve the goals of effectiveness and efficiency in running democracy in this country. One concrete example of the authority granted to the DPR in representing the aspirations of the people is in the selection of Constitutional Judges. Article 24C Verse (3) of the 1945 Constitution confirms that the House of Representatives (DPR) has the authority to nominate three candidates for Constitutional Judge. In the process, the President then appoints nine Constitutional Justices from candidates submitted by various parties. 3 of them were nominated by the DPR, 3 by the Supreme Court, and 3 by the President himself. This reflects the importance of the role of the DPR as the people's representative in determining candidates for Constitutional Court Judges. In order to block the power in the separation of powers in the administration of the State (separation of powers). G. Marshal in his book Constitutional Theory distinguishes the identity of the doctrine of separation of powers, including:

1. Differentiation, differentiating the functions of State institutions, both the makers of implementing regulations and the institutions authorized to resolve existing disputes or conflicts.
2. The legal incompatibility of office holding, in this case meaning the prohibition of concurrent office holding at all levels, must be aimed at regulating conflicts of interest between State institutions.
3. Isolation, immunity, and independence between State institutions are idealized as not interfering, being independent, and not correcting the weaknesses of other State institutions.
4. Checks and balances, balance, and control are suitable constitutional requirements.

5. Co-ordinate status and lack of accountability, between State institutions are more co- ordinative or synergistic, not compromising for political interests, and not subordinate.

In the doctrine of power division, checks and balances have a strategic position and moreover become decisive in the bond between State institutions, namely each State institution regulates and balances the power of other State institutions. The existence of such checks and balances is expected to prevent domination and abuse of power in each independent State institution [14].

The principle of *contrarius* states that whoever makes a state administrative decision is responsible for canceling that decision. In the context of the removal of a Constitutional Court judge, it is true that it is the President who appoints or decides on a judge. However, it should be noted that the principle of *contrarius actus* is not the only consideration in determining the authority to remove a judge. In a country's constitutional system, the removal of judges is usually enshrined in the constitution or current laws. Clear provisions and procedures must be followed in deciding the removal of a judge, and this does not solely depend on the principle of *contrarius actus* [15].

Based on Article 18 Verse (1) of Law Number 24/2003 on the Constitutional Court, Constitutional Judges are nominated by three institutions, namely the Supreme Court, the DPR, and the President. This article regulates the mechanism for submitting candidates for Constitutional Court Judges to the Constitutional Court. The use of the word "proposed" in the article does indicate that each party has a role in proposing candidates for constitutional judges. The difference in the use of the words "submitted by" and "submitted from" can indeed have different meanings in the context of legal interpretation. However, it is important to look at all provisions related to the appointment of constitutional judges and not just rely on one particular word phrase.

Regarding the role and position of the Constitutional Court (MK) in a democratic legal state system. Indeed, in many countries undergoing a process of transition to a democratic system of government, the Constitutional Court is often one of the most important institutions in upholding the supremacy of the constitution. Strong recognition and protection of the independence and self-reliance of the Constitutional Court is an important prerequisite in ensuring that the institution can carry out its duties without interference or influence from political parties. By having sufficient independence, the Constitutional Court can function as the watchdog and guardian of the constitution, as well as ensuring fairness in the judicial system. In the Indonesian context, the Constitutional Court plays an important role in maintaining the sustainability of democracy and upholding the supremacy of the constitution. Arrangements regarding the selection of Constitutional Court judges involving several state institutions, including the DPR, the Supreme Court, and the President, are intended to create a mechanism that involves various interests in the selection and appointment process of constitutional judges. However, it is important to ensure that

the selection and appointment of constitutional judges is conducted transparently, independently, and based on adequate qualifications. Efforts to maintain the independence of the Constitutional Court and avoid political interference must continue to be enhanced, so that the Court can function effectively as the guardian of the constitution and the guardian of justice. In the context of the evolution to a more democratic state, the Constitutional Court has an important role in upholding law and justice and protecting the rights of individuals and groups. Through its decisions based on the constitution, the Constitutional Court can contribute to building a more democratic state, where the supremacy of the constitution and the protection of human rights are the main principles upheld. It is important for Indonesia, like other countries, to continue to strengthen the institution of the Constitutional Court, ensure its independence and integrity, and give full trust to this institution to carry out its roles and duties in accordance with the mandate of the constitution.

#### *Descriptive Analysis of Cases of Dismissal of Constitutional Judges*

Miriam Budiardjo's view [16] relates to the permanent position of judges or at least until judges reach retirement age. The concept of life-long judgeships or until retirement aims to maintain the independence and freedom of the judiciary from political interference or external pressure. Within this framework, it is important for a judge to maintain good behavior and integrity, as well as comply with applicable rules and ethics. If a judge violates the provisions of the law or commits a reprehensible act, disciplinary or other legal measures may be taken against him or her, including removal from office. In order to realize the general principle of proper governance, it must adhere to the principles that form the basis for creating good governance, which is aimed at realizing a clean, transparent and accountable government in carrying out its duties and responsibilities to the community. This also applies in the context of judicial institutions, including the Constitutional Court. Decision-making in the judicial process, including the decisions of judges, must be based on the underlying principles of fairness, compliance with the law, independence and integrity. Good governance in the judiciary, including the Constitutional Court, has an important role to play in ensuring that decisions are based on these principles. Good governance in the judiciary involves various aspects, such as strong institutions, transparent procedures, accountability, openness and effective oversight. Courts must operate independently, free from political interference or external pressure, and adhere to the principles of justice and the rule of law.

M. Shepherd's view is that the checks and balances mechanism can be determined to run properly if the judiciary is independent and impartial. In line with this matter, for Paul Scholten, if the law is not carried out as it should be, it can no longer be said to be the law. In this case, the decision of the House of Representatives to remove judge Aswanto can be determined to be incompatible with the existing legal norms. Because the authority lies with the President, not the DPR, so the unilateral decision taken by the DPR cannot be said to be

the law because the policy is determined to be incompatible with the applicable law. Often in history *das sein* and *das sollen* cannot be implemented as ideally between the written provisions and the reality in the field are not synchronized due to some of the reasons behind it. Similarly, the removal of Judge Aswanto, which was unilaterally decided by the Legislature, ended up in a conflict both constitutionally and institutionally [17]. By maintaining good governance in judicial institutions, including the Constitutional Court, it is hoped that the judicial process can run fairly, openly and in accordance with the principles of justice. This will strengthen public trust in judicial institutions and maintain the integrity of the judicial system as a whole. [18] The provisions regarding the dismissal of a Constitutional Court judge are contained in Article 23 paragraph (1) and Article 24 paragraph (2) of the Constitutional Court Law. Article 23 paragraph (1), a judge of the Constitutional Court can be dismissed with honor or with dishonor. Honorable dismissal can occur in several situations such as:

- a. Death: If a Constitutional Court judge dies, he or she is automatically dismissed from office.
- b. Resigning at own request: A judge of the Constitutional Court has the right to tender his/her resignation from office. If the judge submits his/her resignation and the request is approved, he/she is honorably discharged.

On the other hand, Article 24 paragraph (2) states that a Constitutional Court judge can also be dismissed if there is an expiration of his/her term of office, reaching the age of 67 years, or due to prolonged illness, with evidence along with an attachment of a doctor's letter. In the case of Judge Aswanto's dismissal, if there is no legal cause as stipulated in Article 23 paragraph (1), then the dishonorable dismissal of a judge is not in accordance with the existing provisions. The reasons for dishonorable dismissal are listed in Article 24 paragraph (2) of the Constitutional Court Law. These reasons include:

- a. If a Constitutional Court judge serves a prison sentence for a court decision with permanent legal force on a criminal offense with a prison sentence of 5 years or above, then he can be dismissed dishonorably.
- b. If a Constitutional Court judge commits an act that is considered reprehensible, which can damage the image and integrity of the Constitutional Court, then he or she can be dismissed with dishonor.
- c. If a Constitutional Court judge does not attend the trial for which he is responsible 5 times in a row without a valid reason, then he can be dishonorably dismissed.
- d. For example, if a Constitutional Court judge violates his oath or promise of office, which is his commitment and obligation as a constitutional judge, then he can be dismissed dishonorably.
- e. If a judge of the Constitutional Court deliberately impedes the process of rendering a decision by the Constitutional Court in accordance with the time specified in the 1945 Constitution, then he or she may be dishonorably dismissed.

- f. If a Constitutional Court judge violates the prohibitions set out in Article 17 of the Constitutional Court Law, he or she may be dishonorably discharged.
- g. If a judge of the Constitutional Court no longer complies with the stipulated conditions for becoming a constitutional judge, for example because he or she has reached the age limit or there has been a change in the required qualifications, then he or she can be dishonorably dismissed.

If at the time of Judge Aswanto's removal there was no cause in accordance with these provisions, doubts may arise about the validity and legality of the removal. If the removal decision is made without clear reasons and in accordance with legal provisions, it may lead to allegations of intervention or interference with the judiciary with political interests. The DPR's decision to remove or dismiss Judge Aswanto as a Constitutional Judge as an attempt to intervene in the institution of judicial power is subjective. Of course, in a legal system based on the principle of separation of powers, it is important to maintain the independence and autonomy of the judiciary. Political interference in matters of law enforcement can potentially undermine the principles of democracy, the rule of law, and the separation of powers. Therefore, protecting the independence of the judiciary is an important principle in maintaining justice and legal certainty.

#### *Legal Implications and Impacts of the Removal of Constitutional Court Judges by the House of Representatives for the Indonesian Constitutional Court System, Especially Judge Aswanto*

States that embrace democratic values and uphold the rule of law recognize the very important role that judges play in maintaining the rule of law and upholding justice. An independent judge with integrity is a valuable asset in the judicial system, including in the context of the Constitutional Court. By having a sound administrative structure and engaging competent judges, the Constitutional Court can serve as an effective guardian of the constitution and enforcer of the law. A strong and independent Constitutional Court can prevent constitutional crises, as its decisions are based on consistent and objective interpretation and application of the constitution. As the embodiment of judicial power, a judge has a great responsibility in carrying out his or her duties. Ideally, a judge must uphold the principles of integrity, impartiality and independence. Judges are expected to be able to carry out their duties with courage, justice and professionalism, without any interference or influence from any party, including political interests. Judges as representatives of God or figures who are expected to be noble do carry a heavy burden, as they must maintain their image as guardians of justice and truth. Ideally, judges should be free from external influences, including political influences, in order to decide cases fairly and based on the law. Regarding the dismissal of Judge Aswanto and the analogy used by the Chairman of Commission III of the DPR. It is important to understand that in a democratic system based on checks and balances, which means the principle of division of powers, the judiciary has an independent role and is not subject to pressure

or intervention from other institutions, including the DPR. Indonesian law has devolved lawmaking powers to the DPR, but still gives the government the right to submit bills to the DPR. The purpose of shifting the law-making power to the DPR is based on the desire to practice a democratic system of government based on the concept of distribution of power and the establishment of checks and balance mechanisms between State institutions. These requirements can be implemented properly by the President and the DPR as a form of the principle of checks and balances between the two institutions. However, sometimes there are conventions between the two parties, as in the improvement of the law on regional head elections, the president did not agree with the DPR and in the end the president produced a replacement regulation. [19] The analogy that describes the Constitutional Court as a company, judges as directors, and the DPR as the owner can lead to misunderstandings about the role of the judiciary. The Constitutional Court is not a company that is run based on direct orders from the owner or other institutions. Constitutional judges should not be viewed as employees who can be unilaterally dismissed for not complying with the wishes of another party.

The principle of independence is an important foundation in maintaining the integrity and credibility of the judiciary. Intervention or interference from other institutions in the law enforcement process can undermine the value of the institution's independence. In the case of the removal of judge Aswanto that you mentioned, if there is no clear legal basis for the action, it can be perceived as an arbitrary action that can threaten the independence of the Constitutional Court. The principle of prohibition of abuse of authority or *détournement de pouvoir* in the context of good governance. This principle emphasizes that an official or institution must not use its authority for personal or group interests that are contrary to the purpose of granting such authority. In the case of the removal of judge Aswanto, if the action is carried out without a clear legal basis and legitimate purpose, then it can be considered an abuse of authority or arbitrary action by the DPR against the Constitutional Court. The removal of a Constitutional Court judge must be based on clear provisions and within the limits set by the constitution and applicable laws and regulations. If there are indications of abuse of power in the actions taken by the DPR towards the Constitutional Court, then it is important for authorized institutions, such as supervisory institutions or the judiciary, to examine and assess the validity and appropriateness of such actions. Having a strong foundation in policy formation is very important. In the context of Judge Aswanto's dismissal, there are no legal arguments that justify his dismissal, and the reasons used cannot be digested with logic according to the law. If the dismissal of a judge is carried out without a clear legal basis and without adequate reasons, it is certainly a serious concern. In a legal system based on the principle of the rule of law, decisions such as the dismissal of judges must be based on clear legal provisions, including constitutional footing, laws and regulations, and appropriate moral values.

The great authority possessed by Constitutional Court Judges as protectors of constitutional rights and enforcers of

law. In this context, Article 24C Paragraph (1) of the 1945 Constitution authorizes the Constitutional Court to examine laws against the Constitution, decide disputes over the authority of state institutions, decide on the dissolution of political parties, and decide disputes over the results of general elections. The article shows that the Constitutional Court has broad jurisdiction and its decisions are final. In addition, referring to Article 24 Paragraph (1) of the 1945 Constitution, the judicial power is an independent and independent power. This principle is one of the main pillars in the democratic system and the rule of law. This shows that Constitutional Court judges must carry out their duties independently and must not be intervened by factors other than institutions. M. Shepherd's opinion on the importance of the independence and impartiality of the judiciary as part of the checks and balances mechanism is relevant. In a healthy system of government, the existence of a judiciary that is independent and free from interference by political forces can ensure that executive and legislative powers are not abused and the law is enforced fairly. Paul Scholten's statement on the importance of the law being implemented as it should be also holds true. Laws only have meaning and power if they are enforced with consistency and fairness. If decisions or actions that contradict legal norms are taken, then it can undermine the legitimacy of the law itself. In the context of the dismissal of judge Aswanto by the DPR, there is a discrepancy with the applicable legal norms. If the authority to dismiss Constitutional Court judges rests with the President, then the unilateral decision of the DPR is not in accordance with applicable legal provisions.

The removal of a Constitutional Court judge and the role of Commission III of the House of Representatives in this matter is important in the context of maintaining the balance of power between state institutions. As an institution responsible for oversight of executive power, the DPR has a role in supervising judicial institutions, including the Constitutional Court. However, in carrying out its supervisory duties, the DPR must remain within the limits of authority stipulated in the law and maintain the independence and independence of the judiciary. The dismissal of Constitutional Court judges must follow the rules set out in the law. If dismissal is only proposed by the DPR, then the subsequent process usually involves the executive and the Constitutional Court itself. Thus, the final decision on the dismissal of Constitutional Court judges is not entirely the domain of the legislature. There is a view that constitutional judges often change or cancel legal products made by the DPR. The decision of a constitutional judge to annul a legal product must be based on considerations of the constitutionality and validity of the law concerned, not solely on the basis of political reasons or emotional disappointment. In the case of the dismissal of judge Aswanto, there are concerns that the action was taken without a clear legal basis. If there is no regulation governing the process of dismissing a Constitutional Court judge, then the validity of the action can be questioned in terms of constitutionality. The attempt to report the Chairman of Commission III of the DPR to the Court of Honor (MKD) is a step that can be taken to question

actions taken without a clear legal basis. However, it should be noted that the success of this step in restoring the dignity of the constitution depends on the process and decision taken by MKD.

The action taken by the DPR in removing Justice Aswanto and appointing Guntur Hamzah as Secretary General of the Constitutional Court, on the grounds that Justice Aswanto often corrects the DPR's legal products, could have adverse implications in the future. The action could set an example for other institutions that have the authority to "nominate" Constitutional Court judges to take similar steps that are not in accordance with the principles of independence and impartiality. The Constitutional Court, as the highest institution in the constitutional justice system, does have a very important role in maintaining the validity of the law and constitutional principles. The view that the Constitutional Court is a "supreme body" is based on its broad and crucial role in deciding inter-institutional disputes, presidential impeachment, and its binding and final decisions. In maintaining the integrity and impartiality of the Constitutional Court, it is important for the DPR or other institutions involved to carefully consider the consequences and impact of their actions on the institution. Unethical treatment and political interference with the Constitutional Court can undermine its impartiality and weaken public trust in the institution. Therefore, it is important for all parties concerned to understand the importance of maintaining the independence of the Constitutional Court and ensuring that decisions are made based on objective legal considerations and in accordance with constitutional foundations.

#### IV. CONCLUSION

Based on the explanations that have been presented, it can be concluded that the DPR's decision to dismiss Judge Aswanto as a constitutional judge has no strong legal basis. The decision appears to be more of a political attempt to intervene in the judiciary. The reason given by the DPR, using the analogy of a corporation and a board, is not legally acceptable. Furthermore, this policy could lower the reputation of the Constitutional Court as the guardian of the constitution. It could create a bad precedent in the future, where other institutions that have the authority to "nominate" MK judges may follow suit. Regarding policies that may be considered to have no strong legal basis or are not based on objective and logical reasons. In a good legal system, policies or actions taken by the government or state institutions must be guided by a legal basis and appropriate procedures. If the replacement of constitutional judges is carried out without an adequate legal basis or without objective and logical reasons, it can certainly raise concerns about violations of the independence of the judiciary and the principles of the rule of law. It is important to maintain the integrity and independence of the Constitutional Court as a constitutional judicial institution that has a crucial role in maintaining the validity of law and constitutional principles.

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