



Evaluating Alleged Political Influence And Intervention in Constitutional Court Rulings as Political Machines

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Abstract

According to the 1945 Constitution of the Republic of Indonesia, the fourth paragraph of the preamble mandates that the government protect the entire nation and all of Indonesia's blood as an embodiment of the fifth principle, "Social Justice for All the People of Indonesia." This means that the Indonesian state is a state of law, and the government is tasked with putting this mandate into practice. It governs the Constitutional Court in its dual roles as the judicial branch and the defender of the constitution. In the event that a law contains provisions that are unconstitutional (against the constitution), the court has the authority to declare such law to be unenforceable in its whole or in part. It is inappropriate to utilize the Constitutional Court as a vehicle for authority because its purpose is to maintain balance between the power of the legislature and the executive branch of government to ensure that none is used arbitrarily. by removing the independence of judges, particularly in instances involving the government. The purpose of this study is to evaluate the morality and power of independent, free constitutional judges. The research method used is normative juridical, with a statutory and regulatory approach and a conceptual approach.

Keywords: *Constitutional Court; Politicization; Political*

Introduction

The development of the concept of the rule of law is a product of history. The formulation of the meaning continues to develop following the history of the development of society in the state. The concept of a rule of law is related to the term nomocracy (nomocratie) or legal sovereignty, which means that the determinant in the exercise of state power is law. The purpose of a rule of law is that the implementation of government power must be based on the law, not the order of the head of state. The state and other institutions, in whatever action they take, must be based on the law and be legally accountable. The power to run a government is based on legal sovereignty (the rule of law) and aims to maintain legal order. Constitutional complaints can be filed when there are actions or omissions by public officials that result in violations of the constitutional rights of citizens, both individually and as a group. Violations of legal norms occur when actions that are contrary to the 1945 Constitution can be subject to judicial review or testing at the Constitutional Court (MK). The Constitutional Court is the only state institution that has constitutional authority to interpret and monitor the purity of the Constitution. Because

of this, the Constitutional Court is called the sole interpreter of the constitution and the guardian of the constitution (Sadzali, 2022).

The Constitutional Court is a court of first and final level whose decisions are final and binding, so that within the limits of reasonable reasoning, when the content of the article, paragraph, and/or part of the law is clearly in conflict with the 1945 Constitution and has been annulled by the Court, of course it does not need to be revived. In the draft law because it clearly does not have binding legal force. Independence and impartiality in judicial power are characteristics of the existence of a legal state. So, a free and impartial judiciary is related to the existence of independent judicial power. Provisions regarding the independence of judicial power were then developed in the Basic Principle on the Independence of the Judiciary, which states that the independence of judicial power includes the main elements in court decision-making, namely impartiality and freedom of influence from outside. Judicial power is an independent power that emphasizes law and justice. Thus, impartiality has a very significant influence, especially on the Constitutional Court. We all know that the Constitutional Court is the true embodiment of justice. Because if regulations made by the legislature and the executive violate the values contained in the constitution and also found in social life, the Constitutional Court is present to correct the products made by these two institutions in order to create the desired legal goals (Muabezi, 2017).

So that arbitrary actions by the authorities do not happen again, there must be a separation of power between state administration institutions (separation of power) into three institutional parts, namely the legislative body (regulator), the executive body (implementing regulations), and the judicial body (enforcing regulations). It cannot be denied that the desire to guarantee the independence of judicial power cannot be separated from the bad experience of judicial institutions, which have long been confined by government domination under guided democracy and the New Order (Rishan, 2016). Therefore, political influences are very strong, both from the legislature and the executive. This political influence can occur because, from the moment the judges are appointed, there has also been politicization. Minimizing the role of the President and the DPR in selecting and appointing judges is a form of effort to prevent politicization of the selection and appointment of judges. Conceptually, the politicization of the appointment of prospective judges often results in retaliation for the services of the elected prospective judges towards certain political interests of the President and the DPR. Therefore, to prevent the entry of political interests into prospective judges, independent state institutions were introduced to build a more meritorious process for the selection and appointment of judges.

Based on the description above, this researcher will focus on finding out the ethics and authority of free and independent constitutional judges, looking more closely at the problems that arise due to the independence of the Constitutional Court institution.

Research methods

The type of research used in this research is normative law (Soekanto & Mamudji, 2015). Using primary and secondary legal materials and tertiary legal materials as supporting materials. In connection with the type of research used, normative legal research (Marzuki, 2008), several approaches to the problem will be used in this study, as follows: The statutory approach, the conceptual approach, the philosophical approach, the comparative approach, and the case approach are all examples.

Results and Discussion

The Constitutional Court (MK), which was formed in 2003, has influenced legal and constitutional developments in Indonesia. The Constitutional Court's decisions surprised many parties and encouraged national and state life to be more dynamic. The Constitutional Court's judicial review authority is to examine and decide on the constitutionality of a law. Judicial review exists as a

consequence of the tiered and layered system of legal norms (*stufentheorie*), as stated by Hans Nawiasky (Simamora, 2014). In this way, the Constitutional Court implemented the principle of checks and balances (monitoring and balancing) in the formation of laws (Firdaus et al., 2023). This is as quoted from Hans Kelsen's statement as follows: "recognized the need for an institution with power to control or regulate legislation," meaning the Constitutional Court was formed in response to the need for a branch of power capable of controlling or supervising the formation of legislation.

The walls of the Indonesian state have collapsed following ethical violations by constitutional judges; free judicial power has been marred by greed and lust for power, so that there are no longer any checks and balances. Restoring the spirit of the constitution is not an easy task because the public will no longer trust the Constitutional Court as an institution to guard the constitution. The Constitutional Court (MK) is one of the institutions that was born as a product of the reform years and was formed through amendments to the 1945 Constitution so that there would no longer be deviations from the state constitution, and with checks and balances, the government system would be in accordance with good government. Because basically, the accumulation of power on one hand will have the potential for corruption, as per Lord Acton's adage, "Power tends to corrupt; absolute power corrupts absolutely." The 1945 Constitution mandates that the constitutional rights of citizens are in the hands of the Constitutional Court, which represents the judicial power in deciding election disputes, dissolving political parties, examining both formal and material legal products, and providing opinions to the People's Representative Council (DPR). related to alleged violations committed by the President and/or Vice President (Ramadan et al., 2022).

Supervision of constitutional judges is less effective because supervision through the Honorary Court of the Constitutional Court (MKMK) is ad hoc and limited, so it is necessary to restore the role of the Judicial Commission (KY) as supervisor of constitutional judges so that it runs effectively and efficiently in order to maintain the honor and dignity of judges. . Internal supervision is not effective, so there is a need for external supervision in accordance with the theory of checks and balances because of the potential for arbitrariness. Constitutional judges' violations are determined by the MKMK, and if they are proven to have violated the code of ethics, the code of ethics, they are obliged to be dismissed from their position if there is a serious violation, to impose a verbal warning if the violation is minor, or to rehabilitate their position if they are not proven to have violated the code of ethics. Violations of law and ethics by constitutional judges are a form of exceeding authority (abuse of power) in addition to non-performance of internal supervision, thereby compromising the dignity of judges and requiring more optimal external supervision (Mardiya, 2017).

For this reason, a special organ can be created, such as a special court called the Constitutional Court, or control over the constitutionality of laws (judicial review) can be given to ordinary courts, especially the Supreme Court. The special organ that controls this can completely abolish the law, which is unconstitutional, so that it cannot be applied by other organs. Meanwhile, if an ordinary court has the competence to test the constitutionality of a law, it may only be in the form of refusing to apply it in a concrete case when it declares that the law is unconstitutional, while other organs are still obliged to do so. implementing it. The existence of the Constitutional Court is very important and has a very strategic position in relations between institutions from other branches of power (Subiyanto, 2016).

Indonesia, as a legal state whose aim is to provide welfare for society, cannot be separated from efforts to realize justice. In a legal state, justice is the main and fundamental element that is structural and abstract. In line with this, Gustav Radbruch said that law must be able to embody three basic values, consisting of the value of certainty, the value of usefulness, and the value of justice. Various efforts to realize justice have been carried out by the Indonesian state through its government by fulfilling legal substance in the form of statutory regulations and by providing legal structures in the form of court institutions, which are often referred to as the last bastion of law enforcement in order to achieve justice. However, sadly, as the last bastion, the courts are often sidelined by the personal interests of law

enforcers, litigants, and the general public. Therefore, the presence of an impartial and independent judiciary is a core foundation for the building of a modern legal state. The implication of this principle is that no interests should influence judges in carrying out their judicial duties, including office (political) interests or economic interests.

Independence and impartiality in judicial power are characteristics of the existence of a legal state. So, a free and impartial judiciary is related to the existence of independent judicial power. Provisions regarding the independence of judicial power were then developed in the Basic Principle on the Independence of the Judiciary, which states that the independence of judicial power includes the main elements in court decision-making, namely impartiality and freedom of influence from outside. Judicial power is an independent power that emphasizes law and justice. Thus, impartiality has a very significant influence, especially on the Constitutional Court. We all know that the Constitutional Court is the true embodiment of justice. Because if regulations made by the legislature and the executive violate the values contained in the constitution and also found in social life, the Constitutional Court is present to correct the products made by these two institutions in order to create the desired legal goals (Muabezi, 2017).

The existence of independence cannot be separated from accountability in the form of inherent supervision. The supervision of judges was previously carried out by the Supreme Court, but it was not effective because it was internal and impromptu when there was a case and without any public involvement. The weak supervision of judges is exacerbated by the absence of relationships between institutions related to the liaison institution between the executive and the judiciary, in addition to disrupting the efficiency and effectiveness of judicial power institutions because there is no good governance where supervision is carried out by the institutions themselves. So after the amendment to the Constitution In 1945, an organ institution was formed whose task was to uphold the dignity of judges, namely the Judicial Commission (KY), whose position is equal to that of the Supreme Court (MA) and Constitutional Court (MK), but without having strong authority, it is limited to recommendations to the Supreme Court that are not binding and are limited to considerations. without giving more meaning (complementary in nature). Ni'matul Huda said that the less harmonious relations between institutions meant that the weakening of the KY was increasingly evident with the MKRI decision Number 005/PUU-IV/2006 that the KY had no authority to supervise the MK so that the MK had an impartial and independent position; however, this exceeded the MK's authority (*ultra petita*) by deciding for its own interests, which makes the Constitutional Court a super body institution and potentially full of high interests, so that external supervision is needed because it turns out that many constitutional judges are caught in the law due to the weakness and passiveness of the Constitutional Court's ethical monitoring institution (Rishan, 2016).

In addition to the many abuses of authority and conflicts of interest, it was also found that constitutional judges used this institution as an extension of executive power as a result of ethical politics when recruiting constitutional judges by the President and the DPR. Even though the position of a constitutional judge must be free from the politics of retaliation, regulators must not take advantage of the politics of retaliation as a reward for appointing a judge because the appointment process is a statutory mandate. After becoming a judge, you must adhere to the principles of independence and impartiality. There are no more Constitutional Court judges. Delegations from the President, the DPR, and the Supreme Court all work as strongholds for the country's constitution.

Departing from the problem above, in fact, the Constitutional Court has long been used as a political vehicle for the authorities. For example, regarding the Constitutional Court decision Number 91/PUU-XVIII/2020 concerning the Omnibus Law, in this decision the Constitutional Court explicitly instructed law makers to improve the law. omnibus law. However, the legislators, namely the President and the DPR, did not comply with the decision, even though we all know that the Constitutional Court's decision is final and binding, meaning that it is legally obligatory to comply with the decision. The President and the DPR seem to have ignored the final and binding nature of the Constitutional Court's

decision. The President chose to issue a Perppu rather than comply with the Constitutional Court's decision, even though there was no legal vacuum. On the other hand, the DPR did not comply with the Constitutional Court's decision; they chose a quicker alternative, namely making improvements to the regulations for the formation of laws and regulations.

The construction of our legal politics has recently been in an emergency situation, stemming from law makers not complying with judicial decisions, many legal products being created immediately in the interests of the authorities, and ignoring the legal objectives that have been aspired to so far. Not to mention, there is retribution involved in maintaining a position of power. October 16, 2023, is the nation's bad history regarding our legal politics. From the beginning of the formation of the Constitutional Court until this year, during President Jokowi's government, the Constitutional Court's decision changed in just an instant, and it could be said that the politicization was too strong, where in the previous decision it was decided that it was an open legal policy. . Impartiality: neutrality is an inherent principle of judges, including constitutional judges, in order to uphold justice for the litigants in the Constitutional Court panel, and if there is a conflict of interest, the judge must resign from examining the case submitted, unless this results in the quorum not being fulfilled to conduct trial, so that whatever the Constitutional Court's decision can be accepted by all parties, including the public (Susanti, 2017).

For this reason, to restore the dignity of the Constitutional Court, it is necessary to have an attitude of integrity and independence from constitutional judges, regardless of where they are proposed from. When they become constitutional judges, everything must be ordained for the interests of the nation and state, so that the existence of the last bastion of the constitution can be in accordance with the ideals. the ideals of the constitution, namely Article 24 of the 1945 Constitution. 34 It is not an easy thing to restore the image of the Constitutional Court, but it is not impossible as long as we believe and make maximum efforts from the constitutional judges. The existence of the Constitutional Court Honorary Council (MKMK) in enforcing the ethics of constitutional judges who are suspected of violating judge ethics. Apart from that, the role of stakeholders who have integrity is to continue to guard the nation and state. In addition, independence, impartiality, and integrity, as well as the integrity and cohesion of constitutional judges, must be the main concern and continue to be maintained.

Conclusion

Judicial ethics is the heart of a judicial institution in order to emphasize the impartiality of judges who hear cases. If a judge violates judicial ethics or the ethics of constitutional judges, then the judge is obliged to be dismissed because he has harmed the dignity of the judiciary, which is steeped in impartiality as emphasized in the code of judicial ethics as explained above. The Constitutional Court should not be used as a vehicle for authority because it was formed to balance the authority of two state institutions, namely the executive and the legislature, so that there is no arbitrariness in exercising their authority. The axis of justice actually rests on the Constitutional Court as the guardian of the Constitution, meaning all products created by legislators, and if these products conflict with the values of justice, then the Constitutional Court is present to correct the product. However, if the Constitutional Court is used as a vehicle for power, injustice will increasingly appear in this country.

References

- Firdaus, M. R., Hijriyah, R. L., & Huroiroh, E. (2023). Judicial Preview Sebagai Mekanisme Preventif Terhadap Ketidakpastian Hukum Akibat Putusan Inkonstitusional Bersyarat Oleh Mahkamah Konstitusi. *Sosio Yustisia: Jurnal Hukum Dan Perubahan Sosial*, 3(1). <https://doi.org/10.15642/sosyus.v3i1.364>.

- Mardiya, N. Q. (2017). PENGAWASAN PERILAKU HAKIM MAHKAMAH KONSTITUSI OLEH DEWAN ETIK. *Jurnal Hukum Dan Peradilan*, 6(1). <https://doi.org/10.25216/jhp.6.1.2017.25-40>.
- Marzuki, P. P. M. (2008). Penelitian Hukum. *Penelitian Hukum*, 35.
- Muabezi, Z. A. (2017a). NEGARA BERDASARKAN HUKUM (RECHTSSTAATS) BUKAN KEKUASAAN (MACHTSSTAAT). *Jurnal Hukum Dan Peradilan*, 6(3). <https://doi.org/10.25216/jhp.6.3.2017.421-446>.
- Muabezi, Z. A. (2017b). Negara Berdasarkan Hukum (Rechtsstaats) Bukan Kekuasaan (Machtsstaat): Rule Of Lae and Not Power State. *Jurnal Hukum Dan Peradilan*, 6(3).
- Ramadan, W. A., Nusantara, I. A. P., & Mitasari, T. (2022). REFORMULASI PENGAWASAN MAHKAMAH KONSTITUSI DEMI MENINGKATKAN EFEKTIVITAS PENEGAKAN KODE ETIK HAKIM KONSTITUSI. *Jurnal Studia Legalia*, 3(02). <https://doi.org/10.61084/jsl.v3i02.29>.
- Rishan, I. (2016). Redesain Sistem Pengangkatan dan Pemberhentian Hakim di Indonesia. *Jurnal Hukum IUS QUIA IUSTUM*, 23(2). <https://doi.org/10.20885/iustum.vol23.iss2.art1>.
- Sadzali, A. (2022). Peranan Mahkamah Konstitusi dalam Mewujudkan Demokrasi Substantif pada Pemilu 2024 melalui Penegakan Hukum Progresif. *As-Siyasi: Journal of Constitutional Law*, 2(2). <https://doi.org/10.24042/as-siyasi.v2i2.14948>.
- Simamora, J. (2014). ANALISA YURIDIS TERHADAP MODEL KEWENANGAN JUDICIAL REVIEW DI INDONESIA. *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 25(3). <https://doi.org/10.22146/jmh.16079>.
- Soekanto, S., & Mamudji, S. (2015). Penelitian hukum normatif: suatu tinjauan singkat. In *Jakarta: PT Raja Grafindo Persada* (17th ed.). Rajawali Pers.
- Subiyanto, A. E. (2016). Perlindungan Hak Konstitusional Melalui Pengaduan Konstitusional. *Jurnal Konstitusi*, 8(5). <https://doi.org/10.31078/jk854>.
- Susanti, B. (2017). The Constitutional Court and Democracy in Indonesia. *Bulletin of Indonesian Economic Studies*, 53(1). <https://doi.org/10.1080/00074918.2016.1239310>.

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