Indonesia Law Review

Volume 12 | Number 3 Article 1

12-21-2022

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Recommended Citation
Agus, Mochammad Arief and Alamsyah, Andi Muhammad Irvan (2022) "AN ANALYTICAL STUDY ON THE INTERVENTION OF THE LEGISLATURE TO THE CONSTITUTIONAL COURT IN INDONESIA COMPARED TO DEVELOPED COUNTRIES," *Indonesia Law Review*: Vol. 12: No. 3, Article 1.
Available at: https://scholarhub.ui.ac.id/ilrev/vol12/iss3/1

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Indonesia Law Review (2022) 3: 20 - 41
ISSN: 2088-8430 | e-ISSN: 2356-2129

AN ANALYTICAL STUDY ON THE INTERVENTION OF THE LEGISLATURE TO THE CONSTITUTIONAL COURT IN INDONESIA COMPARED TO DEVELOPED COUNTRIES

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Article Info

Received : 10 October 22 | Received in revised form : 27 November 22 | Accepted : 5 December 2022
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Abstract

Practical improvements in the national institution context brought numerous changes regarding interactions between The Constitutional Court & The legislature including contemporary polemics. The check and balances framework is important to be noticed related to the Judge's Independence. Aswanto's recall as one of the Judges of the Indonesian Constitutional Court encourages us to elaborate more about the essence of independence. At the same time, checks and balances should stand out. What is the legal standing of any actions taken by the parliament to the constitutional court? How do developed countries practice the relationship between the legislature and the judiciary? The answer should be clearly explained in front of the public. To answer those questions, comparative studies were also conducted on particular advanced developed countries concerning any relationship or interventions of the legislature to the Constitutional Court or any other highest level of judicial power. The existing method is normative-juridical, a research conducted by examining various formal legal rules, using secondary data obtained through document studies or literature studies and sharpen with comparative approaches. Nevertheless, the final conclusion shows that several forms of legislative interventions are legal in Indonesia. In the context of the relationship between the legislature and the constitutional courts, the independency of Constitutional Court Justices is strictly protected among developed countries in various aspects. Those aspects are concluded as important factors that represent the image of the relationship between the house and the constitutional court. It will enhance our perspective to overview similar constraints in the future.

Keywords*: Intervention, The legislature, Constitutional Court, Developed Countries, Comparative Study*

Abstrak

Perkembangan praktik dalam konteks kelembagaan nasional membawa banyak perubahan terkait interaksi antara Mahkamah Konstitusi & Badan Legislatif termasuk polemik kontemporer. Kerangka check and balances penting untuk diperhatikan terkait dengan Independensi Hakim. Penarikan kembali Aswanto sebagai salah satu Hakim Konstitusi Indonesia, mendorong kita untuk menjelaskan lebih jauh tentang esensi dari Independensi. Pada saat yang sama, check and balance harus dipertahankan. Bagaimanakah legal standing dari setiap tindakan yang dilakukan parlemen kepada mahkamah konstitusi? Bagaimana praktik negara maju berkaitan dengan

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DOI : https://doi.org/10.15742/ilrev.v12n3.2

hubungan antara legislatuf dan mahkamah konstitusi? Jawabannya harus diuraikan dengan jelas di hadapan publik. Untuk menjawab pertanyaan tersebut, studi komparatif juga dilakukan pada negara maju tertentu berkaitan dengan hubungan atau intervensi legislatif terhadap Mahkamah Konstitusi atau kekuasaan kehakiman tertinggi lainnya. Metode yang digunakan adalah yuridis normatif, yaitu penelitian yang dilakukan dengan menelaah berbagai kaidah hukum formal, dengan menggunakan data sekunder yang diperoleh melalui studi dokumen atau studi kepustakaan dan dipertajam dengan pendekatan komparatif. Dengan demikian, kesimpulan akhirnya menunjukkan bahwa beberapa bentuk intervensi legislatif bersifat legal di Indonesia. Dalam konteks hubungan antara badan legislatif dan mahkamah konstitusi, Independensi hakim MK secara ketat dilindungi oleh negara-negara maju dalam berbagai aspek. Apek tersebut disimpulkan sebagai faktor penting yang mewakili perwajahan hubungan antara DPR dan MK. Hal tersebut akan menambah perspektif kita dalam melihat persoalan yang sama di masa mendatang.

Kata Kunci *: Intervensi, Badan Legislatif, Mahkamah Konstitusi, Negara Maju, Studi Komparatif*

I. INTRODUCTION

The independence of the judiciary is an ideal concept needed to realize the concept of a rule of law. If judicial power is not independent, then the legal position is difficult to serve as the basis for the running of government.[3] The history of the judiciary in the world shows that the greatest danger that can threaten the independence of the judiciary comes from the various influences of government institutions or political parties.[4] Keith Rosenn[5], stated that there are at least two things that make the judicial power vulnerable to intervention: First, the concept of judicial power has been clearly regulated in the constitution but this is not enough to guarantee because often the existing laws and regulations are unable to guarantee the existing provisions. on. Second, apart from any ideological and political conception, the independence of the judiciary is basically not permanent, instead, it is temporary over space and time in the political constellation that existed at its time.

One interesting example to illustrate the existence of attempts to intervene in the judiciary in Indonesia is the case of the recall of one of the nine constitutional judges, namely Aswanto, by the House of Representatives as a representative of legislative power. In the context of national law, the DPR as the House of Representatives does have authority related to the Constitutional Court as stipulated in article 24C paragraph (3) of the 1945 Constitution of the Republic of Indonesia that "The Constitutional Court has nine members of constitutional judges appointed by the President, three of whom are proposed by each Supreme Court, three people by the House of Representatives, and three people by the President". The authority of the DPR to propose judges for the Constitutional Court is further regulated in the Law on the Constitutional Court[6]. However, the DPR authority to recall the Constitutional Court judges that they

[3] Brian Z. Tamanaha, *On The Rule of Law*, (Cambridge: Cambridge University Press, 2011), p. 109-110

[4] Justice FB William Kelly, "*An Independent Judiciary: The Core of The Rule of Law*", 13 November 2022, https://gsdrc.org/document-library/an-independent-judiciary-the-core-of -the-rule-of-law/, p. 5

[5] Keith Rosenn, *The Protection of Judicial Independence in Latin America*, (University of Miami Inter-American Law, 1987), p. 65

[6] The Constitutional Court Law in question is Law No. 24 of 2003, but during its validity period, there were several changes made by the legislators (DPR and President) to the Constitutional Court Law. The first change gave birth to Law no. 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court. The second amendment is UU no. 4 Tahun 2014 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2013 Tentang Perubahan Kedua Atas Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi Menjadi Undang-Undang. And the third amendmend is UU No 7 Tahun 2020 tentang Perubahan Ketiga atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi.

proposed and were officially appointed by the President is not regulated at all in the Constitutional Court Law. Constitutional Court Law only regulates the dismissal process, and even then this process does not involve any proposing institution.[7]

Bivitri Susanti explained that "what the DPR did to constitutional judge Aswanto was a form of silencing a state institution (the Constitutional Court). Nowhere in the world, judges cannot be dismissed because of the decisions they make. Basically, judges must have space that is free from political intervention that can make them controlled to make court decisions for political interests.[8] In line with Bivitri Susanti, nine former MK judges, three of whom are former Chief Justices of the Constitutional Court, namely Jimly Asshiddiqie, Mahfud MD, and Hamdan Zoelva, agreed that the move by the DPR to recall Aswanto as a constitutional judge during his tenure was a violation of the constitution and Constitutional Court Act[9]. Even though it drew various criticisms, in the end, the recall of constitutional judge Aswanto by the DPR was approved by the president.[10]

The polemic of the recall of Constitutional Court judges who are part of the judicial power by the DPR RI which represents legislative power can actually be viewed in a configurational perspective between the principle of judicial independence and the principle of *checks and balances* between state institutions. The principle of *checks and balances* actually wants mutual control and supervision of the implementation of each authority. Including supervision and control between the DPR as legislative power over the Constitutional Court as judicial power. On the other hand, the Constitutional Court as a judicial institution whose duty is to uphold law and justice requires the principle of independence in the exercise of its authority, especially independence for all forms of intervention in the context of making decisions that are in line with legal and justice considerations. These two principles are actually very important and needed in a country that adheres to the rule of law. However, adhering to these two principles is not as easy as trying to implement them technically in the state system.

The case of Judge Aswanto is only a starting point that leads us to the main topic. It is also important for the author to state that the paper is not "case study oriented". The first major question in this paper is the legal standing of the relationship between the house and the judiciary. The study in this paper will attempt to broadly discuss the legal standing of any forms of interventions made by legislative power to the Constitutional Court in Indonesia. As a form of comprehensiveness of the study, comparative studies were also conducted on several developed countries which also regulate the intervention of the legislature power against the Constitutional Court or equal judicial power. Consequently, the second important question is the result of comparative studies on the relationship between the house and the judiciary. The study in this paper is expected to be additional literature in the formulation of policies, especially related to the form of the interventions of legislative power over the Constitutional Court in Indonesia in the future.

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[7] The process of Constitutional Court Impeachment is stipulated more in article 23 until article 27 of Constitutional Court Law.

[8] Bivitri Susanti, Mabuk Kekuasaan Merusak Kemandirian Yudikatif, accessed on 12 October 2022, https://www.kompas.id/baca/opini/2022/10/05/mabuk-kekuasaan-merusak-kemandirian-yudikatif

[9] Susana Rita Kumalasanti dan Nina Susilo, 9 Mantan Hakim Koonstitusi: DPR Langgar Konstitusi, accessed on 11 October 2022, https://www.kompas.id/baca/polhuk/2022/10/01/berhentikan-aswanto-dpr-langgar-konstitusi

[10] Susana Rita Kumalasanti et.al., Sah Hakim Konstitusi Bisa Diberhentikan dan Diganti Sewaktu-waktu, accessed on 23 November 2022, https://www.kompas.id/baca/polhuk/2022/11/22/sah-hakim-konstitusi-bisa-diberhentikan-dan-diganti-sewaktu-waktu

II. RESEARCH METHOD

The methodology used in writing this analytical article is normative-juridical (legal research), research conducted by examining various formal legal rules such as laws, and other regulations, as well as literature containing theoretical concepts to analyze the influence of power. The intervention of the legislature Body over the Constitutional Court in Indonesia and its comparison with Developed Countries. Secondary data are obtained through document studies or literature studies such as books, texts, journals, magazines, newspapers, documents, laws, and regulations. To sharpen the analysis, comparative approaches were also used concerning several developed countries which also regulate the relationship between the powers of the legislature and the Constitutional Court.

III. RESULT AND DISCUSSION

A. The Legal Standing on The Relation Between the Legislature and The Constitutional Court

1. The Independence in The Check and Balances Framework

The results of the amendments to the 1945 Constitution of the Republic of Indonesia have conceptually adhered to the application of the principle of *checks and balances*. This is illustrated by the regulation of authority between each state institution which is mutually bound to one another. This attachment is intended so that each state administration unit can control and offset each other to avoid arbitrariness.[11] Adhering to the principle of *checks and balances* cannot be separated from the implementation of the concept of division of powers. This is in line with the words of Robert Weissberg,

> *"A principle related to the separation of powers is the doctrine of checks and balances. Whereas separation of powers divides governmental power among different officials, checks and balances give each official some power over the others".*[12]

The discourse regarding the position of judicial independence is also something that cannot be separated from the concept of a state that adheres to the rule of law. The importance of the position of independence in an institution that is under judicial power is a *sine qua non* to the implementation of its function to uphold law and justice. Article 1 point (3) of the 1945 Constitution of the Republic of Indonesia confirms that "Indonesia is a state based on law". The adherence to the rule of law concept emphasizes that all people, both the government and the people, must be subject to the law and rely on a basic rule that positions everyone as equal before the law.[13] Therefore, law formation and law enforcement have become central points in ensuring the achievement of all the principles of a rule of law.

In order to achieve ideal law enforcement, a branch of judicial power (judiciary) is needed that can carry out its duties independently. Jimly Ashiddiqie explained that one of the main principles of a rule-of-law state is an independent and impartial

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[11] Mega Ayu Werdiningsih, "Check and Balances dalam Sistem Peradilan Etik", *Jurnal Konstitusi dan Demokrasi* Vol. 1 No. 1 (2021) p. 66. https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1008&context=jurnalkonsdem

[12] Robert Weissberg, *Understanding American Government*, (New York: Holt Rinehart and Winston, 1979). p. 35.

[13] Munir Fuady, *Teori Negara Hukum Modern (Rechtstaat)*, (Bandung: Refika Aditama, 2011). p. 3

judiciary.[14] In the context of the 1945 Constitution of the Republic of Indonesia, the concept of judicial independence is regulated in Article 24 paragraph (1) which states that "judicial power is an independent power to administer justice in order to uphold law and justice".

The urgency of judicial independence is also emphasized in several conventions or international agreement documents. *Universal Declaration of Human Rights* (1948), Article 10 states that "*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*"[15] In addition, the Siracuse Principles (1981) reveal that "(1) every judge is free to decide matters before him in accordance with his assessment of the facts and his understanding of the law without any improper influences, inducements, or pressures, direct or indirect, from any quarter or for any reason, and (2) that the judiciary is independent of the executive and the legislature, and has jurisdiction, directly or by way of review, over all issues of a judicial nature.[16] The *New Delhi Standards* (1982) which were held at the initiative of a non-governmental organization, the *International Bar Association*, are based on the conception that the independence of the judiciary carries two meanings: the independence of the individual judges, and the independence of the judiciary as a body. The independence of the individual judge is composed of two essential elements; substantive independence and personal independence. Substantive independence means that in the making of judicial decisions and exercising other official duties, individual judges are subject to no other authority but the law. Personal independence means that the judicial terms of office and tenure are adequately secured. Personal independence is secured by judicial appointments during good behavior terminated at retirement age, and by safeguarding judicial remuneration. Thus, executive control over the terms of service of the judges, such as remuneration, pensions, or travel allowances, is inconsistent with the concept of judicial independence. Still much less acceptable is any executive control over case assignment, court scheduling, or moving judges from one court to another or from one locality to another.[17] *Bangalore Principles of Judicial Conduct*, in its provisions, state that "Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects."[18]

> *UN Basics Principles of the independence of Judiciary, in Article 2 states "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason"[19] In the declaration, the independence of the judiciary has individual and institutional aspects. In order to guarantee the individual independence of the judiciary, there are two ways, first, a judge must be protected from threats so that he is not afraid*

[14] Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia*, (Jakarta: Konstitusi Press, 2005). p. 123-129

[15] Full Text of UDHR 1948, https://www.un.org/en/about-us/universal-declaration-of-human-rights.

[16] Siracuse Principles, https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf

[17] *New Delhi Standard*, https://www.jiwp.org/new-delhi-declaration

[18] Bangalore Principles of Judicial Conduct, https://www.unodc.org/pdf/crime/corruption /judicial_group/Bangalore_principles.pdf

[19] For the complete text of the UN Basic Principles see https://www.ohchr.org/en/instruments mechanisms/instruments/basic-principles-independence-judiciary

or doubtful in the decision-making process. Second, the method of selecting judges and the ethical principles that apply to them must be developed in such a way as to minimize the risk of corruption and outside influences.[20]

In connection with the explanation above, the concept concerning the independence of the judiciary is very broad, not only regarding its institutional position but independence also includes the personality of the judge in assessing and formulating considerations to make a decision. Ibnu Sina Chandranegara stated[21] *that*

"The nature of judicial independence is divided into two conceptions. The first concept of judicial independence is the personal independence of judges, this concept is often analogous to the concept of "authors of their own opinions. The second concept of judicial independence is institutional independence." It appears that judicial independence depends on other branches of power, especially if it is associated with decisions that are routinely ignored or implemented poorly. This concept is often interpreted as collective independence of institutional independence, or referred to as the maxim "what judges think is what they produce and what they produce controls the outcomes of legal conflicts."

In more technical regulations, the independence of the judiciary is regulated in Law No. 24 of 2009 concerning judicial power. Article 3 paragraph 2 of this rule stated that "all interference in judicial matters by other parties outside the judicial power is prohibited, except in cases referred to in the 1945 Constitution of the Republic of Indonesia".

Julia Laffranque explained that judicial independence is a tool that can help judges to fulfill their duties legally. Julia also mentioned that independence includes internal decision-making factors, namely justice in the administration of justice by judges, and must guarantee adjudication that is free from external and internal influences from the justice system. The freedom of external influence is the independence of the judge from the power and domination of the authority above him.[22]Alisdair Gillespie also stated that judicial independence is a concept that generally refers to the classical definition, namely that judges should be independent of the executive. It was also explained that judicial independence does not only mean freedom from outside judicial power but truly is free from any outside pressure.[23]

Franken, a legal expert from the Netherlands, stated that the independence of the judiciary can be divided into four forms;[24]

a. Constitutional independence (*constitutionele onafhankelijk-kheid*);
b. Functional independence (*zakleijke of functionele onafhankelijk-kheid*);
c. Personal independence of judges (*persoonlijke of rechtspositionele onafhankelijk-kheid*);
d. Real practical independence (*practicche of feitelijk onafhankelijkkeid*).

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[20] Nano Tresna Arfana, "*Ketua MK Paparkan Independensi Kekuasaan Kehakiman kepada Mahasiswa FH Universitas Riau*", accessed on 13 November 2022, https://www.mkri.id/index.php?page=web.Berita&id=17392

[21] Ibnu Sina Chandranegara, "Defining Judicial Independence and Accountability Post Political Transition", *Constitutional Review*, Volume 5, Number 2, December (2019), p. 297-298

[22] Julia Laffaranque, Dissenting Opinionand Judicial Independence, *Juridica International* Vol. VIII 2003, p. 6, https://www.juridicainternational.eu/public/pdf/ji_2003_VIII_162.pdf pada tanggal 12 Oktober 2022

[23] Alisdair Gillespie, *The English Legal System, 1st Published*, (New York: Oxford University Press, 2007), p. 202-205

[24] Imam Anshori Saleh, *Konsep Pengawasan Kehakiman*, (Malang: Setara Press, 2014),p .131.

Constitutional independence (*constitutionele onafhankelijk-kheid*), is associated with the Trias Politica doctrine with the power-sharing system according to Montesquieu. Judicial power institutions must be independent in the sense that their institutional position must be free from political influence. Functional independence (*zakleijke of functionele onafhankelijk-kheid*), relates to the work performed by judges when facing a dispute and must give a decision. The independence of judges means that each judge may exercise his freedom to interpret the law if the law does not provide a clear understanding because after all the judge has the freedom to apply the contents of the law to ongoing cases or disputes. Personal independence of judges (*persoonlijke of rechtspositionele onafhankelijk-kheid*) is the freedom of individual judges when dealing with a dispute. Real practical independence (constitutionele onafhankelijk-kheid) is the independence of judges to be impartial (impartial). Judges must follow the development of public knowledge that can be read or witnessed through the media. The judge must not be influenced by the news and then take the words of the media at face value without considering them.

Departing from the explanation of the arguments above, it can be argued that the concept of *checks and balances* and the independence of the judiciary must always go hand in hand. The orientation of implementing *checks and balances* between state institutions to provide boundaries and control over the use of their authority, on the other hand, also requires a position of judicial independence. Judicial institutions are upstream of the law enforcement process, including all legal cases which also involve state institutions or the interests of each state institution in it. Therefore, the existence of the principle of independence can guarantee objectivity in the handling of each case which can be a solution to various possible legal conflicts that may occur in the future. In short, the existence of the principle of checks and balances also requires judges to be able to work independently and be free from the influence and interests of the executive and legislative powers.

The existence of judicial independence must also be supported by a friendly system of *checks and balances*. Relations between state institutions which are held as a means of *checks and balances,* on the other hand, must also pay attention to the limitations not to touch the realm of independence of the judiciary, both institutional and personal in nature. Richard Hamilton predicted that judicial power (judiciary) is the weakest branch of state government compared to the legislature and executive branches. The executive branch of power is considered to have a broad reach of influence because the executive power branch has a valid coercive power tool and the legislature branch is strong because it controls the budgeting function (budgetary rights).[25] Even though the 1945 Constitution of the Republic of Indonesia has provided guarantees for the independence of the judiciary in article 24 paragraph (1) which states that "judicial power is an independent power to administer justice to uphold law and justice", if it is not supported by a cultural commitment and a structural commitment to the mandate of the constitution to organize an independent judiciary, then this provision is only considered as unenforced aspiration.[26]

2. The Independence of The Constitutional Court

The Constitutional Court (MK) is one of the judicial institutions exercising judicial

[25] Ralph H Gabriel, *On The Constitution*, (NY: The American Heritage Series, 1954), p. 169

[26] Olga Schwartz dan Elga Sykiainen, *Judicial Independence in the Russian Federation*, (Utrecht: Max-Planck Instituut, 2008), p. 971

(judicial) power, in addition to the Supreme Court (MA), which was formed through the Third Amendment to the 1945 Constitution.[27] The formation of the Constitutional Court cannot be separated from legal and constitutional developments regarding the testing of legal products by the judiciary or what is known as a judicial review.[28] The idea of establishing a separate court outside the Supreme Court to handle *judicial review* was first put forward by Hans Kelsen when he became a member *of the Chancellery* in the renewal of the Austrian Constitution in 1919 – 1920. This idea was accepted and became part of the 1920 Austrian Constitution which formed a Constitutional Court (Vervassungsgerichtshoft). Since then, the Constitutional Court has been known and developed outside the Supreme Court, which specifically handles *judicial review* and other constitutional cases.[29] Although the establishment of the Constitutional Court was first initiated by the Professor at the University of Vienna, the authority to examine legislation (*judicial review*) itself had previously emerged from cases tried at the United States Supreme Court (*Supreme Court of the United States*). This phenomenal case was known as Marbury vs Madison in 1803. Although the American Constitution does not recognize *judicial review*, John Marshal, who at that time was the Chief Justice of the Supreme Court, had annulled a law on the grounds that it was contrary to the American Constitution.[30]

The formation of the Constitutional Court of the Republic of Indonesia can be understood from two sides, namely from a political side and a legal side. From a constitutional political perspective, the existence of the Constitutional Court is needed to balance the power to formulate laws held by the DPR and the President. This is necessary so that the Law not becomes a source of legitimacy for the tyranny of the majority of people's representatives in the DPR and the President who is directly elected by the majority of the people. On the other hand, the change in the constitutional system which no longer adheres to the supremacy of the MPR places state institutions in an equal position. This is very possible when in practice there are disputes over authority between state institutions that require a legal forum to resolve them, the Constitutional Court is considered the most appropriate institution to resolve these problems. From a legal standpoint, the existence of the Constitutional Court is one of the consequences of the change from the supremacy of the MPR to the supremacy of the constitution. The principle of constitutional supremacy is contained in Article 1 paragraph (2) which states that sovereignty is in the hands of the people and implemented according to the Constitution. [31]

The authority in reviewing laws (*judicial review*) is a case that is crowned by the Constitutional Court. Through the Constitutional Court's decision regarding judicial review, a control mechanism (checks and balances) was created for the legislature's authority. The control mechanism (checks and balances) is intended to prevent the

[27] Stipulated at MPR Annual Meeting 9 November 2001

[28] The terms of judicial review is originally from "toetsingsrecht". However, there are differences between the two, especially in terms of judicial action. *Toetsingsrecht* is limited to the judge's assessment of a legal product while its cancellation is returned to the forming institution. Meanwhile, the concept of judicial review includes the judge's action to cancel the legal regulation in question. In addition, the term judicial review is also related but must be distinguished from other terms such as legislative review, constitutional review, and legal review. In the context of the judicial review carried out by the Constitutional Court, it can be referred to as constitutional review because the touchstone is the constitution. See Jimly Asshiddiqie, *Model-Model Pengujian Konstitusional di Berbagai Negara*, (Jakarta: Konpress, 2005), p. 6–9.

[29] Asshiddiqie, "Model-Model Pengujian", p. 24

[30] Moh. Mahfud MD, *Konstitusi Dan Hukum Dalam Kontroversi Isu* (Jakarta: Rajawali Pers, 2010). p.s. 257

[31] Mahkamah Konstitusi, Latar Belakang Pembentukan Mahkamah Konstitusi, accessed on 11 Oktober 2022, 15.20, https://www.mkri.id/index.php?page=web.Berita&id= 11767

formation of laws that contradict the constitution.[32] In addition to the authority to conduct a judicial review, the Constitutional Court based on Article 24C paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia also has the authority to decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide disputes concerning the results of general elections, as well as the obligation to render a decision on the opinion of the People's Representative Council regarding alleged violations by the President and/or Vice President according to the Constitution.

As one of the judicial institutions that exercise judicial power, the Constitutional Court is actually bound by the principle of independence in carrying out its duties. The Constitutional Court is required to be free from all forms of intervention and to be independent in resolving all issues related to constitutionality. Even so, the regulation of the independence of the Constitutional Court does not necessarily make the Constitutional Court free from various forms of influence from other powers, especially the DPR as a representative of legislative power. Especially if it is related to the authority of the Constitutional Court which examines the constitutionality of a law which is actually a legal product made by the DPR and the president.[33]

The existence of the concept of institutional relations in an effort to control each other and monitor the performance of each institution in a positive context can be seen as an effort to maintain accountability in the justice system. Judicial accountability is a supporter of the independence of judicial power.[34] Judicial power does not exist in a vacuum and its independence is not absolute. Judges are not perfect humans and are very likely to make mistakes, therefore the independence of judges must be accompanied by responsibility (accountability). Judicial power must be implemented according to the value of justice, procedural and substantive/material legal guidelines, and the interests of the litigants are the limits to judicial power.[35] In other words, this freedom is bound or limited (gebonden vrijheid).[36]

3. The Regulation of The Interventions of DPR to the Constitutional Court in Indonesia

Based on its position in the 1945 Constitution of the Republic of Indonesia, DPR is an institution that is given the authority to form laws. If it is related to the concept of separation of powers as put forward by John Locke, the DPR is an institution that represents legislative power. This was stated by him that "The legislature power is that which has a right to direct how the force of the commonwealth shall be employed

[32] Muh. Ridha Hakim, "Tafsir Independensi Kekuasaan Kehakiman Dalam Putusan Mahkamah Konstitusi", *Jurnal Hukum dan Peradilan*, Volume 7 Nomor 2, (2018) p. 289

[33] Article 20 number (1) Indonesia Constitution said "Dewan Perwakilan Rakyat memegang kekuasaan membentuk undang-undang". And the number (2) stipulated "Setiap rancangan undang-undang dibahas oleh Dewan Perwakilan Rakyat dan Presiden untuk mendapat persetujuan Bersama".

[34] Zainal Arifin Mochtar, *Sistem Peradilan yang Transparan dan Akuntabel (Catatan Kecil Penguatan)* on Komisi Yudisial, Problematika Hukum dan Peradilan di Indonesia, (Jakarta: Komisi Yudisal Republik Indonesia, 2014), p. 288

[35] Andi Hamzah, *Kemandirian Kekuasaan Kehakiman Dalam Konteks Pembagian Kekuasaan dan Pertanggungan Jawab Politik*, (Jakarta: BPHN Seminar Hukum Nasional Ke-VIII Reformasi Hukum Menuju Masyarakat Madani, 1999) p. 51.

[36] Paulus Effendi Lotulung, *Kemandirian Kekuasaan Kehakiman Dalam Konteks Pembagian Kekuasaan dan Pertanggungan Jawab Politik*, (Jakarta: BPHN Seminar Hukum Nasional Ke-VIII Reformasi Hukum Menuju Masyarakat Madani, 1999) p. 157

for preserving the community and the members of It".[37]

The DPR's involvement in the administrative process at the Constitutional Court has been regulated in the applicable laws and regulations. Based on Article 18 of Law Number 24 of 2003 in conjunction with Law number 04 of 2014 concerning the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court it is stated that "Constitutional judges are submitted by 3 (three) people each by the Supreme Court, 3 (three) people by the DPR, and 3 (three) people by the President, to be determined by Presidential Decree."[38] The selection of Constitutional Court judges from 3 (three) state institutions symbolizes the mechanism of representation of 3 (three) different main branches of state power, namely the President who represents executive power, the DPR which represents legislative power, and the Supreme Court which represents judicial power.[39]

Article 20 of the Constitutional Court Law also states that the process of selecting constitutional judges from the three elements of state institutions is carried out through an objective, accountable, transparent, and open selection process by each state institution. Provisions regarding the procedures for selection, selection, and submission of constitutional court judges are regulated by each authorized institution. For the dismissal process, the Constitutional Court Law states that there are 2 (two) dismissal mechanisms, namely honorable and dishonorable discharge. Dismissal with respect as stated in article 23 of the Constitutional Court Law was carried out for the reasons;

a. die;
b. resign upon submission to the Constitution;
c. is 70 (seventy) years old;
d. being physically or mentally ill continuously for 3 (three) months so that they cannot carry out their duties as evidenced by a doctor's certificate.

The dishonorable dismissal of constitutional judges was carried out for the following reasons:

a. being sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime punishable by imprisonment;
b. commit a disgraceful act;
c. does not attend the trial which is his duty and obligation for 5 (five) consecutive times without a valid reason;
d. violating an oath or promise of office
e. by intentionally obstructing the Constitutional Court from rendering a decision;
f. violates the prohibition of multiple positions;
g. no longer fulfills the requirements of a constitutional judge; and/or
h. violate the Code of Ethics and Code of Conduct of Constitutional Judges.

When there are elements that meet the requirements for the dismissal of Constitutional Court Judges, based on Article 23 of the Constitutional Court Law, the

[37] John Locke, *Two Treatise on Civil Government*, (Cambridge UK: Cambridge University Press,1998), p. 162-

[38] The provisions of this article also refer to Article 24C paragraph (3) of the Indonesia Constitution which also states that "Hakim konstitusi diajukan masing-masing 3 (tiga) orang oleh Mahkamah Agung, 3 (tiga) orang oleh DPR, dan 3 (tiga) orang oleh Presiden, untuk ditetapkan dengan Keputusan Presiden."

[39] Ahmad Fadlil Sumadi, "Independensi Mahkamah Konstitusi", *Jurnal Konstitusi*, Volume 8, Nomor 5, (2011), p. 639

dismissal of constitutional judges will then be determined by a Presidential Decree at the request of the Chief Justice of the Constitutional Court. The President's decision is stipulated within a maximum period of 14 (fourteen) working days from the date the President receives the request for dismissal from the Constitutional Court.

Referring to these provisions, the attributive authority to dismiss Constitutional Court judges is still given by the president by using a Presidential Decree, in the sense that both the DPR, the Supreme Court, and the president as the proposing institution are not directly involved in the process of dismissing the Constitutional Court judges they have proposed. Even so, the process of proposing a vacant post of Constitutional Court judges will still be proposed based on the origin of the institution proposing the judge who was previously dismissed. The proposing institution will later propose a replacement for the constitutional justices to the President within a maximum period of 30 (thirty) working days after receiving the notification from the Constitutional Court.[40]

Even though Constitutional Court judges, in their recruitment process, involve several proposing institutions, it does not mean that representatives from each of these institutions will intervene in the existence of the Constitutional Court. Ideally, after being appointed as a constitutional judge, each constitutional court judge must present himself as a Constitutional Court judge who is no longer affected by the election mechanism from which and by whom he is appointed. Therefore, the selection of the Constitutional Court by each state institution must carry out objective and accountable principles.[41]

In addition to the recruitment process, the involvement of the DPR which can also intersect with the principle of independence of the Constitutional Court is the implementation of the DPR's authority in drafting laws whose substance regulates the Constitutional Court. The 1945 Constitution of the Republic of Indonesia states in article 24C paragraph (6) that "The appointment and dismissal of constitutional judges, procedural law and other provisions regarding the Constitutional Court are regulated by law". Then in article 25, it is also stated that "The conditions for becoming and for being dismissed as a judge are determined by law".[42]

Based on the formulation of article 24C paragraph (6) and article 25, there are several fields that become the realm of open legal policy for the DPR and the President in formulating norms related to the Constitutional Court. Some of these fields are related to the Appointment and Dismissal of constitutional judges, the Law of Procedure of the Constitutional Court, the conditions for the appointment and dismissal of constitutional judges, and other fields. Departing from this point, it can be concluded that these two articles (Article 24C paragraph (6) and Article 25) have given authority (*open legal policy*) which is quite broad to the DPR and the President in drafting norms related to the Constitutional Court. The breadth of this field certainly correlates with the magnitude of the potential for DPR intervention against the Constitutional Court. This intervention will become even more evident when analyzing the concept of drafting laws in Indonesia, especially laws governing the judiciary which do not recognize any limitations for legislative power to enter into the realm of formulating norms that can conflict with the principle of the independence

[40] Pasal 26 Constitutional Court Law.

[41] Ahmad Fadlil Sumadi, *"Independensi Mahkamah Konstitusi",* p. 639-640

[42] See Article 1 number (3) Law No 12 Year 2011 regarding Establishment of Law and Regulations which stipulated "Undang-Undang adalah Peraturan Perundangundangan yang dibentuk oleh Dewan Perwakilan Rakyat dengan persetujuan bersama Presiden".

of the judiciary. This is different when compared to several countries in Asia, Europe, and Latin America where changes to laws in the field of judicial power recognize the limits of what legislators may and may not do in regulating judicial institutions such as the position of judges.[43]

Departing from the description above, the involvement of the DPR in the preparation of various policies that can intersect with the principle of the independence of the judiciary is an important issue to be reviewed. The role of the DPR in proposing Constitutional Court judges and the absence of clear restrictions for the DPR as legislators to regulate judicial power institutions can be a loophole that allows the risk of intervention against the independence of the judiciary, especially personal independence. Especially in terms of the position of the DPR which is very close to political parties. Political parties actually come with a variety of respective interests. We do not expect the presence of political parties as Katz and Mair's analysis concludes that there is a change in the way parties work in producing state law products. According to Katz and Mair, political parties are no longer present to represent the interests of society, but the interests of certain groups or at least the interests of fellow party elite groups in the DPR.[44]

B. Comparative Analysis of the Legislature Interventions to the Constitutional Court in Indonesia and Developed Countries in Various Aspects

The intervention of legislative institutions over the constitutional or supreme court actually exists. It is simply identified by looking at the practical exercise of particular legislative interventions. The relationship between DPR and the constitutional court is quite strong regarding the establishment of the constitution. To be sure, DPR is the former of the constitution. That is why in checking the prospective constitution review, the Constitutional Court should carefully pay attention to and solemnly consider either oral or written detail from DPR.[45] In addition, The relationship between DPR and MK might be in the matter of DPR as one of the institutions with the power to judge the implementation of the constitution, with the power of authorship of the constitution, and as a national institution that possibly to be in clash with other institutions in doing its jurisdictions given by the constitution.[46] Indeed, Indonesia is one of the countries that give particular jurisdictions to the legislature related to The Constitutional Court and it should be explained in detail. A glance at the intervention of the legislature is inadequate to provide significant pieces of evidence. Consequently, it is required to identify every single part of the constitutional court that is possibly influenced by the legislature.

Developed countries are advanced in exercising any aspect of the nation, unexceptionally laws. Hence, there is an urgency to overlook the intervention of the legislature over the constitutional or supreme courts in developed countries. In the context of national institutions in developed countries, there are various types of legislative interventions to the constitutional court. A *de facto* legislative power possibly influences the constitutional court in particular aspects, such as appointment,

[43] Idul Rishan, Evaluasi Jabatan Hakim Konstitusi, Kolom Opini Surat Kabar Kompas, 3 Oktober 2022, access on https://www.kompas.id/baca/opini/2022/09/30/evaluasi-jabatan-hakim-konstitusi.
[44] Rishan, "Evaluasi Jabatan".
[45] Lintje Anna Marpaung, "The Comparison Between Indonesian Constitutional Court And Russian Constitutional Court", The First International Conference on Law, Business and Government 2013, (Indonesia: UBL, 2013), 62
[46] Marpaung, *"The Comparison Between Indonesian".*

qualification, period, number limitation, and impeachment of justices. The legislature often evolved in the selection of the chief of constitutional judges. In fact, political interests sometimes play in the legislative intervention in the constitutional courts, and it leads us to elaborate more about several types of interventions. The procedure to establish The Constitutional Court and appoint a number of honorable judges is very complex. It generates a variety of aspects which probably interrupted by the legislature. These will be deeply emphasized in the following partial explanations:

1. **The Intervention of the Legislature over the Appointment of Judges in Indonesia compared to Particular Developed Countries**

Indonesia and most highly developed countries clearly distribute power to the legislature in terms of Justice Appointment. To show that, Indonesia has DPR as one of the institutions which have jurisdiction to fulfill three positions of constitution's judge by proposing three chosen individuals to the President who later will issue a presidential decree for appointing them accordingly.[47] As the same country that separates the power between the Constitutional Court & the Supreme Court, Russian Federation also includes its parliamentary organs. Judges of the Constitutional Court of the Russian Federation and of the Supreme Court of the Russian Federation are appointed by the Federation Council of the Federal Assembly of the Russian Federation (upper house of parliament) on a proposal of the President of the Russian Federation.[48]

A number of developed countries that do not practice separation of power to their supreme court embrace the legislature in the process of Justices Appointment. An instance, Germany involve their parliament to elect the Justices. *The Bundestag* and *The Bundesrat*[49] shall each elect half of the Justices of each Senate of the Justices to be elected from among the judges at the supreme federal courts, one shall be elected to the Senate by one of the electoral organs, two by the other electoral organ, of the remaining Justices three from one of the electoral organ, two from the other electoral organ.[50] Besides, China grants the right of a judicial appointment to Congress. In China, The appointment and removal of judges shall be handled in accordance with the scope of appointment and removal authority and procedures provided for by the Constitution and laws. The President of the Supreme People's Court shall be elected or removed by the National People's Congress[51]; its vice presidents, adjudication committee members, and the chief judges and associate chief judges of its court divisions shall be appointed or removed by request of the President to the Standing Committee of the National People's Congress.[52] To sum up, developed countries with

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[47] Marpaung, *"The Comparison Between Indonesian".*

[48] Overview of the Judicial System of the Russian Federation, accessed October 10, 2022, http://www.supcourt.ru/en/judicial_system/overview/

[49] The German Bundestag is the supreme constitutional organ of the Federal Republic of Germany and the only organ of the state that is directly elected by the people, German Bundestag, *The Bundestag at a glance,* (Germany: Public Relation Division of German Bundestag, 2020), p. 2, https://www.btg-bestellservice.de/pdf/80140000.pdf

[50] "Chapter 1, Part 1, Article 5, Clause 3 of Federal Constitutional Court Act in the version of 11 August 1993 (Federal Law Gazette I p. 1473), last amended by Article 4 of the Act of 20 November 2019 (Federal Law Gazette I p. 1724)"

[51] The NPC is a unicameral legislature with additional powers to oversee the work of the government and to elect major officials. Tony Saich, *The National People's Congress: Functions and Membership*, (Cambridge: Harvard Kennedy School, 2015), p.2, https://ash.harvard.edu/files/ash/files/the_national_peoples_congress.pdf

[52] "Judges Law of the People's Republic of China", The National People's Congress of the People's Republic

unseparated judicial powers show that the legislature is significantly involved to appoint a justice.

However, some developed countries are not giving a place to the legislative bodies in the procedure of justices appointment, and the UK is one of them. In the procedure for appointing a justice, it is the responsibility of the Lord Chancellor to convene a selection commission: this is usually done by way of a letter to the President of the Court who chairs the selection committee. The Lord Chancellor can accept the commission's recommendation, reject it, or ask the commission to reconsider.[53] Moreover, the US also stands for not involving the legislature but the president takes the responsibility. The procedure for appointing a Justice is provided for by the Constitution in only a few words. The "Appointments Clause" (Article II, Section 2, clause 2) states that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Judges of the Supreme Court.[54] Those countries are mentioned as an anti-thesis for the statement that the legislature has The Intervention over The Supreme Court for the election of justices.

In the Conclusion of this part, the Authors argued that the intervention of legislative bodies is not absolute except in Indonesia and Russia. But, we notably ensure that the majority of leading developed countries are giving intervention to the legislature over the appointment of constitutional court justices.

2. The Intervention of the Legislature over the Requirement of Judges

The main "gate" to the honorable title of "The Guardian of Constitution' is the requirements. By configuring the requirements of judges any institutions available to place their interests. So, the requirements have a significant role to guard the independence of the Court. According to the Constitution of 1945, Indonesia as a constitutional country is mandatory to regulate clear conditions in which a candidate is eligible to be a constitutional court judge. Indeed, the related laws constitute that a candidate should be an Indonesian Citizen, achieve a doctorate and master's degree in law, have good faith in One and Only God, be of a noble character, and be at least at the age of 47 and at the highest of 65.[55] The challenge is to obey the rules and extinct any opposite efforts that could violate the laws concerning constitutional court. Obviously, DPR has jurisdiction to set the laws but the independency of separated powers should be respected.

If the previous narration illustrates that the intervention of the legislature over the court has a small probability, further elaboration is necessary. International perspective could be a proper choice to compare with, especially in the developed world. As revealed by Japan, the requirements of Justices are even broader. *Article 41 of the 1947 Court Organization Law 14 states that:* [56]

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of China, Accessed October 10, 2022. http://www.npc.gov.cn/englishnpc/c23934/202012/9c82d5dbefbc4ffa98f3dd815af62dfb.shtml

[53] "Appointments of Justices", The Supreme Court of the United States, Accessed October 10, 2022, https://www.supremecourt.uk/about/appointments-of-justices.html

[54] Barry J. McMillion, *Supreme Court Appointment Process: President's Selection of a Nominee,* (New York: Congressional Research Service, 2022), https://sgp.fas.org/crs/misc/R44235.pdf

[55] Article 15 Clause 2

[56] John O. Haley and Wiley B. Rutledge, "The Japanese Judiciary: Maintaining Integrity, Autonomy and the Public Trust", Symposium held at Seattle, Washington, August 22-24, 2002, p.7, https://law.wustl.edu/wp-content/uploads/2018/10/2003-3HaleyJapaneseJudiciary.pdf

"Justices of the Supreme Court shall be appointed from among persons of broad vision and extensive knowledge of the law, who are not less than forty years of age. At least ten of them shall be persons who have held one or two of the positions mentioned in item (i) or (ii) for not less than ten years, or one or more positions mentioned in the following items for a total period of twenty years or more: (i) President (chōkan) of a high court; (ii) Judge (iii) Summary court judge; (iv) Public prosecutor (v) Lawyer (vi) Professor or assistant professor (jokyōju) in law in universities as determined separately by statute.

The pool of qualified persons as defined by statute is extraordinarily large. Hence the potential for political appointments is equally great. Yet, not since the first justices were selected have a party or cabinet-level political considerations influenced even the appointment of the chief justice.[57]

Indonesia exercised strict requirements and it can limit the intervention over the court. In contrast, Japan regulated a large range of requirements which potentially influenced by political interests. In conclusion, the range of ascendency of The legislature over the Judge depends on how broadly the requirements reach the candidates. For easier illustration, requirements are equal to "a gate", the bigger sizes open the wider access to a large number of people and political intentions might be involved.

3. The intervention of the Legislature over the Selection of Chief Judges in Indonesia compared to Particular Developed Countries

A Chief of Constitutional takes a fundamental responsibility in the case of the national judicial system. Hopefully, the independency of the court could be protected in the selection procedure.

Indonesia seems to guard the independency of its Constitutional Court in deciding its Chief. The positive laws concerning the constitutional court said that *"Prior to the election of the Chief Justice and the Deputy Chief Justice of the Constitutional Court as referred to in section (3), the meeting to elect the Chief Justice and the Deputy Chief Justice of the Constitutional Court shall be chaired by the oldest constitutional court justice".*[58] It is boldly stated that Indonesia is strict in terms of the Constitutional Court's Chief Selection. But, unfortunately, it is not completely safe, according to the jurisdiction, there is a probability of the legislature configuring the law regarding constitutional court that is in line with their own interests.

The US is one perfect example of a country that excludes the legislature from taking any part in the Chief Justice selection. The process for appointing a Chief Justice is the same as for appointing Associate Justices and typically involves a sharing of responsibilities between the President, who nominates the Justices, and the Senate, which provides "advice and consent." The criteria that Presidents use in selecting a Supreme Court nominee vary, but typically involve policy and political considerations as well as a desire to select a person with outstanding professional qualifications and unquestioned integrity.[59] Indeed, the intervention of the legislature over the Chief

[57] Haley, *"The Japanese Judiciary".*

[58] The Constitutional Court of The Republic of Indonesia, *the 1945 Constitution of The Republic of Indonesia & Law of The Republic of Indonesia Concerning The Constitutional Court*, (Jakarta: The Office of the Registrar and the Secretariat General Of the Constitutional Court of the Republic of Indonesia, 2015), p. 43, https://www.mkri.id/public/content/infoumum/regulation/pdf/uud45%20eng.pdf

[59] Congressional Research Service The Library of Congress, *The Chief Justice of the United States: Responsi-*

Judge selection is "a myth" in the United States of America,

In Japan, The chief justice is ostensibly nominated by the cabinet with ceremonial appointment by the Emperor.[60] The National Diet in Japan is not eligible to participate. Similarly, the President of India has a right to decide Chief Justice among the candidates. The Chief Justice of India and the Judges of the Supreme Court are appointed by the President under clause (2) of Article 124 of the Constitution.[61] Thus, it strongly emphasized that legislative bodies have no jurisdiction over the chief justice election.

The closure of this part convinced us that the independency of the highest-level court could be protected. And, it brings us to the conclusion that the intervention of the legislature over the appointment of chief justice does not exist.

4. The Intervention of the Legislature over the Number of Judges Fulfillment in Indonesia compared to Particular Developed Countries

The importance of how many judges sit on the highest-level court in a nation is actually crucial. Consequently, the intervention of the legislature needs to be identified. Starting from Indonesia, DPR has an important role in the nomination of judges. Three of them are selected by the legislative body. It stated in Article 18 (1) The constitutional court justices shall be proposed respectively 3 (three) people by the Supreme Court, 3 (three) people by the DPR, and 3 (three) people by the President, in order to be designated by a Decree of the President.[62] Thus, the relationship between the legislature and the judicial power obviously exists but the former is not superior. Because, the right of the executive, legislative and judicial powers are apparently balanced. Therefore, it is unfair to state that those kinds of jurisdiction are an intervention over the constitutional court.

Moved to Canada, the Court consists of a Chief Justice and eight other justices. Members of the Court are appointed by the federal government as new vacancies occur. Three judges traditionally come from Ontario, two from Western Canada, and one from the Atlantic provinces. In addition, the Supreme Court Act requires that at least three judges must come from Quebec.[63] This is a unique regulation since the local value is involved in the procedure. So, executive power is legally involved to fill the number of court judges, while legislative bodies have no rights granted.

Japan has given similar rights to the government, not the legislature, similar to Canada. The Court consists of a chief justice and fourteen associate justices. The chief justice is appointed by the emperor as recommended by the Cabinet, 2 and other justices are appointed by the Cabinet.[64] The legislature is not involved in filling out the number of justices.

Most of advanced world countries, the number of judges is certainly fulfilled by the

bilities of the Office and Process for Appointment, (New York: CRS Report for Congress, 2005), https://www.everycrsreport.com/files/20050923_RL32821_95bf847e26a09cb286295dbeae8a11f76d39f5e0.pdf

[60] https://law.wustl.edu/wp-content/uploads/2018/10/2003-3HaleyJapaneseJudiciary.pdf

[61] John O. Haley and Wiley B. Rutledge, *Op cit*

[62] The Constitutional Court of The Republic of Indonesia, *op cit,* p. 53

[63] The Department of Justice of Canada, "Minister of Justice and Attorney General of Canada announces a judicial appointment to the Federal Court", Accessed October 10, 2022, https://www.canada.ca/en/department-justice/news/2022/10/minister-of-justice-and-attorney-general-of-canada-announces-a-judicial-appointment-to-the-federal-court.html

[64] Yasuo Hasabe, "The Supreme Court of Japan: Its adjudication on electoral systems and economic freedoms". p. 296, Downloaded from https://academic.oup.com/icon/article/5/2/296/850113 by guest on 12 October 2022

executive organs and not the legislature. Differently, Indonesia gives an opportunity to the house of representatives to join the fulfillment of judges.

5. The Intervention of the Legislature over the Period of Supreme Court Justice in Indonesia compared to Particular Developed Countries

There is a typical difference among the nations concerning the period of Constitutional Court Judges. For example in Canada, once appointed, a judge is eligible to serve on the bench until retirement (age 75 for federally appointed judges, age 70 in some provincial/territorial jurisdictions). Judges can be removed by a joint address of Parliament or a provincial legislature, only after an independent and impartial investigation shows that there is good reason (see Judicial Conduct, below).[65] In other words, Canada gives such "a lifetime period" to the appointed judges. Differently, in Italy, Judges are not granted a similar period. These judges serve for twelve years and are not immediately eligible for the second term. During this period, they cannot practice law or be members of Parliament or of regional assemblies.[66] It demonstrates how developed countries are giving a proper length of period to the elected judges.

In contrast, the short-term period given by Indonesia. The laws regarding Constitutional Court stated in Article 22 that the term of office of a constitutional court justice is 5 (five) years and he/she can be re-elected only for 1 (one) subsequent term of office.[67] Compared to the others the limitation of this period is suspicious. 5 years acknowledge as the symbol of political election in Indonesia. Therefore, the intervention over the court in Indonesia could indirectly exist.

As a partial conclusion, most of the countries above are not giving any significant role to the legislature since the period of Justice stated in the constitution. However, the legislative body probably could intervene ongoing period of a judge by impeachment or revise the relevant laws.

6. The intervention of the Legislature over the Impeachment of Justice in Indonesia compared to Particular Developed Countries

An outlook on the developed world demonstrates difficulties in successfully impeaching any member of the constitutional or supreme court. Unfortunately, Indonesia is totally an exception regarding the contemporary relevant issues. The latest impeachment of a Constitutional Court Judge occurred in Indonesia since The House of Representatives (DPR) impeached one of Indonesia's Constitutional Court Judges, Professor Aswanto.[68] This is strong evidence that there is an intervention of the legislature over the impeachment of the Judges. Questioning the evidence is obviously unnecessary.

Concerning the separation of powers, several countries unite the constitutional jurisdiction of the Supreme Court. One of them is the United States of America. For Instance, the United States (US) representative for Minnesota Ilhan Omar has called

[65] The Department of Justice Canada, *op cit*

[66] John Clarke Adams, "The Italian Constitutional Court in Its First Two Years of Activity", Buffalo Law Review, Volume 7 No 2, 1958, p.255, https://core.ac.uk/download/pdf/236353388.pdf

[67] The Constitutional Court of The Republic of Indonesia, *op cit*

[68] CNN Indonesia, Alasan DPR Copot Aswanto dari Jabatan Hakim Konstitusi, October 2, 2022, https://www.cnnindonesia.com/nasional/20221002092202-32-855230/alasan-dpr-copot-aswanto-dari-jabatan-hakim-konstitusi

for Supreme Court Justice Clarence Thomas to resign in 2022.[69] In reality, none of the Supreme Court Justice of the US has ever been impeached. Not only the US but also the United Kingdom (UK) never exercise the removal of a supreme court judge by The Houses of Parliament. But, the intervention of parliament over the supreme court judges does not disappear. Because in the UK, it is only the Houses of Parliament (by joint resolution) that has the power to remove a judge from office.[70] Similarly, India never accepted any impeachment of court justices, but the efforts were initiated. Justice V. Ramaswami has the dubious distinction of being the first judge against whom impeachment proceedings were initiated. In 1993, the motion was brought up in *Lok Sabha*[71], but it failed to secure the required two-thirds majority[72].

Lastly, Japan grants a right to the Diet to participate in a committee regarding the impeachment of justices. The judiciary administers disciplinary proceedings to preserve judicial independence from the political branches of government.23 However, for impeachment and removal, by statute a special Impeachment Committee and Removal Court comprising members of the Diet have been established.[73] Even if the legislative body has a role, it does not mean that intervention over the supreme court exists in Japan. Because judicial independence is strictly protected in Japan and it has a significant role in the impeachment of a justice.

The protection of justice's independence and integrity is prioritized in developed countries. Moreover, they never give any chance to permit any impeachment of justices even though the charges against them exist. On the other hand, Indonesia has certain regulations but the legislature successfully violated the law and stop the ongoing period of a judge. Those harm the independency of justice and automatically provide evidence of the intervention over the constitutional court.

IV. CONCLUSIONS

The final conclusion shows that there is a relationship between the authority of the DPR and the Constitutional Court in Indonesia. The form of relation is the authority of the DPR in proposing judges at the constitutional court and the authority in forming constitutional court laws. The existence of this relationship can be "a loophole" for the DPR to intervene on the principle of judicial independence held by the Constitutional Court. Referring to the current Constitutional Court law, the DPR does not have the authority to dismiss constitutional court judges and also to recall the constitutional court judges who have been officially appointed by the president.

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[69] Giulia Carbonaro, "Han Omar Says Clarence Thomas Needs to Be Impeached Over Wife's Texts", October 10, 2022, https://www.newsweek.com/ilhan-omar-says-clarence-thomas-needs-impeached-over-wife-texts-1691809

[70] The Supreme Court of the United States of America (SCOTUS) and The Supreme Court of the United Kingdom (UKSC): A comparative learning tool, Accessed October 12, 2022, https://www.supremecourt.uk/docs/scotus-and-uksc-comparative-learning-tool.pdf

[71] The legislature of the Union, which is called Parliament, consists of the President and two Houses, known as the Council of States (Rajya Sabha) and **the** House of the People (Lok Sabha). Each House has to meet within six months of its previous sitting. A joint sitting of two Houses can be held in certain cases. Accessed October 12, 2022, https://knowindia.india.gov.in/

[72] The Hindu Net Dest, "List of judges who faced impeachment proceedings", Accessed October 12, 2022, https://www.thehindu.com/news/national/list-of-judges-who-faced-impeachment proceedings/article18578156.ece

[73] John O. Haley and Wiley B. Rutledge, *Op cit*

Comparing Indonesia with particular developed countries, they legally recognize the intervention of parliament over the supreme court in specific aspects. In the context of the relationship between the legislature and the constitutional courts, the independency of Constitutional Court Justices is strictly protected among developed countries in a variety of six aspects. Those aspects are concluded as important factors that represent the image of the relationship between the House and the Constitutional Court. It will enhance our perspective to overview similar constraints in the future.

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