



Independence of Constitutional Judges in Realizing Justice Decisions

Nirmala Sari^(✉)

Faculty of Law, Universitas Jambi, Jambi, Indonesia
nirmalabungas@gmail.com

Abstract. The Constitutional Court was formed with the aim of functioning as an institution that is authorized to interpret the Constitution, resolve disputes between state institutions whose source of authority is from the constitution and make decisions regarding the dismissal of the President and/or Vice President. This study aims to analyze and discover the current recruitment mechanism for Constitutional Justices of the Republic of Indonesia; Designing the reconstruction of the recruitment of Constitutional Court Judges which reflects the independence of Constitutional Justices in Indonesia; and Analyzing and finding the independence of constitutional judges which have reflected fair decisions in Indonesia. This research is a type of normative legal research using a statute approach. Based on the analysis and elaboration of the independence of Constitutional Justices in Indonesia, the conclusions in this study are as follows: First, the recruitment principle becomes a benchmark in the selection of prospective constitutional judges conducted by each of the relevant state institutions. This causes the independence of the Constitutional Court Judges in holding their mandates and positions because they are loaded with political possibilities. Second, based on the results of the research, the researcher concludes that currently there is a need for reconstruction of the recruitment of Constitutional Court Judges which reflects the independence of Constitutional Justices in Indonesia only through the Supreme Court. The Constitutional Court is one of the perpetrators of Judicial power that is equal to the Supreme Court, and also parallel to other state institutions that hold executive and legislative powers. Third, the existence of political intervention in the Constitutional Court can be seen from the differences of opinion or views of constitutional judges on a problem. Differences in the views of constitutional judges are caused because each judge wants to show his contribution in every decision-making and because of different political choices.

Keywords: Constitutional Court · Judge Recruitment · Independence · Equitable Decisions

1 Introduction

The court is not the only place that administers justice. The definition of justice according to Sjachran Basah, is “everything related to the task of deciding cases by applying the law, finding the law in concreto in maintaining and guaranteeing compliance with material law, by using the procedural method stipulated by formal law” [1].

© The Author(s) 2023

D. A. Kurniawan (Ed.): GDIC 2022, ASSEHR 772, pp. 1233–1238, 2023.

https://doi.org/10.2991/978-2-38476-110-4_123

The importance of administering justice is related to legal certainty. Legal certainty is an effort to find a balance between various free wills that conflict with one another [2]. Van Kan said that the law aims to safeguard the interests of every human being so that these interests cannot be disturbed. As stated in Article 1 paragraph (1) of Law no. 48 of 2009 concerning judicial power, "judicial power is an independent state power to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the Indonesian Law State".

The provisions regarding the filling of Constitutional Justices are stated in Article 24C Paragraph (3) of the 1945 Constitution stipulates that: "The Constitutional Court has nine members of the Constitutional Court who are appointed by the President, three each by the Supreme Court, three by the House of Representatives, and three by the by the President". Article 24C Paragraph (6) of the 1945 Constitution stipulates that "The appointment and dismissal of Constitutional Judges, procedural law, and other provisions regarding the Constitutional Court are regulated by law".

However, the law does not clearly regulate the selection of constitutional judges, thus providing an opportunity for the Supreme Court, the People's Legislative Assembly, and the President as the institution proposing constitutional judges to carry out selections based on their own perceptions. Until now, the implementation of the selection of constitutional judges by the Supreme Court still tends to be carried out in a closed and internal manner, such as the submission of Suhartoyo and Manahan MP Sitompul in 2014 [3].

2 Methods

This research is a qualitative research using a case approach through the type of empirical juridical research. Case study is a qualitative method which the author feels can be used method that can describe the problem. Qualitative researchers too required to understand the theories to be used as material for elaboration with findings newest. In qualitative research it does not mean testing previous theories. It is possible that the previous theory that has been present will be taken into consideration ensuring the findings of researchers to have a value validity.

This study uses a systematic literature review method which is a way to evaluate and interpret all available research based on specific research questions, topic areas or phenomena. In this study, researchers searched data through portal-journal websites that could be accessed such as Google Scholar, electronic books and so on.

3 Result and Discussion

Ajaran pemisahan kekuasaan dari Montesquieu di inspired by John Locke's views in his "Two Treaties on Civil Government" and practice.

British constitution. According to [4] between three kinds of power, namely:

(1) LegislatiVe power; (2) The power to carry out matters (executive) in domestic affairs, which includes the Government and the Courts; and (3) The power to act against foreign interests in the interests of the state or the interests of the citizens of that country which Locke calls federative power.

Principles of Judicial Power.

The principles of administering judicial power include:

- a. The principle of justice is carried out simply, quickly and at low cost.
- b. The principle of equality before the law or the principle of judging according to the law without discriminating against people.
- c. The principle of a passive judge means that if there are no cases submitted to the judge, the judge is waiting for the case to be submitted to him.
- d. The principle of a judge may not refuse to examine and adjudicate a case submitted on the pretext that the law is not clear or unclear.
- e. The principle of judges is considered to know the law (*ius curia novit*)
- f. The principle of being open to the public, this principle is intended to further guarantee the objectivity of the judicial power unless the law determines otherwise.

The Judicial Commission is an independent institution that has the authority to propose the appointment of Supreme Court judges and other authorities in order to protect and uphold the honor, dignity and behavior of judges.

Independence of Constitutional Justices

Judges or courts, which are places for people to seek justice, must be independent, independent in the sense that they are not dependent on or bound by anyone, so that they do not have to side with anyone so that their decisions are objective. This independence also requires that the judge in examining and deciding cases must be free. Thus the independence of the judge cannot be separated from the freedom of the judge, but is an integral part [5].

Constitutional Judge Recruitment Mechanism In Indonesia Currently Applicable

Mechanism of Recruitment of Constitutional Justices of the Republic of Indonesia

The recruitment of constitutional judges must comply with the principles of transparency, accountability and professionalism. The mechanism for proposing the election of constitutional justices provided comes from three representatives of the Supreme Court (hereinafter referred to as the Supreme Court), three from the DPR (hereinafter referred to as the DPR), and three from the President. The recruitment process recommended by each state high institution is three authoritative centers in a system of checks and balances. The embodiment of substantive constitutional justice is to position the Constitutional Court as an institution that the public can rely on to obtain their constitutional rights [6].

The constitutional recruitment system has various characteristics as stipulated in laws and regulations. The provisions of Article 24C paragraph (3) of the 1945 Constitution of the Republic of Indonesia state that the Constitutional Court has nine member constitutional judges appointed by the President, three of whom are proposed by the Supreme Court, three by the People's Representative Council, and three by the President.

System for selecting constitutional judges in the constitutional system of the Republic of Indonesia.

Based on Article 20 (1), through the Selection Committee team (hereinafter referred to as the Pansel), direct appointment, even the existence of the Pansel Team as a formality.

Therefore, these norms need to be reconstructed to be more rigid. The selection standards put forward by three from the President, three from the DPR, and three from

the Supreme Court are official and formal in recruitment. Check and balance mechanisms between institutions are intended to supervise and control or complement each other [7].

Dynamics of Constitutional Justice Recruitment Patterns

Selection of Constitutional Justices in the DPR

As one of the institutions that is constitutionally given the authority to nominate constitutional judges, the mechanism for the recruitment and selection of constitutional judges in the DPR also needs to be scrutinized and analyzed. The selection process for constitutional judges in the DPR can be described as follows:

The process of recruiting constitutional justices consists of 9 (nine) stages, including:

- a. Ratification of the rules, mechanism and schedule of recruitment events;
- b. Screening the names of prospective constitutional judges;
- c. The DPR faction submits names to Commission II of the DPR;
- d. The Small Team led by the Deputy Chairman of Commission II of the DPR examines the administration of the names of the proposed constitutional judge candidates;
- e. Names that pass the selection will be published to the public as candidates for constitutional judges;
- f. The public can provide input to Commission II of the DPR regarding the candidate;
- g. Implementation of fit and proper tests;
- h. Election of candidates for constitutional judges by the DPR (voting); And
- i. The results of the election were ratified in a plenary session

Selection of Constitutional Justices in MA

The selection of constitutional judges at the Supreme Court which constitutionally also has the authority to nominate constitutional judges needs to be evaluated. Selection of constitutional judges by the Supreme Court both in the first period to the seventh period, the selection mechanism is carried out in various ways.

Selection of Constitutional Justices by the President

It is not only the selection process for constitutional judges in the DPR and the Supreme Court that raises problems, but also the recruitment and selection process carried out by the President. The selection process for constitutional judges is carried out in a closed manner [8].

Independence Of Constitutional Judges In Reflecting Justice Decisions In Indonesia. Criteria for Independence of Constitutional Justices.

- 1) Quality, Education and Diversity (Quality, Education and Diversity)
- 2) Judicial Powers
- 3) Sources of Funding/Budget (Financial Resources)
- 4) Organizational Sustainability Guarantees (Structural Safeguards)
- 5) Accountability and Transparency

Characteristics of Constitutional Court Decisions

The decisions of the Constitutional Court (MK) always follow developments in state administration and answer any problems raised by the Petitioners in the main points of their petition. In various decisions of the Constitutional Court, either with a resolution granted, rejected or even unacceptable or *niet ontvankelijk verklaard* (NO) there is a *ratio decidendi* which is important in upholding constitutional supremacy.

4 Conclusion

Based on the analysis and elaboration of the independence of Constitutional Justices in Indonesia, the conclusions in this study are as follows:

1. The Recruitment Mechanism of Constitutional Justices of the Republic of Indonesia Has Reflected the Independence of Constitutional Judges

The recruitment system is the main entry point for candidates for constitutional judges who are superior and with integrity. However, the recruitment of Constitutional Court judges by three state institutions (the President, the DPR and the Supreme Court) tends to vary. Uncertain, the President appoints judges and forms a team. The DPR conducts a fit and proper test followed by voting, while the Supreme Court conducts a closed selection [9].

2. Reconstruction of Recruitment of Constitutional Court Judges Reflecting the Independence of Constitutional Justices in Indonesia

Currently, it is necessary to reconstruct the recruitment of Constitutional Court Judges which reflects the independence of Constitutional Justices in Indonesia. Recruitment of Constitutional Court Judges which reflects the independence of Constitutional Justices only through the Supreme Court.

3. The independence of the Constitutional Court Judges Reflects Judgments that are Equitable in Indonesia.

The existence of political intervention in the Constitutional Court can be seen from the differences of opinion or views of constitutional judges on a problem. Differences of opinion from Constitutional Justices will be able to reduce the image of the Constitutional Court as the country's highest judicial institution.

1. Strengthen the independence and impartiality of constitutional judges in assessing and deciding cases.
2. Threats to independence can come from both state institutions and society.
3. Impartiality is impartiality in assessing and deciding problems.
4. Obtain constitutional justices who have integrity and personality that is beyond reproach, are just, and are statesmen.
5. Obtain constitutional judges who master the constitution and state administration.
6. Obtain constitutional judges who do not concurrently serve as state officials.

References

1. Ahmad Mujahidin, "Peradilan Satu Atap di Indonesia", Refika Aditama, Bandung, 2007.
2. C.S.T. Kansil dan Christine S.T. Kansil "Pengantar Ilmu Hukum Indonesia", Rineka Cipta, Jakarta, 2011.
3. H. Ahmad Kamil, "Filsafat Kebebasan Hakim", Prenada Media Group, Jakarta, 2012.
4. Josef M. Monteiro, "Lembaga-lembaga Negara setelah Amandemen UUD 1945", Pustaka Yustisia, Yogyakarta, 2014.

5. Moh. Kusnardi dan Ibrahim Harmaily, “Hukum Tata Negara Indonesia”, Pusat Studi Hukum Tata Negara FH UI. Jakarta, 1998.
6. Prodjodikoro Wirjono, “Azas-Azas Hukum Tata Negara di Indonesia”, Dian Rakjat. Jakarta Timur, 1983.
7. Sjachran Basah, “Mengenal Peradilan di Indonesia”, Raja Grafindo Persada, Jakarta, 1995.
8. Adonara, F. F, “Prinsip Kebebasan Hakim Dalam Memutus Perkara Sebagai Amanat Konstitusi. Jurnal Konstitusi”, 2016, 12(2), pp 217–236.
9. Winda Wijayanti, “Transparansi dan Partisipasi Publik dalam rekrutmen Calon Hakim Konstitusi, Jurnal Konstitusi”, 2015 Volume 12, Nomor 4, pp 666.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter’s Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter’s Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

