

The Dismissal of Constitutional Court Judges by the House of Representatives from the Perspective of Separation of Powers

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Abstract: The power of the House of Representatives to remove constitutional judges is discussed and analyzed in this article. It examines how the House of Representatives carries out its oversight role and if that includes assessing constitutional judges. The House of Representatives' dismissal of constitutional judges is also demonstrated by actual examples in this article.

Purpose: From the perspective of the separation of powers, this research aims to investigate and evaluate the House of Representatives' action in dismissing constitutional judges.

Design/Methodology/Approach: A legislative, conceptual, and case approach using a legal research technique is employed in this analysis. Primary and secondary legal resources constitute the legal materials utilized.

Findings: The findings of this investigation demonstrate that the DPR lacks the authority to fire Constitutional Court judges, regardless of whether it be via an evaluation or via any other method. Constitutional Court judges, who are chosen and appointed by the President, must continue in their role until their term expires, unless they are no longer qualified as per the Law on the Constitutional Court. The model of DPR supervision of Constitutional Court Judges, as described in Article 228A of DPR Regulation No. 1 of 2025, is unconstitutional. The oversight

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model violates the 1945 Indonesian Republic Constitution, the Constitutional Court Law, Constitutional Court Decision 103/PUU-XX/2022, the separation of powers, the lawmaking, independence, and authority principles.

Originality/value: This research is highly original and innovative. This is because the author explores the issue from the perspective of separation of powers. The findings of this article contribute to the implementation of constitutional judges' independence.

Keywords: dismissal of constitutional judges; authority of the People's Representative Council; constitutional law

Paper Type: article-research

Introduction

Indonesia is among the nations that follow the separation of powers theory. Authority within the state is allocated to three primary branches: the legislative, executive, and judicial branches. This distribution of authority relies on the principle of separation of powers, which aims to establish a system of checks and balances between governmental institutions, ensuring that no single entity holds too much power. In this context, the judicial branch plays a crucial role as it carries out independent and sovereign judicial power to uphold laws and justice, as outlined in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, commonly referred to as the 1945 Constitution. The principle of independence mentioned here forms the cornerstone of a contemporary constitutional state where the law governs authority.

A key judicial organization is the Constitutional Court, often abbreviated as MK. The creation of the MK following the third amendment of the 1945 Constitution of the Republic of Indonesia in 2001 marked a significant step in safeguarding constitutional authority and preventing the misuse of power. The MK possesses the power to evaluate laws in relation to the 1945 Constitution, adjudicate disputes regarding authority among state bodies, resolve electoral conflicts, determine the disbandment of political

parties, and decide on assessments made by the House of Representatives regarding potential misconduct by the President and/or Vice President. To fulfill this role, the Constitutional Court is made up of nine constitutional judges who are appointed by the President, the Supreme Court, and the House of Representatives, with three judges from each entity, as stated in Article 24C paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

The process for selecting judges for the Constitutional Court includes a suitability test carried out by the House of Representatives. The goal is to make sure that the candidates have good morals, outstanding character, and a strong grasp of the constitution and government practices (refer to Article 24C paragraph (5) of the 1945 Constitution of the Republic of Indonesia). This procedure shows the monitoring role of the DPR as stated in Article 20A of the 1945 Constitution of the Republic of Indonesia, which empowers the DPR to oversee how laws are followed and how the state budget is spent. Therefore, the DPR's role in choosing constitutional judges is part of the system of checks and balances between the legislative and judicial parts of the government.

As time has gone by, the changes in state politics have brought to light significant problems related to the authority of the House of Representatives over constitutional judges, especially concerning the practice of removing judges before their term ends. The removal of Constitutional Judge Aswanto by the House of Representatives in 2022 serves as a clear example from Indonesia. This event led to much discussion about the limits of the DPR's power and the risk of undermining the principle of judicial independence. This action raised alarms that constitutional judges might lose their job security, which could make them vulnerable to political pressure that might affect their ability to make fair decisions in cases (Hong et al. 2023).

The DPR contended that Aswanto's position, as shown in his decisions, frequently failed to align with the goals of the DPR as the initiating body. This was especially relevant when he decided to revoke the Job Creation Law. This event was very political, and the DPR had the chance to misuse its authority, which could endanger the independence of the Constitutional Court. This creates an opportunity for political interference in the constitutional judicial process, resulting in judges no longer being able to evaluate the constitutionality of laws based on objective factors and legal principles. Instead, they may be subjected to pressure from groups that believe they possess political power over them, which could jeopardize the integrity of judicial evaluations within the context of fair and unbiased law (Ramadhan and Asril 2022).

This topic is important for examination as it pertains to the relationships between different agencies and the boundaries of power each government branch possesses. Within the framework of Indonesian constitutional law, which supports democratic principles and the supremacy of the constitution, every state institution is required to use its power in a balanced manner, refraining from overpowering others, and must always act in accordance with constitutional principles. If the DPR's power to remove constitutional judges is not explicitly restricted, it may lead to an uneven distribution of power and establish a negative example for the judiciary's independence (Sabrina and Khalid 2023).

Concerns regarding the autonomy of the Constitutional Court have emerged following the release of Regulation Number 1 of 2025 by the House of Representatives of the Republic of Indonesia. This regulation pertains to amendments of House Regulation Number 1 of 2020, which outlines the Rules of Procedure (hereinafter referred to as House Regulation No. Please provide a text for me to rephrase. This regulation updates the

earlier regulation by incorporating Article 228A, which states: "To enhance the supervisory role and uphold the dignity of the DPR concerning the outcomes of commission discussions as mentioned in Article 227 paragraph (2), the DPR may regularly assess candidates approved in a plenary meeting." This provision grants the DPR the power to assess all positions that require a fit and proper test in the DPR, which includes the role of a judge in the Constitutional Court. This new system allows the DPR to remove constitutional judges during their term of office. Indeed, this practice may infringe upon the principles of independence, the separation of powers, and the rule of law (Riqiey and Khatami 2025).

In addition, the impact that may occur after the enactment of DPR RI Regulation 1/2025 is that Constitutional Court judges may be concerned about taking an objective stance when deciding a case. This is because, politically speaking, they must also consider the proposing institution, whether it is in line with the proposing institution or not. Such a situation should not occur in a modern constitutional state. Constitutional Court judges, in exercising their constitutional authority, must always be protected from interference, whether external or internal. In fact, various constitutional law literature states that the principle of judicial independence is a fundamental principle that must be upheld (Windy Rizky Putri, M 2025).

This authority then sparked controversy among academics, legal practitioners, and civil society. On the one hand, the DPR argued that as an institution with constitutional authority to appoint constitutional judges, it logically also had the right to evaluate and dismiss the judges it had proposed. The DPR reasoned that this measure was a form of public accountability, given that the DPR was the representative of the people and had a responsibility to ensure that state officials elected through the

political process maintained their integrity and professionalism while in office (Sabrina dan Khalid 2023).

The House of Representatives' practice of sacking Constitutional Court judges in the middle of their terms might have severe repercussions in light of the aforementioned issues, since it may jeopardize the independence of judges in performing their duties, erode public trust in the Constitutional Court's rulings, and cast doubt on the impartiality and integrity of the judicial system. Additionally, this behavior may be viewed as a breach of constitutional regulations regulating the process for removing judges, which would pave the way for political meddling that would undermine the values of democracy and the rule of law in Indonesia. The legitimacy of the Constitutional Court as a body responsible for enforcing the constitution may suffer as a result, which could cause a crisis of public confidence in the judiciary as a whole. As a result, this research seeks to use relevant theories to answer questions and offer input for future practices, with the goal of ensuring that all constitutional practices, including the removal of Constitutional Court judges, continue to adhere to the rules and regulations, respect the principle of legal certainty, and uphold the fundamental values that govern the relationship between state institutions (Silvanie, Gusman, and Farda 2023).

Methods

The method employed by the author to address this legal matter involves the legal research approach (Marzuki 2021). The strategies implemented in this investigation include regulatory, conceptual, and case-related techniques. For this study, both primary and secondary legal resources were utilized. Primary legal sources were gathered using inventory and categorization techniques, while secondary legal sources were sourced through literature research methods. Once all primary and secondary legal resources were gathered, the subsequent step was to identify,

categorize, and methodically arrange them according to their origins and levels. Finally, all legal materials underwent a review and analysis through legal reasoning utilizing the deductive approach.

Discussion and Findings

The creation of the People's Representative Council (DPR) is closely tied to the lengthy journey of establishing a modern Indonesian nation, especially from the national movement era to the adoption of the 1945 Constitution of Indonesia (Riqiey and Huda 2024). The DPR stands for the idea of popular sovereignty, meaning that the highest authority belongs to the people and should be acted upon through their elected representatives. It is a historical, political, and legal entity that has progressively evolved alongside the changes in Indonesian society. The concept of a representative body began to take shape in the early 1900s when the Dutch Colonial Government created the Volksraad in 1918. While the Volksraad was not a complete legislative body and served mainly as a consultative group, it marked the start of a political platform where local leaders could express the concerns of the people. Influential individuals like Mohammad Husni Thamrin and Tjipto Mangoenkoesoemo demonstrated that there was a strong realization among nationalists for the necessity of such representative bodies. The Volksraad became a key venue for promoting the concept of self-rule, which later evolved into calls for independence (Suryawan 2020).

The DPR was first recognized as an official organization during the Republic of the United States of Indonesia (RIS) in 1950, when the country adopted a parliamentary system. However, the DPR established under the 1950 Constitution was only a temporary measure. A significant change happened after the Presidential Decree on July 5, 1959, which restored the 1945 Constitution of Indonesia, leading to the restructuring of the DPR according to the constitutional rules. Throughout the Old Order

and New Order periods, the DPR underwent a phase of political influence and executive control, yet it continued to represent the people, despite its powers being quite limited. The 1998 reforms marked a turning point for the DPR. With four amendments made to the 1945 Constitution of Indonesia (from 1999 to 2002), the role of the DPR was notably enhanced. These amendments established that the DPR has the authority to create laws, monitor the government, and manage the budget. The reforms also curtailed the excessive powers of the president and eliminated the dominance of civil servants who had previously occupied the DPR chairs. Since that time, the DPR has developed into a truly independent, democratic legislative assembly representing the will of the people (Eko 2009).

Article 20A of the 1945 Constitution of the Republic of Indonesia is a recent addition that was established by the Second Amendment to the 1945 Constitution of the Republic of Indonesia in the year 2000. This amendment was officially enacted during the Annual Session of the People's Consultative Assembly on August 18, 2000. Before the amendment, the 1945 Constitution of the Republic of Indonesia lacked clear sections that specifically outlined the roles, rights, and responsibilities of the House of Representatives (DPR). This gap placed the DPR in a vulnerable position relative to the President within the constitutional framework (Sujana 2024).

The creation of Article 20A is closely linked to the requests made during the 1998 Reform, which stressed the importance of reducing presidential authority (which was too strong) and enhancing the role of the legislature. During the New Order period, the DPR functioned primarily as a “rubber stamp” for the government since the majority of laws were created by the executive branch, and the DPR lacked significant oversight. To address this issue, the modification of the 1945 Constitution of the Republic of Indonesia sought to create the DPR as a robust,

representative legislative institution capable of monitoring the government (Riqiey and Khatami 2025).

The supervisory function is one of the duties outlined in Article 20A paragraph (1) of the 1945 Republic of Indonesia Constitution. The power to perform fit and proper assessments on applicants for the Constitutional Court (MK) is one practical manifestation of the supervisory role of the House of Representatives (DPR). As a result, the power to determine whether candidates are qualified and appropriate for the Constitutional Court is an expression of this supervisory role, allowing the DPR to ensure that candidates meet the standards of integrity, professionalism, and independence expected of a constitutional judge.

The DPR's implementation of fit and proper tests also has a crucial constitutional aspect in the context of checks and balances. Judges of the Constitutional Court, a judicial body with significant authority, such as the ability to rule on election disputes, review legislation, and decide conflicts regarding the authority of state institutions, must have a high level of statesmanship as well as legal expertise. Thus, the DPR participates in the selection procedure for judge candidates as a means of political supervision to ensure the constitutional court's quality and accountability (Sakti and Yusuf 2022).

In 2025, DPR Regulation No. 1 of 2025 pertaining to Amendments to DPR Regulations on Rules of Procedure was passed. The substance of this rule just introduces Article 228A, which is put between Articles 228 and 229, but it doesn't significantly alter the overall framework of the previous rules of procedure. When we carefully examine considerations a and b in DPR Regulation No. 1 of 2025, it becomes clear that the foundation for the passage of this legislation is the necessity to improve the DPR's supervisory role as a representative body of the populace,

especially in holding public officials accountable who are elected through the DPR mechanism.

Article 228A of DPR Regulation No. 1 of 2025 states that the DPR is given the authority to evaluate certain state officials whose selection process is carried out through the DPR, including Constitutional Court judges. This evaluation is understood as an integral part of the DPR's supervisory function, so that its implementation is designed to reassess the commitment, integrity, professionalism, and suitability of the officials concerned in carrying out the constitutional mandate given to them. In other words, Article 228A introduces a new mechanism in the form of periodic reviews as an instrument of political oversight by the DPR over officials selected through a fit and proper test (Rifurio 2025).

Regarding the points mentioned earlier, it is evident that removing judges from the Constitutional Court while they are in office is permissible, as the DPR is authorized to conduct evaluations in line with Article 228A paragraph (1) of DPR Regulation No. 1 of 2025. This type of regulation could infringe upon Article 24 of Indonesia's 1945 Constitution, which upholds the autonomy of the judicial system. It allows the DPR the authority to review and potentially withdraw its support for appointed judges, leading to the risk of political influence over judicial matters. This situation clearly poses a threat to Article 24 of the 1945 Constitution of Indonesia, which distinctly protects the judiciary's independence, including that of the Constitutional Court in fulfilling its constitutional roles. Such potential political interference could disturb the separation of powers, diminish public confidence in the fairness and integrity of the Constitutional Court, and foster legal ambiguity, thereby jeopardizing the justice principles that the judiciary is meant to uphold.

*The Dismissal of Constitutional Court Judges by the House of Representatives from
the Perspective of Separation of Powers*

The evaluation of Constitutional Court judges by the DPR cannot be considered part of its supervisory function. This is because the supervisory function as referred to in Article 20A paragraph (1) of the 1945 Constitution of the Republic of Indonesia is limited to the DPR conducting a fit and proper test of candidates for Constitutional Court judges, not conducting periodic evaluations of Constitutional Court judges. In fact, when viewed from an administrative law perspective, the purpose of the oversight function is twofold, namely as a repressive measure and as a preventive measure. This is due to the fact that Article 228A of DPR Regulation No. 1 of 2025 does not fall under the category of oversight as stated in Article 20A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, but rather as a method adopted by the DPR that is suspected of being used to facilitate certain political interests.

With the provision of Article 228A of DPR Regulation No. 1 of 2025, the DPR is explicitly given the authority to withdraw candidates who have been determined in a plenary meeting. However, these positions are autonomous. This shows that after being determined by the DPR, there is no interference from other parties or recall if it is considered detrimental to the proposing institution. The provisions set forth in Article 228A of DPR Regulation No. 1 of 2025 have the potential to be overturned by the Supreme Court. This is because these provisions conflict with the law on the Constitutional Court (Riqiey dan Khatami 2025).

In addition, the provisions set forth in Article 228A of DPR Regulation No. 1 of 2025 contradict Article 24 of the 1945 Constitution of the Republic of Indonesia, which guarantees the independence of the Constitutional Court. In fact, the provisions set forth in Article 228A of DPR Regulation No. 1 of 2025 also contradict Constitutional Court Decision No. 103/PUU-XX/2022, which affirms that:

“... In the future, the dismissal of a constitutional judge before the end of his/her term of office can only be carried out for the following reasons: resignation at his/her own request submitted to the Chief Justice of the Constitutional Court, continuous physical or mental illness for 3 (three) months so that he/she cannot carry out his/her duties as evidenced by a doctor’s certificate, and dishonorably dismissed for reasons as stated in Article 23 paragraph (2) of the Constitutional Court Law. If there is a reason for dismissal during the term of office, the dismissal by the President will only be carried out after there is a letter of request from the Chief Justice of the Constitutional Court. Such an affirmation needs to be stated firmly because the process of replacing a constitutional judge by the proposing institution will only be followed up after there is a presidential decree regarding the dismissal of a constitutional judge before the end of his/her term of office. Within the limits of reasonable reasoning, the existence of clear and firm regulations regarding the possibility of dismissing a constitutional judge before the end of his/her term of office is intended to maintain independence and at the same time maintain the independence and independence of the judicial power. This means that actions taken outside the provisions of the norms of Article 23 of the Constitutional Court Law is not in line with the 1945 Constitution. This, apart from having the potential to damage and disrupt the independence of constitutional judges, actions outside these provisions also damage the independence or self-reliance of the judiciary as the main bulwark of the rule of law as stated in Article 1 paragraph (3) and Article 24 paragraph (1) of the 1945 Constitution”.

In view of the above considerations, Constitutional Court judges cannot be dismissed by anyone, including the House of Representatives, in future practice. This applies regardless of whether it is couched in the language of evaluation or otherwise. The above decision of the Constitutional Court clearly states that Constitutional Court judges can only be dismissed in accordance

with the law on the Constitutional Court. Any other method is prohibited. Therefore, if such a practice is found in the future, it is unconstitutional and can be brought before the State Administrative Court.

Conclusion

The enactment of DPR Regulation No. 1 of 2025 has given rise to new constitutional issues. This is because Article 228A of DPR Regulation No. 1 of 2025 states that evaluating Constitutional Court judges is part of the DPR's constitutional function. From an administrative law perspective, this supervisory function cannot be justified, whether viewed from a preventive or repressive standpoint or in terms of its usefulness. Moreover, when viewed from a constitutional perspective, it contradicts the 1945 Constitution of the Republic of Indonesia, the Law on the Constitutional Court, Constitutional Court Decision 103/PUU-XX/2022, the principle of separation of powers, the principle of legislation, the principle of independence, and the principle of authority. In view of this, DPR Regulation No. 1 of 2025 is not in accordance with the principle of separation of powers.

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*The Dismissal of Constitutional Court Judges by the House of Representatives from
the Perspective of Separation of Powers*

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