

Review of the Authority of the House of Representatives in Removing Constitutional Court Judges

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Abstract

The Constitutional Court of the Republic of Indonesia is a high state institution in the Indonesian constitutional system which is the holder of judicial authority together with the Supreme Court. In the dismissal of the Constitutional Court Judges it is very urgent to decide because it relates to the independence of the Constitutional Court Judges. The longer the case, the political pressure from the DPR as a fellow state high institution will result in the instability of the legal system in Indonesia. Moreover, at this time the DPR has confirmed that it will not annul the replacement of Constitutional Justice Aswanto, so it is important that the DPR's actions be immediately tried by the judicial authority, in casu the Constitutional Court. The formulation of the problem in this study is what is the authority of the DPR in removing Constitutional Court judges? This study uses normative research with descriptive research specifications. The province's request for an examination is very priority and also so that the Court suspends all actions aimed at replacing a serving Constitutional Justice in a manner or procedure outside of the provisions in Article 23 of the Constitutional Court Law, and it is also not justified to issue a stipulation that legalizes the action as the applicant requested in the petitum provision. The petition of the applicant is based on strong reasons which are non-nobis solum sed omnibus (not for us alone, but for everyone), because the independence of the MK as guardian of constitutional rights is at stake.

Keywords: Authority, House of Representatives, Constitutional Justices.



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INTRODUCTION

Politically, Indonesia is the 3rd largest most democratic country in the world after India and the United States (Hanevi et al., 2022). In Indonesia there is an institution that accommodates the aspirations of the people and implements the 1945 Constitution and obeys its provisions, namely the DPR or the People's Representative Council which was formed in 1950 is one of the legislative institutions in Indonesia, this House of Representatives has several functions, namely as a forum for the community to channel their aspirations, oversee the running of government and make laws (Revalina et al., 2022) (Nwokeocha, 2023a). Meanwhile, the Constitutional Court is a judicial institution that was established in 2003 and has the task of deciding constitutional disputes and guaranteeing the supremacy of the constitution as well as guarding the constitution and ensuring that government policies do not conflict with the constitution (Nwokeocha, 2023b). However, the relationship between the two institutions is not always harmonious. Several times there have been conflicts between these two institutions, such as what recently happened, namely the removal of Constitutional Court Judge Aswanto by the DPR because it had annulled a law product of the DPR at the Constitutional Court. Based on the Constitutional Court law article 23 paragraph (4) which reads "the dismissal of constitutional judges is determined by a Presidential Decree at the request of the Chief Justice

of the Constitutional Court". It is clear that the DPR does not have the power to dismiss MK judges, the steps taken by the DPR threaten the independence of the Constitutional Court. The formulation of the problem is that in accordance with the background above, the problem that we will discuss in this paper is "what is the authority of the DPR in removing Constitutional Court judges?"

RESEARCH METHODS

The type of research used in this study is normative legal research, with descriptive research specifications. The type of data used is secondary data which originates from primary legal materials (Constitutional Court Law), secondary legal materials (results of research and journals). To collect data, a literature study was carried out, namely by reading and collecting existing data in the form of secondary data. The data analysis technique used is a qualitative analysis technique.

RESEARCH RESULTS AND DISCUSSION

The DPR or the People's Representative Council is one of the high state institutions in the Indonesian constitutional system which is a people's representative institution whose duties include preparing and discussing Draft Laws (Daniel et al., 2022). Meanwhile, the MK or the Constitutional Court is a high state institution in the constitutional system which holds judicial power together with the Supreme Court and has one of the duties of examining laws against the Constitution. (Ioraa, 2023). However, the relationship between these two institutions was several times not harmonious, as an example of the disharmony between these two institutions that the author can take, namely regarding the DPR (House of Representatives) removing Aswanto's position as a judge of the Constitutional Court on the grounds that judge Aswanto had annulled the law carried out by DPR. Therefore Aswanto who was a constitutional judge proposed by the legislature was dismissed. This step by the DPR towards the Constitutional Court shows an attitude of authoritarianism and defiance of the law.

The duties and powers of the DPR (House of Representatives), namely (Martins, 2022):

1. Legislative functions: Compile the National Legislation Program (Prolegnas), Prepare and discuss bills, Accept bills submitted by the DPD (related to regional autonomy; central and regional relations; formation, expansion and merger of regions; management of natural resources and other natural resources; and financial balance central and regional), Discuss bills proposed by the President or DPD, Establish Laws together with the President, Approve or disapprove government regulations in lieu of Laws (submitted by the President) to be enacted into Laws.
2. Function of the budget: Approving the draft law on the state budget (submitted by the President), paying attention to the DPD's consideration of the bill on the state budget and bills related to taxes, education and religion, following up on the results of audits on the management and accountability of state finances submitted by the BPK, giving approval on the transfer of state assets and on agreements that have a broad impact on people's lives related to the burden of state finances.
3. Oversight function, Overseeing the implementation of laws, state budgets and government policies, discussing and following up on the results of supervision submitted by the DPD (related to the implementation of the law on regional autonomy, formation, expansion and merger of regions, management of natural resources and other SDEs, implementation of the state budget, taxes , education and religion)
4. Other functions, Absorb, collect, accommodate and follow up on the aspirations of the people, Give approval to the President to: (1) declare war or make peace with other countries; (2) appoint and dismiss members of the Judicial Commission, provide advice to

the President in terms of: (1) granting amnesthesia and abolition; (2) Appoint ambassadors and accept the placement of other ambassadors, Select BPK members by taking into account the considerations of the DPD, Give approval to the Judicial Commission regarding the candidates for Supreme Court judges who will be designated as Supreme Court judges by the President, Select 3 (three) constitutional judges to be submitted further to the President.

Regulations regarding the dismissal of Constitutional Judges are contained in article 23 of the Constitutional Court Law, in this article it regulates 2 conditions for the dismissal of a Constitutional Judge, namely honorable and dishonorable discharge. In detail, the constitutional justices were honorably dismissed with the following reasons: Passed away; Resigned at a personal request submitted to the Chief Justice of the Constitutional Court; 70 (seventy) years old; The term of office has ended; or physically or mentally ill for 3 (three) months so that they cannot carry out their duties as evidenced by a doctor's certificate (Daniel et al., 2022).

The reasons for a constitutional judge being dishonorably dismissed are if: they are sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime punishable by imprisonment; commit a disgraceful act; does not attend the trial which is his duty and obligation for 5 (five) consecutive times without a valid reason; violate the oath or promise of office; intentionally hindering the Constitutional Court from rendering a decision within the time frame referred to in Article 7B paragraph (4) of the 1945 Constitution of the Republic of Indonesia; violates the prohibition of multiple positions as referred to in Article 17; no longer fulfills the requirements as a constitutional judge; and/or violate the Code of Ethics and Code of Conduct of Constitutional Judges.

The conclusion to remove Aswanto shows that the DPR is ahistorical with the laws they produce themselves. This is because this mechanism is contrary to Article 23 of Law number 7 of 2020 concerning the MK (UU MK). Materially Aswanto is not being dismissed with or without honor. Meanwhile, the formal coherence is also problematic because it does not go through the correct mechanism, namely sending a letter from the Chief Justice of the Constitutional Court to the President to subsequently issue a Presidential Decree on the dismissal of constitutional judges (Obichili et al., 2023).

CONCLUSION

The DPR is a legislative body and is a forum for conveying the aspirations of the people and the Constitutional Court is a state body guarding the constitution which has the authority to decide at the first and last levels. Several times the relationship between the two institutions was not harmonious and there were conflicts. Most recently, the DPR removed MK judge Aswanto because it annulled a law made by the DPR, they thought that Aswanto should not have done that because Aswanto was the DPR's representative at the Constitutional Court. The dismissal of the MK judges should have been determined by the President at the request of the Chief Justice of the Constitutional Court and required a clear basis. The DPR should not assume that Aswanto is the DPR's representative at the Constitutional Court because Aswanto is a judge proposed by and not proposed from, democratic countries need an institution such as the Constitutional Court to protect political minorities.

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