

Unraveling the Challenges of the Independence of Constitutional Court Judges Amidst the Politicization of the Judiciary in Indonesia: A Legal and Political Analysis

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Abstract: The Constitutional Court (MK) as the guardian of the constitution plays an important role in upholding constitutional justice in the Indonesian constitutional system. However, the independence of MK judges is still vulnerable to political intervention, both in the legislative process and in the appointment and dismissal of judges. This study uses a normative juridical method with a legislative and conceptual approach. The results of the study show that this vulnerability is influenced by the revision of the Constitutional Court Law, which is fraught with political interests, the interference of political institutions in the selection of judges, and conflicts of interest in several controversial decisions. To strengthen the independence of the Constitutional Court, regulatory reforms based on meritocracy, external supervision through the Judicial Commission, transparency and public participation in the selection process and decisions, as well as the reinforcement of judges' ethics and integrity are needed. With these steps, it is hoped that the Constitutional Court will consistently carry out its function as the guardian of the constitution, uphold the principle of the rule of law, and protect the constitutional rights of the Indonesian people.

Keywords: Constitutional Court, Judicial Independence, Politicization of the Judiciary, Judicial Commission, Rule of Law.

A. Introduction

The Constitutional Court (MK) in the Indonesian constitutional system is positioned as the guardian of the constitution, playing a role in upholding constitutional justice in society, nation, and state. As an institution that enforces law and justice, the MK must be run by judges who have integrity, noble character, are fair, have a statesmanlike spirit, understand the constitution and state administration, and do not hold concurrent positions as state officials. To ensure the enforcement of law, the MK is based on the judicial branch of government, one of whose main principles is to maintain independence.¹

The mechanism for appointing Constitutional Court judges from the three branches of government—the President, the House of Representatives, and the Supreme Court—is intended to ensure integrity, independence, and a multi-layered control mechanism for the

¹ Mellani Mugia Adhita, "Independensi Hakim Mahkamah Konstitusi Dalam Perkara Pengujian Uu Yang Memuat Conflict Of Interest Pada Putusan Mk No 90/Puu-Xxi/2023," *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humaniora* 1, no. 20 (2024), <https://journal.forkami.com/index.php/nusantara/article/view/440>.



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Constitutional Court as a constitutional judicial institution.² However, in practice, political intervention in the judicial system often occurs through various forms and mechanisms. A number of cases reveal a pattern whereby political pressure is often exerted directly on judges, whether by public officials, political parties, or certain interest groups, with the aim of influencing decisions to align with political interests.³

One example that has sparked controversy is the ruling regarding Gibran Rakabuming Raka's candidacy in the 2024 elections. This controversy arose due to a conflict of interest, whereby one of the constitutional judges, Anwar Usman, who is Gibran's uncle, was part of the panel of judges that decided the case. Ethically and legally, a judge should not hear cases involving his own family members.⁴

In addition, during the hearing on alleged violations of the constitutional judges' code of ethics, Jimly Asshidiqie emphasized that the Constitutional Court was established to guarantee the sovereignty of the people with a composition of nine judges nominated by the President, the House of Representatives, and the Supreme Court. He stressed that the judges nominated were not representatives of the nominating institutions, but were only selected and nominated by them. Therefore, the DPR's interpretation that it has the authority to dismiss Judge Aswanto and replace him with M. Guntur Hamzah is considered incorrect, excessive, and inappropriate.⁵ This situation shows that the independence of Constitutional Court judges still faces serious challenges due to political intervention, both in the appointment and dismissal of judges. This is exacerbated by regulatory ambiguities that open up opportunities for misinterpretation by the proposing institutions.⁶ Therefore, this research is urgent in order to analyze these issues through a legal and political approach, while also providing academic contributions and practical recommendations to strengthen the independence of Constitutional Court judges and maintain the integrity of constitutional justice in Indonesia.

Previous studies, such as those conducted by M. Reza Saputra, have focused on the impact of revisions to the Constitutional Court Law on the independence of judges. This study is novel in that it not only examines regulatory aspects, but also comprehensively describes the challenges to the independence of Constitutional Court judges amid the politicization of the judiciary using legal and political analysis. Thus, this study is expected to contribute theoretically to the development of constitutional law as well as provide practical recommendations to strengthen the independence of Constitutional Court judges and maintain the integrity of constitutional justice in Indonesia.

Referring to the description in the background regarding the challenges of the independence of Constitutional Court judges amid the politicization of the judiciary in Indonesia: a legal and political analysis. Based on this study, the issues raised in this research are: What are the factors that cause the independence of Constitutional Court judges to be

² Muhammad Fawwaz Farhan Farabi dan Tanaya, "Polemik Legalitas Pemecatan Hakim Konstitusi oleh Lembaga Pengusul: Tinjauan Kasus Pemecatan Hakim Aswanto dan Implikasinya Terhadap Kemandirian Kekuasaan Kehakiman," *Jurnal Hukum dan HAM Wara Sains* 2, no. 04 (2023): 294–303, <https://doi.org/10.58812/jhhws.v2i04.291>.

³ Hilda Halnum Salsabil, "Mahkamah Konstitusi Di Persimpangan: Menelusuri Upaya Pelemahan Dan Dampaknya Bagi Hukum Dan Demokrasi," *PAMALI: Pattimura Magister Law Review* 4, no. 3 (2024): 419, <https://doi.org/10.47268/pamali.v4i3.2371>.

⁴ Hoddin, "Analisis Kritis terhadap Intervensi Politik dalam Proses Peradilan di Indonesia," *YUDHISTIRA : Jurnal Yurisprudensi, Hukum dan Peradilan* 1, no. 3 (2023): 25–32, <https://doi.org/10.59966/yudhistira.v1i3.1690>.

⁵ Hananto Widodo Raraniken Ayuning Bintari, "TINJAUAN YURIDIS INDEPENDENSI HAKIM MAHKAMAH KONSTITUSI (STUDI PUTUSAN MAHKAMAH KONSTITUSI NOMOR 103/PUU-XX/2022)," *NOVUM: JURNAL HUKUM* 10, no. 4 (2023), <https://ejournal.unesa.ac.id/index.php/novum/article/view/58451>.

⁶ Ahmad Solehudin Andra Triyudiana Azhary Fathama, Aryani, N. P., "Netralitas Profesi Hakim di Tengah Intervensi Politik," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 1, no. 1 (2023), Retrieved from <https://journal.forikami.com/index.php/dassollen/article/view/98>.

vulnerable to the politicization of the judiciary in Indonesia, and what legal and political solutions can be pursued to protect the independence of Constitutional Court judges from political intervention.

B. Methodology

This article aims to reveal the legal rules, legal doctrines, and legal principles related to unraveling the challenges of judicial independence amid the politicization of the judiciary in Indonesia: a legal and political analysis. This study uses a normative legal method. The approaches used are legislative and conceptual. The legislative approach is used to examine and analyze various regulations related to the legal issues under study. Meanwhile, the conceptual approach is used to analyze concepts, principles, and theoretical aspects relevant to this study.⁷ The technique used in collecting legal materials is through literature study, including books, journals, and websites. The legal materials that have been collected are then analyzed using qualitative descriptive analysis.

C. Results and Discussion

Factors That Cause the Independence of Constitutional Court Judges to be Vulnerable to the Politicization of the Judiciary in Indonesia

A country founded on the rule of law places the supremacy of law as the main foundation in maintaining the independence of judicial power. This means that judicial institutions must be free from all forms of influence or intervention from other parties, whether from the executive, legislative, or other external forces, so that the judiciary can function objectively in upholding the law and realizing justice.⁸ In this context, judges, including constitutional judges, have a moral and legal responsibility to always maintain the independence of the judiciary. Thus, the authority vested in judges must be exercised professionally, impartially, and in accordance with applicable laws. Furthermore, beyond the rules that have been explicitly stipulated in the 1945 Constitution of the Republic of Indonesia, any form of interference from external parties in the judicial process is an unjustifiable act, as it has the potential to undermine the integrity and public trust in the judiciary.⁹

Every amendment to a law must essentially fulfill a number of specific procedural requirements. One of these is the obligation to be included in the National Legislation Program (Prolegnas), as stipulated in Articles 16 and 1 of Law Number 12 of 2011.¹⁰ The process should ideally include the stages of planning, drafting, discussion, ratification or enactment, and promulgation. However, the revision of the Constitutional Court Law is considered to deviate from these provisions and is laden with political interests. This is evident from the fact that the revision of the Constitutional Court Law was never included in the National Legislation Program (Prolegnas) list, but was suddenly approved by the House of Representatives without going through the proper channels.¹¹ Furthermore, the revision discussion process did not involve the Constitutional Court as the most affected institution, nor did it provide adequate space for public participation. Fajar Laksono emphasized that this situation was very worrying,

⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana, 2006).

⁸ Jerimas Pelokilla, "UUD 1945 Sebagai Landasan Konstitusional Terhadap Perlindungan Hak Warga Negara Indonesia," *JOCER: Journal of Civic Education Research* 1, no. 1 (2023): 24–28, <https://doi.org/10.60153/jocer.v1i1.11>.

⁹ Jimly Asshiddiqie, *Konstitusi dan konstitutionalisme Indonesia*, Ed. 1 Cet. 2 (Sinar Grafika, 2011).

¹⁰ Wahyu Eko Nugroho, "Implementasi Trias Politica dalam Sistem Pemerintahan di Indonesia," *Gema Keadilan* 1, no. 1 (2014): 49–54, <https://doi.org/10.14710/gk.2014.3732>.

¹¹ M. Reza Saputra dan Taufiqurrohman Syahuri, "Analisis Dampak Revisi UU Mahkamah Konstitusi Terhadap Independensi Hakim Di Indonesia," *Jembatan Hukum : Kajian ilmu Hukum, Sosial dan Administrasi Negara* 1, no. 3 (2024): 80–89, <https://doi.org/10.62383/jembatan.v1i3.422>.

especially since the discussion was held during a pandemic, which further limited and made it difficult for the public to convey their aspirations and views on such a strategic change in the law.

One example that can be highlighted is Constitutional Court Decision Number 90/PUU-XXI/2023 regarding the age limit for presidential and vice presidential candidates. This decision drew widespread public reaction and controversy, as it was considered to be rife with potential conflicts of interest and thick with political overtones. This view is further reinforced by the fact that the then Chief Justice of the Constitutional Court, Anwar Usman, is the uncle of Gibran Rakabuming Raka, the person explicitly mentioned in the petition for judicial review.¹² This family closeness raises serious concerns about conflicts of interest that could influence the independence of decision-making. Furthermore, the existence of three dissenting opinions from other constitutional judges further highlights the sharp differences of opinion within the Constitutional Court, while also raising suspicions that the decision-making process is not entirely free from political pressure and intervention.¹³

Another example that is often cited in highlighting the issue of the independence of Constitutional Court judges is the practice of replacing Constitutional Court judges by the House of Representatives. This move is considered to reflect a form of intervention by political institutions that has the potential to weaken the independence of the judiciary. In fact, the principle of independence is actually a fundamental principle which means that judges must be given complete freedom in interpreting and applying the law without pressure or influence from any party.¹⁴ Within the framework of separation of powers, the judiciary should be guaranteed autonomy, separate from the interests of the executive and legislative branches. However, the reasons given by the House of Representatives for replacing the judge suggest political interests that could lead to restrictions on the judge's freedom to carry out his duties.¹⁵ This situation creates the risk that judges will feel pressured or constrained in handling cases, which clearly contradicts the fundamental principle of law that judges must be free from all forms of intervention. Furthermore, dismissals that are politically motivated can create a sense of insecurity for judges, both psychologically and in the practice of law enforcement, thereby threatening their independence.¹⁶

The authority possessed by a sovereign state in administering the judicial system is essentially a tangible manifestation of the exercise of judicial power. This power serves to ensure compliance with the law while upholding justice based on the fundamental values of Pancasila and the provisions set forth in the 1945 Constitution of the Republic of Indonesia. Thus, the administration of judicial power is not only an instrument for enforcing the law, but also a means of realizing the principle of the rule of law within the framework of the Unitary State of the Republic of Indonesia.¹⁷

This is further elaborated in the Official Explanation of Law No. 48 of 2009, which emphasizes the importance of judicial independence in every judicial process. This principle

¹² Mellani Mugia Adhita, "Independensi Hakim Mahkamah Konstitusi Dalam Perkara Pengujian Uu Yang Memuat Conflict Of Interest Pada Putusan Mk No 90/Puu-Xxi/2023."

¹³ Semuel Walangitan, "INDEPENDENSI MAHKAMAH KONSTITUSI DI TENGAH TEKANAN POLITIK," *Indonesia of Journal Business Law* 4, no. 2 (2025): 45–56, <https://doi.org/10.47709/ijbl.v4i2.6596>.

¹⁴ Farid Wajdi dkk., *Pengawasan hakim dan penegakan kode etik di Komisi Yudisial*, Cetakan pertama (Sinar Grafika, 2020).

¹⁵ Jimly Asshiddiqie, *Konstitusi bernegara: praksis kenegaraan bermartabat dan demokratis* (Setara Press, 2015).

¹⁶ Sirajul Munir dkk., "Menyoal Independensi Mahkamah Konstitusi Pasca Pergantian Hakim Mahkamah Konstitusi oleh Dewan Perwakilan Rakyat," *CREPIDO* 5, no. 2 (2023): 207–16, <https://doi.org/10.14710/crerido.5.2.207-216>.

¹⁷ Kosariza Virtu Silaban, "KEDUDUKAN MAHKAMAH KONSTITUSI DALAM SISTEM KETATANEGARAAN REPUBLIK INDONESIA," *Limbago: Journal of Constitutional Law* 1, no. 1 (2021): 60–76.

stems from the belief that a country based on the rule of law must place the independence of judicial institutions as one of its main pillars, so that judicial authority is truly free from the influence of other powers or authorities. The ultimate goal is to create a judicial process that is capable of enforcing the law while maintaining objective justice.¹⁸ In the context of carrying out their duties and authorities, every judge, including constitutional judges, is required to maintain and uphold the independence of the judiciary. That way, the decisions made can truly reflect substantive justice without being influenced by external interests. Furthermore, beyond the provisions that have been clearly outlined by the 1945 Constitution of the Republic of Indonesia, no external party is permitted to intervene or interfere in the legal process, as this could undermine the principle of judicial independence and weaken public trust in the judiciary.¹⁹

Legal and political solutions that can be pursued to maintain the independence of Constitutional Court judges from political interference.

Chapter IX of the 1945 Constitution of the Republic of Indonesia regulates judicial power. The provisions stipulate that the Supreme Court, together with the courts under its authority and the Constitutional Court, are the holders of judicial power in Indonesia. As one branch of judicial power, the Supreme Court has the authority to review and decide cases at the cassation level.²⁰ In addition, the Supreme Court is also given the authority to review regulations under the law, even against certain laws, as well as other authorities directly granted by law. In its capacity as a court of cassation, the Supreme Court receives, examines, and decides cases filed as legal remedies against previous court decisions, both from courts of first instance and appellate courts²¹

The process of appointing judges to the Constitutional Court has never been completely free from political interests. This is understandable because both the House of Representatives and the President, in addition to performing their functions as state institutions, are also political institutions. This fact has been proven by a number of cases that have occurred, for example in the selection process of former Constitutional Court judges Akil Mochtar, Patrialis Akbar, and Arief Hidayat. The most recent case is the dismissal of Constitutional Court Judge Aswanto by the Indonesian House of Representatives on September 29, 2022.²²

This dismissal stemmed from a statement made by the Chair of Commission III of the Indonesian House of Representatives, Bambang Wuryanto (Bambang Pacul), during a plenary session of the House of Representatives on the same day. He considered that Aswanto's performance did not meet the expectations of the House of Representatives because several of his decisions often overturned legislation produced by the House of Representatives. Aswanto was even considered the Constitutional Court judge who most often annulled laws made by the House of Representatives. According to the House of

¹⁸ Andy Omara, "INTERPRETING THE INDONESIAN CONSTITUTIONAL COURT APPROACH IN CONDUCTING JUDICIAL REVIEW ON CASES RELATED TO ECONOMIC AND SOCIAL RIGHTS," *Indonesia Law Review* 7, no. 2 (2017), <https://doi.org/10.15742/ilrev.v7n2.318>.

¹⁹ Nurul Hidayah dkk., "Reformasi Hukum Tata Negara Di Indonesia: Kritik Dan Prospek Untuk Perbaikan," *Jurnal Dunia Ilmu Hukum (JURDIKUM)* 2, no. 1 (2024): 04–08, <https://doi.org/10.59435/juridikum.v2i1.83>.

²⁰ Sulis Fauziah, "Reformasi Kelembagaan Mahkamah Konstitusi Dalam Menjaga Independensi Kekuasaan Kehakiman," *Mahkamah: Jurnal Riset Ilmu Hukum* 2, no. 2 (2025): 54–62, <https://doi.org/10.62383/mahkamah.v2i2.542>.

²¹ Lefri Mikhael, "STUDI PERBANDINGAN ARAH PERLUASAN KEWENANGAN MAHKAMAH KONSTITUSI REPUBLIK INDONESIA," *CREPIDO* 4, no. 2 (2022): 148–60, <https://doi.org/10.14710/crerido.4.2.148-160>.

²² Dimas Yemahura Alfarauq dkk., "Urgensi Kewenangan Komisi Yudisial dalam Rangka Menjaga Perilaku Hakim," *Konsensus: Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi* 2, no. 2 (2025): 01–21, <https://doi.org/10.62383/konsensus.v2i2.660>.

Representatives' argument, because Aswanto was appointed through a House of Representatives election mechanism, he should have a commitment to support and uphold the legality of laws produced by the legislative body.²³

Thus, the DPR's decision to replace Aswanto is actually contrary to the provisions of the Constitutional Court Law and the 1945 Constitution of the Republic of Indonesia, and can be seen as a form of political intervention in the independence of the constitutional court. This refers to Article 3 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Authority, which explicitly guarantees the freedom of constitutional judges in carrying out their duties²⁴

The profession of judge is a noble one, especially that of a Constitutional Court (MK) judge, who plays an important role as guardian of the constitution, protector of human rights, and constitutional rights of all Indonesian citizens. However, this position is viewed merely as a "superior-subordinate" relationship, becoming a covert political practice laden with transactional overtones, namely an inappropriate reciprocal relationship. This condition not only causes problems in the legal sphere, but also spills over into the political sphere.²⁵

Based on the provisions of the Constitutional Court regulations, the dismissal or removal of Judge Aswanto can be considered a violation of the rules, both formally and materially, and therefore does not comply with the applicable procedures and mechanisms. This case reflects political intervention within the Constitutional Court. Therefore, the solution offered by the author is to give authority to the Judicial Commission (KY) as the selection committee for Constitutional Court judges. This is considered more appropriate because the KY is outside the scope of power intervention. This is because the President and the DPR are political institutions that carry out the mandate of the law, while the Constitutional Court, as a judicial institution, functions to oversee that the legal products or laws produced by the DPR do not conflict with the Constitution.²⁶

One of the biggest challenges faced by the Constitutional Court (MK) is maintaining institutional independence and the integrity of constitutional judges amidst national political dynamics. Although the Constitutional Court was designed as an independent institution, the involvement of other branches of power, namely the President, the Parliament and the Supreme Court in the process of selecting judges often raises concerns about political intervention in decision-making.²⁷

Several cases that have compromised the integrity of the Constitutional Court, such as the bribery scandal involving former Chief Justice Akil Mochtar in 2013, have undermined public confidence in the Constitutional Court as a judicial institution that should be neutral. Although various internal reforms have been carried out, the challenge of maintaining the professionalism and objectivity of judges remains a public concern. Therefore, the author offers a solution in the form of strict adherence to the professional code of ethics and the commitment of judges to always maintain their dignity as statesmen. The revision of the

²³ Suparman Marzuki, *Pengawasan & penegakan kode etik profesi hakim* (FH UII press, 2020).

²⁴ Veron Adhyaksa Walujan, "IMPLIKASI KONSTITUSIONAL PENGGANTIAN HAKIM KONSTITUSI OLEH DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA," *LEX ADMINISTRATUM* 12, no. 1 (2023), <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/52784>.

²⁵ Andika Adhyaksa dan Fathurrahim Fathurrahim, "Kondisi Materil Peraturan Perundang-Undangan Dalam Aspek Pembentukannya Dengan Penggunaan Artificial Intelligence," *Nomos: Jurnal Penelitian Ilmu Hukum* 5, no. 3 (2025), <https://doi.org/10.56393/nomos.v5i3.2943>.

²⁶ Andra Triyudiana, "Netralitas Profesi Hakim di Tengah Intervensi Politik."

²⁷ Fakhry Amin, "Peran Mahkamah Konstitusi dalam Menjaga Prinsip Konstitusionalisme di Indonesia: Studi Putusan Judicial Review Tahun 2019–2024," *Ranah Research : Journal of Multidisciplinary Research and Development* 7, no. 6 (2025): 4467–75, <https://doi.org/10.38035/rrj.v7i6.1856>.

Constitutional Court Law is needed to strengthen the guarantee of judges' independence, including the dismissal mechanism that can only be carried out according to clear legal reasons, not due to political pressure.²⁸

In the period 2019 to 2024, the Constitutional Court (MK) has issued various important decisions that have a significant impact on the principles of constitutionalism. Some decisions are considered to strengthen the basic principles of the constitution, but not a few have drawn criticism because they are considered to weaken it. One of the decisions that shows the consistency of the Constitutional Court in maintaining constitutionalism is Decision Number 91/PUU-XVIII/2020 related to the examination of Law Number 11 of 2020 concerning Job Creation.²⁹ In this case, the Constitutional Court stated that the Job Creation Law was conditionally unconstitutional, because the formation process was not in accordance with the principles of the formation of good laws and regulations, especially the principles of openness and public participation. The decision reflects the Court's courage in upholding the principles of the rule of law and democratic proceduralism.³⁰

Based on the analysis above, it can be concluded that in the 2019-2024 period, the Constitutional Court showed a duality of roles. On the one hand, the Constitutional Court appears as a progressive protector of the constitution, but on the other hand, there are inconsistencies that have the potential to weaken the integrity of constitutionalism. Therefore, the author's analysis emphasizes that the Constitutional Court has not been consistent in making decisions. The solution offered is that the Constitutional Court must dare to make a firm decision, considering that every decision of the Constitutional Court is final and cannot be appealed. Thus, the Constitutional Court is required to be able to maintain its independence and dare to face the pressure of executive and legislative powers that often intersect with political interests. Credible External Oversight Provide space for independent institutions or KY to oversee the behavior of judges, following the practices in France and Italy.³¹

Initially, supervision of constitutional judges was under the authority of the Judicial Commission, as stipulated in Article 20 of Law No. 22/2004 on the Judicial Commission jo. Article 34 paragraph (3) of Law Number 4 Year 2004 on Judicial Power. However, this authority was overturned by Constitutional Court Decision Number 005/PUU-IV/2006, which affirmed that constitutional judges are not included as parties that can be supervised by the Judicial Commission.³² Since then, supervision has been carried out internally through Constitutional Court Regulation Number 1 of 2013 by establishing the Honorary Council of the Constitutional Court. This condition creates problems due to the absence of external supervision. Therefore, the author considers it important to restore the authority of the Judicial Commission so that it can return to supervising constitutional judges as before. Bipartisan Mechanism The process of nominating judges is not dominated by one political force, but through cross-party consensus so as not to create excessive loyalty to the proposer.³³

²⁸ Ning Ayunda Choffi dan Eny Kusdarini, "Perkembangan Putusan Mahkamah Konstitusi dalam Menangani Perkara Perselisihan Hasil Pemilihan Umum Presiden," *Jurnal Hukum IUS QUIA IUSTUM* 31, no. 2 (2024): 408–33, <https://doi.org/10.20885/iustum.vol31.iss2.art8>.

²⁹ Amin, "Peran Mahkamah Konstitusi dalam Menjaga Prinsip Konstitutionalisme di Indonesia."

³⁰ Rivan Hidayat dan Ritika Sahzana Adiba, "Reformulation of Absolute Judicial Review Authority in the Constitutional Court to Uphold the Principle of Constitutional Supremacy," *Jurnal Penelitian Ilmu-Ilmu Sosial* 4, no. 2 (2023): 107–22, <https://doi.org/10.23917/sosial.v4i2.2377>.

³¹ Amin, "Peran Mahkamah Konstitusi dalam Menjaga Prinsip Konstitutionalisme di Indonesia."

³² Wahyu Aji Ramadan dkk., "Reformulasi Pengawasan Mahkamah Konstitusi Demi Meningkatkan Efektivitas Penegakan Kode Etik Hakim Konstitusi," *Jurnal Studia Legalia* 3, no. 02 (2022): 21–43, <https://doi.org/10.61084/jsl.v3i02.29>.

³³ Dimas Yemahura Alfarauq dkk., "Urgensi Kewenangan Komisi Yudisial dalam Rangka Menjaga Perilaku Hakim."

Judicial independence is a key requirement for the establishment of constitutionalism. The Constitutional Court (MK), as the examiner of laws against the 1945 Constitution, is supposed to be neutral and free from political influence. However, in recent years, the independence and legitimacy of the Constitutional Court has been questioned. First, the legitimacy of public institutions requires public involvement in oversight.³⁴ In the Constitutional Court, this can be realized through open due diligence in the selection of judges, public consultation forums, and independent monitoring from academics and professional institutions, as practiced in Germany and South Korea. Second, the principles of transparency and accountability must be strengthened by broadcasting hearings live, publishing complete decisions, and compiling summaries of decisions that are easily understood by the public. This practice has been successfully implemented in Canada and South Africa. Public Consultation Forum³⁵

Involve academics, civil society and professional institutions in independent monitoring of the Court's performance, as practiced in Germany and South Korea. Third, the selection of Constitutional Court judges needs to be reformed to be meritocracy-based and free from political domination. The bipartisan recommendation mechanism in Germany can serve as an example to reduce excessive loyalty to the proposing institution.³⁶

Fourth, external oversight needs to be strengthened through the role of the Judicial Commission (KY) in enforcing the code of ethics of constitutional judges. International practices in France and Italy show that judicial oversight institutions play an important role in maintaining judicial integrity. Thus, maintaining the independence of the Constitutional Court is not enough only from within the institution, but also through a political ecosystem that supports openness, public participation, and credible external oversight.³⁷

The Constitutional Court's decision has authority because of its *erga omnes* binding power, meaning that it applies to everyone, not just the litigants. The Constitutional Court's decision can be implemented immediately without requiring a decision from another official, unless otherwise specified in the legislation. With its final and binding nature, the Constitutional Court's decision cannot be reviewed and automatically has legal force since it was pronounced, as stipulated in Article 10 paragraph (1) of Law No. 8/2011.³⁸

D. Conclusion

The independence of Constitutional Court judges in Indonesia is still vulnerable to judicial politicization due to a number of factors, including: legislative processes that are full of political interests, direct involvement of political institutions (President and DPR) in the selection and dismissal of judges, and conflicts of interest that undermine the integrity of decisions. Several cases, such as the non-transparent revision of the Constitutional Court Law, Constitutional Court Decision Number 90/PUU-XXI/2023, as well as the removal of Judge Aswanto by the DPR, are clear evidence that political interference can interfere with judicial independence and reduce public trust.

³⁴ Devi Anggreni dkk., "Peran Mahkamah Konstitusi dalam Menjamin Kedaulatan Hukum di Indonesia," *Hutanasyah: Jurnal Hukum Tata Negara* 3, no. 1 (2024): 11–26, <https://doi.org/10.37092/hutanasyah.v3i1.868>.

³⁵ Hidayat dan Adiba, "Reformulation of Absolute Judicial Review Authority in the Constitutional Court to Uphold the Principle of Constitutional Supremacy."

³⁶ Annisa Salsabila dkk., "Initiating Constitutional Morality: Political Intervention, Ethical Reinforcement, and Constitutional Court Decisions in Indonesia," *Constitutional Review* 10, no. 2 (2024): 505–37, <https://doi.org/10.31078/consrev1028>.

³⁷ Wajdi dkk., *Pengawasan hakim dan penegakan kode etik di Komisi Yudisial*.

³⁸ Virto Silaban, "Kedudukan Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Republik Indonesia."

To maintain the independence of the Constitutional Court, comprehensive juridical and political solutions are needed, namely, first Regulatory reform through the revision of the Constitutional Court Law so that the mechanism for appointing and dismissing judges is truly based on meritocracy and free from political pressure. Second Strengthening external supervision by restoring the role of the Judicial Commission in supervising constitutional judges and enforcing the code of ethics. Transparency and public participation in the selection process of judges, discussion of legislation, and publication of Constitutional Court decisions to ensure accountability. Third A bipartisan mechanism in nominating judges so that there is no domination by one political force. Fourth, strengthening the ethics and integrity of judges as statesmen who maintain the dignity of the Constitutional Court as the guardian of the constitution. With these steps, the Constitutional Court can more consistently carry out its role as guardian of the constitution, upholder of the principles of the rule of law, and protector of the constitutional rights of the people, so as to avoid political intervention and maintain public trust.

References

Amin, Fakhry. "Peran Mahkamah Konstitusi dalam Menjaga Prinsip Konstitusionalisme di Indonesia: Studi Putusan Judicial Review Tahun 2019–2024." *Ranah Research: Journal of Multidisciplinary Research and Development* 7, no. 6 (2025): 4467–75. <https://doi.org/10.38035/rrj.v7i6.1856>.

Andra Triyudiana, Ahmad Solehudin, Azhary Fathama, Aryani, N. P. "Netralitas Profesi Hakim di Tengah Intervensi Politik." *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 1, no. 1 (2023). Retrieved from <https://journal.forikami.com/index.php/dassollen/article/view/98>.

Anggreni, Devi, Ahmad Fuadi, Fitriyani Fitriyani, dan Muhammad Ibnu Al-Kautsar. "Peran Mahkamah Konstitusi dalam Menjamin Kedaulatan Hukum di Indonesia." *Hutanasyah: Jurnal Hukum Tata Negara* 3, no. 1 (2024): 11–26. <https://doi.org/10.37092/hutanasyah.v3i1.868>.

Annisa Salsabila, Tria Noviantika, dan Ahmad Yani. "Initiating Constitutional Morality: Political Intervention, Ethical Reinforcement, and Constitutional Court Decisions in Indonesia." *Constitutional Review* 10, no. 2 (2024): 505–37. <https://doi.org/10.31078/consrev1028>.

Asshiddiqie, Jimly. *Konstitusi bernegara: praksis kenegaraan bermartabat dan demokratis*. Setara Press, 2015.

Asshiddiqie, Jimly. *Konstitusi dan konstitusionalisme Indonesia*. Ed. 1 Cet. 2. Sinar Grafika, 2011.

Adhyaksa, Andika, dan Fathurrahim Fathurrahim. "Kondisi Materiil Peraturan Perundang-Undangan Dalam Aspek Pembentukannya Dengan Penggunaan Artificial Intelligence." *Nomos: Jurnal Penelitian Ilmu Hukum* 5, no. 3 (2025). <https://doi.org/10.56393/nomos.v5i3.2943>.

Dimas Yemahura Alfarauq, Siti Marwiyah, dan Wahyu Prawesthi. "Urgensi Kewenangan Komisi Yudisial dalam Rangka Menjaga Perilaku Hakim." *Konsensus: Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi* 2, no. 2 (2025): 01–21. <https://doi.org/10.62383/konsensus.v2i2.660>.

Farabi, Muhammad Fawwaz Farhan dan Tanaya. "Polemik Legalitas Pemecatan Hakim Konstitusi oleh Lembaga Pengusul: Tinjauan Kasus Pemecatan Hakim Aswanto dan Implikasinya Terhadap Kemandirian Kekuasaan Kehakiman." *Jurnal Hukum dan HAM Wara Sains* 2, no. 04 (2023): 294–303. <https://doi.org/10.58812/jhhws.v2i04.291>.

Hidayat, Rivan, dan Ritika Sahzana Adiba. "Reformulation of Absolute Judicial Review Authority in the Constitutional Court to Uphold the Principle of Constitutional Supremacy." *Jurnal Penelitian Ilmu-Ilmu Sosial* 4, no. 2 (2023): 107–22. <https://doi.org/10.23917/sosial.v4i2.2377>.

Hodin. "Analisis Kritis terhadap Intervensi Politik dalam Proses Peradilan di Indonesia." *YUDHISTIRA : Jurnal Yurisprudensi, Hukum dan Peradilan* 1, no. 3 (2023): 25–32. <https://doi.org/10.59966/yudhistira.v1i3.1690>.

Jerimas Pelokilla. "UUD 1945 Sebagai Landasan Konstitusional Terhadap Perlindungan Hak Warga Negara Indonesia." *JOCER: Journal of Civic Education Research* 1, no. 1 (2023): 24–28. <https://doi.org/10.60153/jocer.v1i1.11>.

M. Reza Saputra dan Taufiqurrohman Syahuri. "Analisis Dampak Revisi UU Mahkamah Konstitusi Terhadap Independensi Hakim Di Indonesia." *Jembatan Hukum : Kajian ilmu Hukum, Sosial dan Administrasi Negara* 1, no. 3 (2024): 80–89. <https://doi.org/10.62383/jembatan.v1i3.422>.

Marzuki, Peter Mahmud. *Penelitian Hukum*. Kencana, 2006.

Marzuki, Suparman. *Pengawasan & penegakan kode etik profesi hakim*. FH UII press, 2020.

Mellani Mugia Adhita. "Independensi Hakim Mahkamah Konstitusi Dalam Perkara Pengujian UU Yang Memuat Conflict Of Interest Pada Putusan Mk No 90/Puu-Xxi/2023." *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humaniora* 1, no. 20 (2024). <https://journal.forikami.com/index.php/nusantara/article/view/440>.

Mikhael, Lefri. "Studi Perbandingan Arah Perluasan Kewenangan Mahkamah Konstitusi Republik Indonesia." *Crepidio* 4, no. 2 (2022): 148–60. <https://doi.org/10.14710/crerido.4.2.148-160>.

Munir, Sirajul, Rahma Aulia, dan Inna Fauzatal Ngazizah. "Menyoal Independensi Mahkamah Konstitusi Pasca Pergantian Hakim Mahkamah Konstitusi oleh Dewan Perwakilan Rakyat." *Crepidio* 5, no. 2 (2023): 207–16. <https://doi.org/10.14710/crerido.5.2.207-216>.

Ning Ayunda Chofifi dan Eny Kusdarini. "Perkembangan Putusan Mahkamah Konstitusi dalam Menangani Perkara Perselisihan Hasil Pemilihan Umum Presiden." *Jurnal Hukum IUS QUA IUSTUM* 31, no. 2 (2024): 408–33. <https://doi.org/10.20885/iustum.vol31.iss2.art8>.

Nugroho, Wahyu Eko. "Implementasi Trias Politica dalam Sistem Pemerintahan di Indonesia." *Gema Keadilan* 1, no. 1 (2014): 49–54. <https://doi.org/10.14710/gk.2014.3732>.

Nurul Hidayah, Syabrina Az-Jahra, Aprillia Amanda, dan Karina Yunitasari. "Reformasi Hukum Tata Negara Di Indonesia: Kritik Dan Prospek Untuk Perbaikan." *Jurnal Dunia Ilmu Hukum (JURDIKUM)* 2, no. 1 (2024): 04–08. <https://doi.org/10.59435/jurdikum.v2i1.83>.

Omara, Andy. "Interpreting The Indonesian Constitutional Court Approach In Conducting Judicial Review On Cases Related To Economic And Social Rights." *Indonesia Law Review* 7, no. 2 (2017). <https://doi.org/10.15742/ilrev.v7n2.318>.

Ramadan, Wahyu Aji, Irma Aulia Pertiwi Nusantara, dan Tanti Mitasari. "Reformulasi Pengawasan Mahkamah Konstitusi Demi Meningkatkan Efektivitas Penegakan Kode Etik Hakim Konstitusi." *Jurnal Studia Legalia* 3, no. 02 (2022): 21–43. <https://doi.org/10.61084/jsl.v3i02.29>.

Raraniken Ayuning Bintari, Hananto Widodo. "Tinjauan Yuridis Independensi Hakim Mahkamah Konstitusi (Studi Putusan Mahkamah Konstitusi Nomor 103/PUU-XX/2022)." *Novum: Jurnal Hukum* 10, no. 4 (2023). <https://ejournal.unesa.ac.id/index.php/novum/article/view/58451>.

Salsabil, Hilda Halnum. "Mahkamah Konstitusi Di Persimpangan: Menelusuri Upaya Pelemahan Dan Dampaknya Bagi Hukum Dan Demokrasi." *PAMALI: Pattimura Magister Law Review* 4, no. 3 (2024): 419. <https://doi.org/10.47268/pamali.v4i3.2371>.

Sulis Fauziah. "Reformasi Kelembagaan Mahkamah Konstitusi Dalam Menjaga Independensi Kekuasaan Kehakiman." *Mahkamah : Jurnal Riset Ilmu Hukum* 2, no. 2 (2025): 54–62. <https://doi.org/10.62383/mahkamah.v2i2.542>.

Veron Adhyaksa Walujan. "Implikasi Konstitusional Penggantian Hakim Konstitusi Oleh Dewan Perwakilan Rakyat Republik Indonesia." *Lex Administratum* 12, no. 1 (2023). <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/52784>.

Virto Silaban, Kosariza. "Kedudukan Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Republik Indonesia." *Limbago: Journal of Constitutional Law* 1, no. 1 (2021): 60–76.

Wajdi, Farid, Imran, dan Muhammad Ilham Hasanuddin. *Pengawasan hakim dan penegakan kode etik di Komisi Yudisial*. Cetakan pertama. Sinar Grafika, 2020.

Walangitan, Semuel. "Independensi Mahkamah Konstitusi Di Tengah Tekanan Politik." *Indonesia of Journal Business Law* 4, no. 2 (2025): 45–56. <https://doi.org/10.47709/ijbl.v4i2.6596>.