

Constitutional Judges: What Powers Does the House of Representatives Have?

Septi Nur Wijayanti^{1*}, Retno Saraswati², Lita Tyesta Addy Listya Wardhani³, Kelik Iswandi⁴, Tanu Surana⁵

¹ Faculty of Law, Universitas Diponegoro, Indonesia and Faculty of Law, Universitas Muhammadiyah Yogyakarta, Indonesia

^{2,3} Faculty of Law, Universitas Diponegoro, Indonesia

⁴ District Court of Sengkang, Indonesia

⁵ School of Law, Shoolini University, India

*Corresponding Author: septinurwijayanti@umy.ac.id

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ABSTRACT

The House of Representatives did not extend the term of constitutional judge Aswanto on September 29, 2022, because Aswanto regularly nullified laws that they passed. This action was taken against the Indonesian legal system with the House of Representatives' authority to remove constitutional judges' and constitutional judges' independence. Accordingly, this paper will employ normative research approaches to assess the House of Representatives' influence over Constitutional Judges. The findings revealed that the Supreme Court, the President, and the House of Representatives proposed the constitutional judges. Each proposed institution is given the ability to nominate and choose constitutional judges. Meanwhile, the dismissal of constitutional judges is governed by Article 24C paragraph (6) of the 1945 Indonesian Constitution. Dismissal of constitutional judges is determined by Presidential decree at the request of the chief of the constitutional court. As a result, the House of Representatives' decision to dismiss constitutional judge Aswanto violates the Indonesian Constitution.

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1. Introduction

Judicial power in Indonesia consists of the Supreme Court and its subordinate judicial bodies, the Constitutional Court, and the Judicial Commission. Poland also experiences a similar phenomenon. Both Indonesia and Poland involve other state institutions in the selection and dismissal of judges. Poland's judicial system comprises a National Judicial Council, Supreme

Court, Constitutional Court, and ordinary courts.¹ The Polish National Judicial Council has the authority to maintain the independence of Courts and judges.² In addition, they also have the authority to elect judges, make mutations of judges, and dismiss judges.³ Although not the same as Poland, Indonesia has a Judicial Commission authorized to propose the appointment of judges and to maintain and enforce the honor and conduct of judges, but only on judges in the Supreme Court. Judges in the Constitutional Court are elected by the President, the House of Representatives, and the Supreme Court.

The selection of constitutional judges is an important part of determining constitutional judges' professionalism and moral integrity.⁴ Anne Sanders and Luc von Danwitz (2018) examined the method of selecting and appointing judges in Poland.⁵ The reformation of the Polish judicial selection system based on personal and professional suitability, emphasizing judicial independence.⁶ The independence of the judiciary perpendicularly impacts the enforcement of the rule of law. When state institutions behave arbitrarily towards society and other state institutions, it is necessary to have judicial independence to function as impartial judges. The independence of the judiciary is essential to ensure that the branches of power exercise their jurisdiction following regulations.⁷

The legislative process conducted by the House of Representatives can be annulled by the Constitutional Court, which consists of nine constitutional judges. It is a form of judicial independence.⁸ However, the cancellation of the legislative product prevented the House of Representatives from accepting counterattacks from the Constitutional Court. The backlash was shown by dismissing the constitutional judge, Aswanto. The House of Representatives argues that Aswanto often repeals laws he makes. Although, the House of Representatives does not have the authority to dismiss constitutional judges. So, the House of Representatives

¹ Łukasz Bojarski, 'Civil Society Organizations for and with the Courts and Judges – Struggle for the Rule of Law and Judicial Independence: The Case of Poland 1976–2020', *German Law Journal*, 22.7 (2021), 1344–84. <https://doi.org/10.1017/glj.2021.72>.

² Mathieu Leloup, 'An Uncertain First Step in the Field of Judicial Self-Government: ECJ 19 November 2019, Joined Cases C-585/18, C-624/18 and C-625/18, A.K. , CP and DO', *European Constitutional Law Review*, 16.1 (2020), 145–69. <https://doi.org/10.1017/S1574019620000024>.

³ Anna Śledzińska-Simon, 'The Rise and Fall of Judicial Self-Government in Poland: On Judicial Reform Reversing Democratic Transition', *German Law Journal*, 19.7 (2018), 1839–70. <https://doi.org/10.1017/S2071832200023257>.

⁴ Farkas Simona, "Constitutional Aspects of the Current Reform of the Selecting Constitutional Judges in the Slovak Republic and the Comparative Perspectives in Europe," *Juridical Tribune* 11.2 (2021), 150–73 <https://doi.org/10.24818/TBJ/2021/11/2.02>.

⁵ Anne Sanders and Luc von Danwitz, 'Selecting Judges in Poland and Germany: Challenges to the Rule of Law in Europe and Propositions for a New Approach to Judicial Legitimacy', *German Law Journal*, 19.4 (2018), 769–816. <https://doi.org/10.1017/S2071832200022872>.

⁶ Yordan Gunawan and others, 'Journalist Protection on the Battlefield Under the International Humanitarian Law: Russia-Ukraine War', *Jurnal Hukum Unissula*, 39.1 (2023), 1–11. <https://doi.org/10.26532/jh.v39i1.24685>.

⁷ Yordan Gunawan, 'Arbitration Award of Icsid on the Investment Disputes of Churchill Mining Plc v. Republic of Indonesia', *Hasanuddin Law Review*, 3.1 (2017), 14–26. <https://doi.org/10.20956/halrev.v3i1.948>.

⁸ Febriansyah Ramadhan and Ilham Dwi Rafiqi, 'Study of Constitutional Court Decisions Cancelling All Norms in the Law', *Legality: Jurnal Ilmiah Hukum*, 29.2 (2021), 286–308. <https://doi.org/10.22219/ljih.v29i2.15434>.

must play by the rules.⁹ However, this can happen because Indonesia does not have a procedure for dismissing constitutional judges, unlike Poland, which has a National Judicial Council.

The participation of the House of Representatives in the selection and removal of constitutional judges is a crucial element in a nation's political and legal framework. However, the House of Representatives' power to remove constitutional judges also threatens the judiciary's autonomy. The study focused on these issues. Therefore, that research was not solely limited to the theoretical realm. This study employed the instance of Aswanto's termination as a constitutional judge. Furthermore, this study also assessed the scope of the House of Representatives' jurisdiction over constitutional judges. The House of Representatives has the power to appoint constitutional judges. However, it does not have complete authority over the judges it proposes. Furthermore, the procedure for removing constitutional justices is exclusively governed by the 2020 Constitutional Court Law. Constitutional judges can only be dismissed either with honor or with shame.

2. Research Method

This study employs normative legal research, focusing on analyzing legal norms contained in statutory regulations, court decisions, and other official legal documents. The research adopts a qualitative approach with a descriptive-analytical method. The data used in this study are secondary and obtained through library research. These include primary legal materials such as laws, implementing regulations, and court rulings, as well as secondary legal materials, including scholarly articles, academic books, and relevant mass media sources. Data sources were selected purposively based on their relevance to the research questions and objectives. The data were analyzed using a qualitative-narrative technique involving the systematic description, interpretation, and evaluation of legal materials. This method aims to identify legal issues, interpret applicable norms, and draw conclusions through legal reasoning. The analysis is intended to provide an in-depth understanding of the legal problems examined and to formulate normative arguments that are scientifically accountable.

3. Result and Discussion

3.1. Overview of the Concept of Judicial Independence

Legal protection is a fundamental right that depends on judicial independence.¹⁰ This function protects citizens when they encounter a legal issue with the state. Aside from personal perspectives, judicial independence holds significance in a community grounded in the rule of law.¹¹ The Indonesian legal system guarantees autonomous judicial power; however, in practice, there are ideological and sociological limitations that implicitly reduce the complete freedom of judges in deciding cases.

⁹ Adem Kassie Abebe, 'Taming Regressive Constitutional Amendments: The African Court as a Continental (Super) Constitutional Court', *International Journal of Constitutional Law*, 17.1 (2019), 89–117. <https://doi.org/10.1093/icon/moz006>.

¹⁰ Koen Lenaerts, 'New Horizons for the Rule of Law Within the EU', *German Law Journal*, 21.1 (2020), 29–34. <https://doi.org/10.1017/glj.2019.91>.

¹¹ Petra Bárd, 'In Courts We Trust, or Should We? Judicial Independence as the Precondition for the Effectiveness of EU Law', *European Law Journal*, 27.1–3 (2021), 185–210. <https://doi.org/10.1111/eulj.12425>.

The idea of judicial independence would have looked strange a few years ago in a Western society emphasizing the separation of powers.¹² However, the Court's independence is increasingly commonly recognized as necessary for free democracy and economic progress.¹³ Independent judges can also be agents of development.¹⁴

Judicial independence has an impact on the financial markets. Investors can invest in a country with confidence if it has judicial independence. There are two theories about how judicial independence affects economic growth. First, there is the view that economic progress can be attributed to promoting institutions for contract law enforcement and property protection. Second, judicial independence can encourage domestic and foreign individuals and businesses to invest in a country's financial markets. A Court's independence can reduce the possibility of asset appropriation, which is why foreign investors will invest based on it.¹⁵

The examination of democracy's fundamentals necessitates an independent judiciary.¹⁶ An independent judiciary creates effective judicial protection.¹⁷ In a democratic society, the judiciary is portrayed as independent and not subject to the whims of executive power. In addition, judicial independence can also give judges no fear in carrying out their duties.¹⁸ Niclas Berggren and Jerg Gutmann (2020) argued that judicial independence also positively impacts personal freedom.¹⁹ Judicial independence is crucial for fair trials and effective judicial protection. A Court with the independence and impartiality to enforce the law is an essential element of the legal system.²⁰

Independence did not occur in a vacuum.²¹ The concept of judicial independence has largely evolved through case law.²² However, establishing a minimum standard of judicial

¹² Juan A. Mayoral and Marlene Wind, 'Unleashed Dialogue or Captured by Politics? The Impact of Judicial Independence on National Higher Courts' Cooperation with the CJEU', *Journal of European Public Policy*, 29.9 (2022), 1433–53. <https://doi.org/10.1080/13501763.2021.1974925>.

¹³ Jan Fałkowski and Jacek Lewkowicz, 'Are Adjudication Panels Strategically Selected? The Case of Constitutional Court in Poland', *International Review of Law and Economics*, 65 (2021), 1–11. <https://doi.org/10.1016/j.irle.2020.105950>.

¹⁴ Maartje De Visser, 'Constitutional Judges as Agents for Development', *Law and Development Review*, 12.3 (2019), 691–722. <https://doi.org/10.1515/ldr-2019-0042>.

¹⁵ Liu Ximeng and Li Zhiwen, 'Efficacy of Judicial Independence in Explaining Financial Markets in Emerging Markets', *Borsa Istanbul Review*, 23.5 (2023), 1132–40. <https://doi.org/10.1016/j.bir.2023.07.001>.

¹⁶ Susanne Baer, 'Who Cares? A Defence of Judicial Review', *Journal of the British Academy*, 8 (2020), 75–104. <https://doi.org/10.5871/jba/008.075>.

¹⁷ Rafael Bustos Gisbert, 'Judicial Independence in European Constitutional Law', *European Constitutional Law Review*, 18.4 (2022), 591–620. <https://doi.org/10.1017/S1574019622000347>.

¹⁸ Fiona Jamieson, 'Judicial Independence: The Master Narrative in Sentencing Practice', *Criminology & Criminal Justice*, 21.2 (2021), 133–50. <https://doi.org/10.1177/1748895819842940>.

¹⁹ Niclas Berggren and Jerg Gutmann, 'Securing Personal Freedom through Institutions: The Role of Electoral Democracy and Judicial Independence', *European Journal of Law and Economics*, 49.2 (2020), 165–86. <https://doi.org/10.1007/s10657-020-09643-9>.

²⁰ Richard Bellamy and Sandra Kröger, 'Countering Democratic Backsliding by EU Member States: Constitutional Pluralism and "Value" Differentiated Integration', *Swiss Political Science Review*, 27.3 (2021), 619–36. <https://doi.org/10.1111/spsr.12448>.

²¹ Enver Hasani and Getoar Mjeku, 'International(Ized) Constitutional Court: Kosovo's Transfer of Judicial Sovereignty', *ICL Journal*, 13.4 (2020), 373–402. <https://doi.org/10.1515/icl-2019-0016>.

²² Joan Solanes Mullor, 'Spain, Judicial Independence, and Judges' Freedom of Expression: Missing an Opportunity to Leverage the European Constitutional Shift?', *European Constitutional Law Review*, 19.2 (2023), 271–93. <https://doi.org/10.1017/S1574019623000081>.

independence is dangerous.²³ Four components are maintained by the traditional definition of judicial independence: internal and collective independence, which is known as the "institutional independence of the judiciary" as a separate entity, and substantive and personal independence, which is known as the "individual independence of judges."

Indonesian laws govern the courts based on the various judicial contexts. The 2004 Judicial Power Act limits the meaning of independence regarding autonomous judicial power. According to this Act, "judicial power" refers to an autonomous state's ability to maintain the law and justice based on the Pancasila (Five Principles) and to carry out the Indonesian legal system. Since the judge must uphold Pancasila-based law and justice and ensure that judgments reflect the sense of justice held by the Indonesian people, the judge's ability to exercise judicial authority is constrained.²⁴

Judicial authority is a devolution of state power to the judiciary. Judges also serve as trustees and mediators in legal disputes involving citizens. The mandate of state authority is to fully realize the basic law and the concept of constitutionalism. In other terms, the judiciary's power can be defined as the authority and obligation to select what and how the legal rules for individual-concrete disagreement situations given to it are to be determined while bearing in mind the country's essential laws. As a result, in the applicable national legal system, legal settlement in specific individual cases is solely in the hands of judicial power. It is true in actual legal issues between persons and situations involving citizens and the government.²⁵

The Constitutional Court was formed under the 1945 Indonesian Constitution as an autonomous entity in charge of interpreting the Constitution and resolving constitutional disputes between legislation and regulations.²⁶ The politicians agreed on the necessity of a distinct Court system to interpret the law. The Constitutional Court is an institution of government and a separate branch of the Supreme Court.

3.2. The Role of the House of Representatives on the Constitutional Judges Selection

Proper laws for the selection of judges are necessary to preserve the judiciary's independence.²⁷ Furthermore, the legitimacy of the act rendered by elected constitutional judges is greatly influenced by the choice of constitutional judges. In Poland, the Constitutional Tribunal's verdict was declared unlawful in 2020 because an invalidly elected constitutional judge gave

²³ Michal Ziolkowski, 'Two Faces of Polish Supreme Court After "Reforms" of The Judiciary System in Poland: The Question of Judicial Independence and Appointments', *European Papers*, 5.1 (2020), 347–62. <https://doi.org/10.15166/2499-8249/362>.

²⁴ Yordan Gunawan and Hanna Nur Afifah Yogar, 'Indonesia E-Hailing Taxi: The Competition between Law and Technology', *Handbook of Research on Innovation and Development of E-Commerce and E-Business in ASEAN*, 2 (2020), 594–606. <https://doi.org/10.4018/978-1-7998-4984-1>.

²⁵ Dewi Sulastri and others, 'Institutional Integrity and Challenges in the Indonesian Constitutional Court Institution', *Jurnal Media Hukum*, 32.1 SE-Articles (2025), 40–58. <https://doi.org/10.18196/jmh.v32i1.24100>.

²⁶ Ni'matul Huda, Dodik Setiawan Nur Heriyanto, and Allan Fatchan Gani Wardhana, 'The Urgency of the Constitutional Preview of Law on the Ratification of International Treaty by the Constitutional Court in Indonesia', *Heliyon*, 7.9 (2021), 1–4 <<https://doi.org/10.1016/j.heliyon.2021.e07886>.

²⁷ Dimitry V. Kochenov and Graham Butler, 'Independence of the Court of Justice of the European Union: Unchecked Member States Power after the Sharpston Affair', *European Law Journal*, 27.1–3 (2021), 262–96. <https://doi.org/10.1111/eulj.12434>.

it.²⁸ It is due to the Polish government's special restrictions, which weakened the judiciary's independence.²⁹ Selecting justices significantly influences the legality of decisions made by elected constitutional judges.

The selection of constitutional judges cannot be separated from political mechanisms. Thus, although the extent of political impact on judicial independence differs amongst nations, politics does affect it. According to Ignacio Arana Araya et al. (2020), political change weakens judicial independence and results in reform.³⁰ Both the executive and judicial branches in certain nations propose constitutional judges.

The nomination and selection procedure for constitutional judges may involve many entities. According to Nancy Arrington et al. (2021), the constitutional judge selection process contains two key actors: nominees and selectors.³¹ Nominees are agencies responsible for nominating candidates for constitutional judges, whereas selectors are agencies that choose and appoint constitutional judges. Indonesia's proposing institutions are the Supreme Court, the President, and the House of Representatives. Furthermore, each proposed institution is given the ability to nominate and choose constitutional judges. Meanwhile, the President is the sole institution appointing constitutional judges. According to Article 24, paragraph (3) of the 1945 Indonesian Constitution, nine constitutional judges that the President appoints make up the Constitutional Court, three of whom are recommended by the Supreme Court, the House of Representatives, and the President himself. The selection mechanism is not carried out by one institution.³² The nomination process for constitutional judges must go through the House of Representatives. The nomination process is conducted through the Commission III of the House of Representatives, responsible for overseeing legal and human rights issues. The Commission III will then present the list of nominees to the President, who is responsible for appointing the judges.³³

Fit and proper was a test that the House of Representatives conducted before choosing constitutional judges. The procedure for selecting potential constitutional judges is the first stage in creating judges with integrity and influences the standard of the Indonesian judicial system. It is vital to reevaluate the workings of each institution, including the work that the House of Representatives, the President, and the Supreme Court have done.

²⁸ Laurent Pech, Patryk Wachowiec, and Dariusz Mazur, 'Poland's Rule of Law Breakdown: A Five-Year Assessment of EU's (In)Action', *Hague Journal on the Rule of Law*, 13.1 (2021), 1–43. <https://doi.org/10.1007/s40803-021-00151-9>.

²⁹ Barbara Grabowska-Moroz and Olga Śniadach, 'The Role of Civil Society in Protecting Judicial Independence in Times of Rule of Law Backsliding in Poland', *Utrecht Law Review*, 17.2 (2021), 56–69. <https://doi.org/10.36633/ulr.673>.

³⁰ Ignacio Arana Araya, Melanie M. Hughes, and Aníbal Pérez-Liñán, 'Judicial Reshuffles and Women Justices in Latin America', *American Journal of Political Science*, 65.2 (2021), 373–88. <https://doi.org/10.1111/ajps.12543>.

³¹ Nancy Arrington and others, 'Constitutional Reform and the Gender Diversification of Peak Courts', *American Political Science Review*, 115.3 (2021), 851–68. <https://doi.org/10.1017/S0003055421000071>.

³² Mustafa Lutfi and Asrul Ibrahim Nur, 'Reconstruction of Norm in Selection System of Constitutional Court Judge Candidates from the Perspective of the Paradigm of Prophetic Law', *Legality: Jurnal Ilmiah Hukum*, 30.1 (2022), 116–30. <https://doi.org/10.22219/ljih.v30i1.20744>.

³³ Jaja Ahmad Jayus, 'Urgency of Legal Indigenous Communities' Position in Indonesian Constitutional System', *Jurnal Media Hukum*, 27.1 (2020), 79–98. <https://doi.org/10.18196/jmh.20200144>.

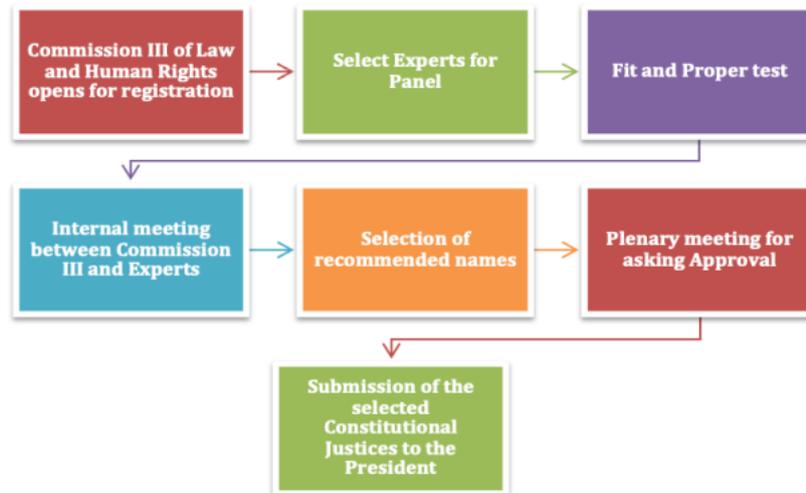


Figure 1. House of Representatives Selection Stages for Constitutional Justices. (Source: Primary Source.)³⁴

Since 2003, the recruitment of Constitutional Court judges has been politicized in the shape of appropriation of the judiciary by coalitions and the distribution of interests according to the political configuration "presidential government coalition" in Commission III of the House of Representatives. From the beginning, the House of Representatives recruited openly. It means that the authority to nominate constitutional justices is not the prerogative of the House of Representatives. The requirements for transparency and participatory recruitment in the 2003 Constitutional Court Act also emphasize that the nomination of constitutional judges by the three institutions is not a prerogative. Each proposing institution used an internal mechanism unknown to the public, so a candidate for constitutional judge suddenly appeared who would soon be appointed.

3.3. Constitutional Judges' Dismissal Power Under the House of Representatives

In Indonesia, there are no legal mechanisms for the proposed organization to dismiss constitutional justices. The dismissal of Constitutional Judges is governed by Article 24C paragraph (6) of the 1945 Indonesian Constitution and is explained in more detail in the 2020 Constitutional Court Act. Only the two methods for dismissing constitutional judges are described in the 2020 Constitutional Court Act. First, constitutional judges may be removed with honor if they die, resign at their request after consulting with the Constitutional Court's Chief Justice, turn seventy, or are found to have a physical or mental condition that has prevented them from performing their duties for two months, as verified by a doctor's note. Second, constitutional judges are dishonorably discharged if they are found guilty of a crime that carries a jail sentence, commit an act of misconduct, skip five consecutive trials that they are required to attend without good cause, violate their office pledge or swearing, deliberately hinder the Constitutional Court's decision-making, or violate the prohibition on corruption.

³⁴ Iwan Satriawan and others, 'An Evaluation of The Selection Mechanism of Constitutional Judges in Indonesia and South Korea', *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 10.1 (2023), 122–47. <https://doi.org/10.22304/pjih.v10n1.a7>.

The procedure for dismissing constitutional judges is similarly governed by Constitutional Court Regulation Number 4 of 2012. There are three types of dismissal mechanisms for constitutional judges: honorable dismissal, dishonorable dismissal, and provisional dismissal. The grounds for honorably dismissing constitutional judges are as follows: the judge must have been 70 years old, have served out his entire term of office, have resigned at his request, have been physically or spiritually ill for three months, and been unable to perform his duties as certified by a physician, or have died. The dismissal method is described sequentially in Figures 2, 3, 4, and 5.

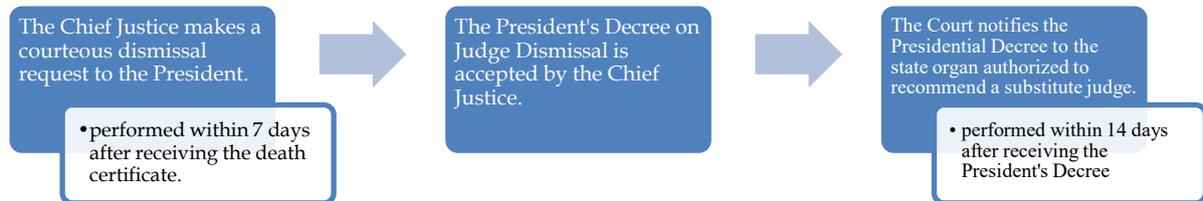


Figure 2. Dismissal of Deceased Constitutional Judge

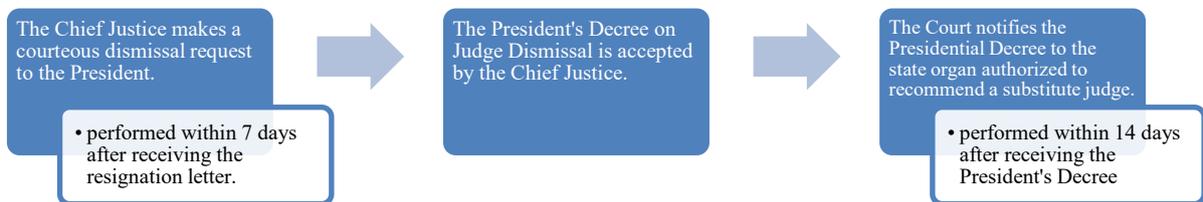


Figure 3. Discontinuation of Constitutional Judge Who Resigned

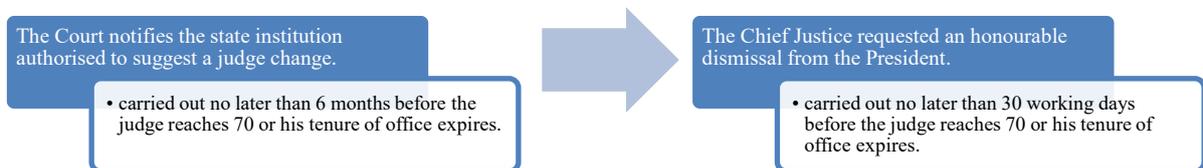


Figure 4. Dismissal of 70-year-old Constitutional Judge

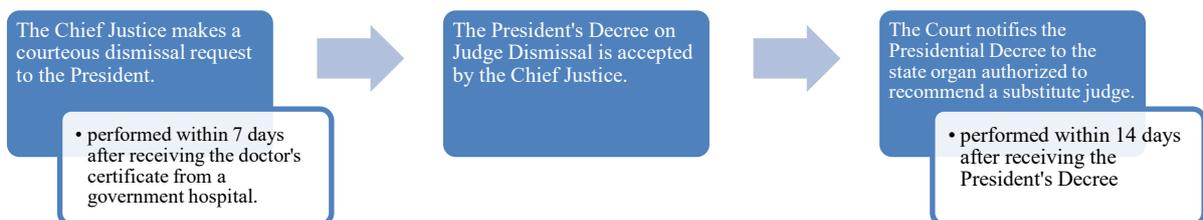


Figure 5. Dismissal of Constitutional Judges who are Physically and/or Spiritually Ill

A constitutional judge may be discharged dishonorably if he/she is incarcerated based on a court ruling that has become permanently enforceable due to his conviction of a crime that carries a jail sentence, his horrific deed, his five consecutive instances of not showing up for duty and obligation trials without a good reason, his breach of an oath of office promise, and his deliberate obstruction of the Court's ability to decide within a set amount of time. The procedure depicted in Figure 6 is responsible for dishonorable dismissal.

The suspension allowed judges to defend themselves before the Constitutional Court's Honorary Assembly. Within seven working days following the Plenary Meeting of Judges' vote on the follow-up reports of suspected infractions, the President must receive the request for an interim suspension. It takes sixty working days to implement a temporary suspension, which can be extended to thirty days. At least fourteen working days before the suspension period expires, the Honorary Panel shall request the Chief Justice extend said time. After receiving the letter requesting an extension of the temporary suspension period, the Chief Justice submits a request to the President to extend the suspension period in no more than three working days. The judge who made the motion for the suspension has not tried the case since it was made.

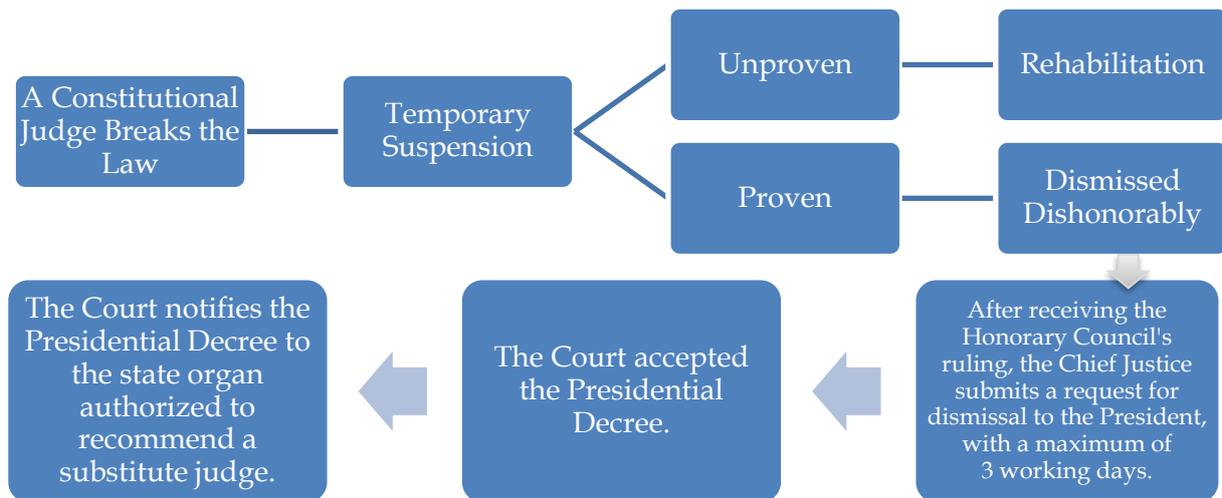


Figure 6. Dishonorable Dismissal Mechanism

At the request of the Chief Justice, judges who have not been shown to have committed the accused offense are rehabilitated by Presidential Decree. Rehabilitation requests must be submitted within three working days following the end of the suspension period or the receipt of the Honorary Assembly Decision. If the Honorary Assembly finds a judge guilty of an accused offense, the judge is not released with honor. Presidential Decree establishes dishonorable dismissal upon the Chief Justice's request, which must be submitted at the latest three days after the Honorary Assembly's decision. After obtaining the Presidential Decree concerning the dismissal of judges, the Court provides seven working days' notice of the Decree to the entity authorized to appoint judges.

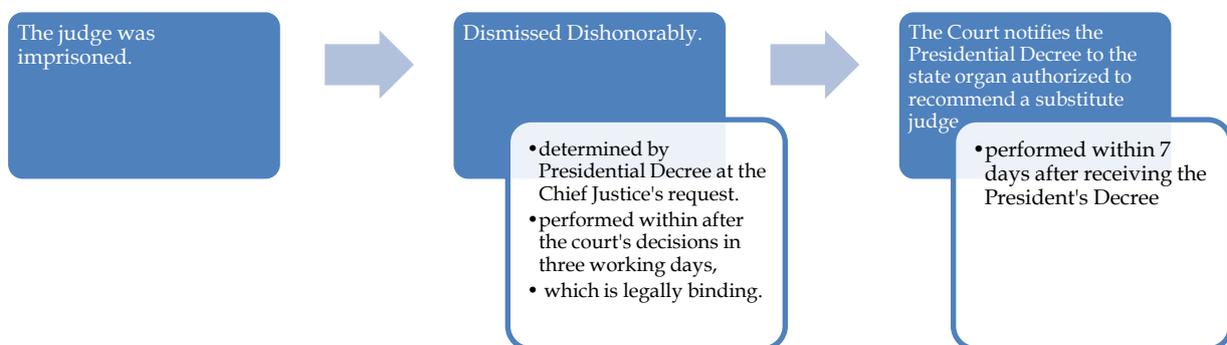


Figure 7. The Judge Was Imprisoned

Judges found guilty of crimes carrying jail sentences based on an officially recognized decision of the Court with enduring legal effect are not covered by the suspension mechanism. The mechanism shown in Figure 7 applies to the judge.

Akil Mochtar, a former Constitutional Judge, was dishonorably dismissed for committing a criminal act. The Constitutional Court's Honorary Assembly sanctioned the constitutional judge's dishonorable dismissal. Akil Mochtar was convicted of money laundering and accepting bribes and gratuities to resolve disputes over regional elections before the Constitutional Court.³⁵ The procedure for dismissing constitutional judges is appropriate and is based on legal infractions. In contrast to the dismissing of constitutional judges, Aswanto is politically charged. The House of Representatives removed the constitutional judge, Aswanto, on September 29, 2022.³⁶ Because the House of Representatives appointed Aswanto as a constitutional judge, the House believes it has the jurisdiction to dismiss him. The House of Representatives chose Aswanto as a judge of constitutional law, one of three.

During the VII Plenary Session of the First Session Period of 2022/2023, the House of Representatives decided to remove and replace Aswanto. Aswanto had the House of Representatives product law declared invalid by the Constitutional Court, which was the rationale behind the House of Representatives' decision to carry out the dismissal. The House of Representatives then chose Guntur Hamzah, who previously served as Constitutional Court Secretariat General, as Aswanto's replacement.

The Constitutional Court initially issued a letter to the House of Representatives confirming its decision, but the House of Representatives read the letter differently. Various parties criticized the House of Representatives action to oust Constitutional Justice Aswanto. The House of Representatives' unexpected dismissal of Aswanto violates the Constitutional Court Act 2020. Aswanto's dismissal of constitutional judges is political. The President is still following up on Presidential Decree Number 114/P of 2022, which addresses the House of Representatives' recommendations for selecting and dismissing constitutional judges. In addition to cutting off Aswanto, the President appointed Guntur Hamzah as a constitutional judge. It follows the House of Representatives' proposal.

A Presidential Decree must be used to initiate the process of removing constitutional judges. The President's decision should be made at the Chief Court's request. Subsequently, the Chief Justice endorses the President's Resolution and transmits it to the motions board. Thus, Aswanto's discharge as a constitutional judge violated the judge's honorable termination procedure. This process, known as the dishonorably dismissing judge's procedure, is also broken by Aswanto's removal as a constitutional judge. Before removing an honorable judge, the Constitutional Court's Honorary Assembly must conduct an ethics hearing. Aswanto's dismissal procedure did not reach that point. If the constitutional judge is convicted, the procedure for ethics hearings in the Honorary Panel of the Constitutional Court might be avoided. Aswanto did not commit any crime. As a result, the actions of the House of Representatives exceeded its authority.

³⁵ Junesvan Purba and Hendri Goklas Pasaribu, 'Mekanisme Pengangkatan Dan Pemberhentian Hakim Konstitusi Menurut Peraturan Perundang-Undangan', *Jurnal Kajian Konstitusi*, 3.1 (2023), 99-117. <https://doi.org/10.19184/j.kk.v3i1.39521>.

³⁶ Angelene Vivian Gunawan and Rasji, 'Political Recalling of Constitutional Judge by the House of Representatives (DPR): Interference Against the Independence of Indonesian Constitutional Court', *Journal of Law, Policy and Globalization*, 135.0 (2023), 94-112. <https://doi.org/10.7176/JLPG/135-11>.

The 1945 Indonesian Constitution's Article 24C paragraph (3) was broken by the House of Representatives when they dismissed Aswanto and did not include a reason for dismissal with honor or dishonor, based on the procedure used to dismiss constitutional judges. Consequently, the actions of the House of Representatives are invalid. Although the 1945 Indonesian Constitution's modifications gave the House of Representatives significant responsibility in selecting the heads of governmental institutions, the 1945 Indonesian Constitution grants the House of Representatives no further powers. The House of Representatives is a legislative body that works with the Senate and the People's Consultative Assembly.³⁷ The judicial, executive, and legislative departments of government are encouraged to operate independently under the theory of separation of powers.³⁸ Discussions concerning democracy, the state's Constitution, and the application of the law center on the idea of the separation of powers.³⁹

Each governmental branch cannot exercise more authority than it is allowed to. The government's economic performance is closely related to its perspective on checks and balances, according to Honorata Mazepus and Dimiter Toshkov (2022).⁴⁰ The concept of checks and balances helps society go from particularism to ethical universalism by discouraging conduct issues by the privileged elite.⁴¹ Some parties view checks and balances as crucial to good public policy.⁴² The 1945 Indonesian Constitution confers legislative authority on the House of Representatives. In addition, only three constitutional justices chosen by the House of Representatives can serve as the Court's justices. The House of Representatives' excessive activities represent a form of tyranny.

After the 2019 election, President Joko Widodo abolished the House of Representatives' checks and balances functions.⁴³ The House of Representatives' decision not to extend the terms of constitutional judges, Aswanto, can be described as a political backlash. Regrettably, the concept of political backlash is still underdeveloped.⁴⁴ Political analysts use the term "backlash" to describe a fast-mobilized protest or countermovement in response to an egregious policy, decision, or action. This expert version is less valid for social scientists because identical changes may not generate a mobilized pushback, making it harder to recognize such changes as creating a backlash. If mobilization against actions or events is

³⁷ Imran Imran, Handar Subhandi Bakhtiar, and Dirga Achmad, 'Legal Standing and Authority of the Regional Representative Council in the Indonesia Constitutional System,' *Amsir Law Journal*, 1.2 (2020), 54–60. <https://doi.org/10.36746/alj.v1i2.23>.

³⁸ Jeremy Waldron, 'Separation of Powers in Thought and Practice?', *Revista de Direito Administrativo*, 279.3 (2020), 17–53. <https://doi.org/10.12660/rda.v279.2020.82914>.

³⁹ Gediminas Mesonis, 'The Principle of the Separation of Powers: The Ontological Presumption of an Ideologeme', *Baltic Journal of Law & Politics*, 13.2 (2020), 1–23. <https://doi.org/10.2478/bjlp-2020-0009>.

⁴⁰ Honorata Mazepus and Dimiter Toshkov, 'Standing up for Democracy? Explaining Citizens' Support for Democratic Checks and Balances', *Comparative Political Studies*, 55.8 (2022), 1271–97. <https://doi.org/10.1177/00104140211060285>.

⁴¹ Luciano Da Ros and Matthew M. Taylor, 'Checks and Balances: The Concept and Its Implications for Corruption', *Revista Direito GV*, 17.2 (2021), 1–30. <https://doi.org/10.1590/2317-6172202120>.

⁴² Gabriele Gratton and Massimo Morelli, 'Optimal Checks and Balances Under Policy Uncertainty', *International Economic Review*, 63.2 (2022), 549–69. <https://doi.org/10.1111/iere.12547>.

⁴³ Asrinaldi, Mohammad Agus Yusoff, and dan Zamzami Abdul Karim, 'Oligarchy in the Jokowi Government and Its Influence on the Implementation of Legislative Function in Indonesia', *Asian Journal of Comparative Politics*, 7.2 (2022), 189–203. <https://doi.org/10.1177/2057891121995564>.

⁴⁴ Ruth Braunstein, 'A Theory of Political Backlash: Assessing the Religious Right's Effects on the Religious Field', *Sociology of Religion*, 83.3 (2022), 293–323. <https://doi.org/10.1093/socrel/srab050>.

usual, then the causes and effects of negative political reactions are not novel, remarkable, or even thrilling. While these worries are legitimate, the shift towards broad themes, specialized language, and careful causal reasoning has removed backlash from social scientific research.⁴⁵

A wide term of political backlash includes formal and informal attacks on judges or courts. Many people believe that Aswanto often overturns laws enacted by the House of Representatives. For example, Aswanto and four other constitutional judges declared the 2020 Job Creation Law conditional and unconstitutional. Aswanto's decision was met with a reaction from the House of Representatives. In response to the conclusion of the House of Representatives Commission III meeting, the House called a plenary session to mobilize a political reaction. The House of Representatives took this action in response to the Court's decision. This justification makes the action of the House of Representatives, which did not extend constitutional judges' terms in office, a political backlash. Political backlash is frequently described in legal literature because of political reactions to Court decisions.

Because progressive change weakens organizations, the reactionary movement known as backlash opposes it. The House of Representatives' reputation is damaged by Aswanto's actions, which often overturn product laws passed by the House. The public may perceive the House of Representatives inexperienced legislative drafting as why the Constitutional Court consistently strikes down its laws. Based on this assumption, the House of Representatives replied by rejecting judges' rulings, especially Aswanto. There are three different ways that attacks on judicial independence might occur, according to James E. Moliterno and Peter Curos (2021): overt attacks, deliberate attacks, and attacks that try to sway public opinion. Overt attacks are a form of attack from outsiders who attack one of the judges by directly intervening in the judge's matter. Attacks that intentionally alter the system to give the government control over and influence future legal decisions are known as deliberate attacks. The most dangerous type of attack on the judiciary is one that manipulates public opinion and undermines the judiciary's independence. The dismissal of constitutional judge Aswanto was one of the three forms of deliberate attack.

3.4. Critical Analysis for Selection and Dismissal of Constitutional Judges

The lack of specific and uniform provisions regarding the procedure for selecting constitutional judges suggests that the organization submitting the proposal lacks defined guidelines for selecting constitutional judges. The absence of a clear mechanism allows the proposing institution to interfere with the independence of the judge of its choice, which results in the ineffective implementation of checks and balances.⁴⁶ Judicial institutions that select judges do not have standards and are closed, so these institutions do not have credibility and accountability. Furthermore, the procedures and organizations with the authority to remove constitutional judges are not clearly defined when dismissing judges under the Constitution. Lastly, in defense of their right to remove Aswanto from his position as a judge under the proposed Constitution, the House of Representatives claims. The House of

⁴⁵ Karen J Alter and Michael Zürn, 'Conceptualising Backlash Politics: Introduction to a Special Issue on Backlash Politics in Comparison', *The British Journal of Politics and International Relations*, 22.4 (2020), 563–84. <https://doi.org/10.1177/1369148120947958>.

⁴⁶ Iwan Satriawan and Tanto Lailam, 'Implikasi Mekanisme Seleksi Terhadap Independensi Dan Integritas Hakim Konstitusi Di Indonesia', *Jurnal IUS Kajian Hukum Dan Keadilan*, 9.1 (2021), 112–38. <https://doi.org/10.29303/ius.v9i1.871>.

Representatives considers that constitutional judge Aswanto routinely annuls laws passed by the House, particularly in the case of his expulsion. Aswanto's actions are legal if these actions are based on the Constitution. The act of termination in examining a law carried out by a judge should not be interfered with by other parties, and judges have independence in deciding the cases they handle because true independence can be interpreted as a situation when a person cannot be controlled or influenced by other parties. These facts draw attention to the disorderly phenomenon of restricted powers, where the House of Representatives has interfered with the judiciary's autonomy.

There are three characteristics of a traditional rule-of-law state concerning authority limitations based on constitutionalism: 1) a constitution acts as a written regulation regulating the relationship between the government and citizens, 2) there is a division of powers that guarantees the independence of the judiciary, and 3) there is a distribution of state power.

Limitations of power in Indonesia have been outlined in the 1945 Indonesian Constitution. The President has several limitations in exercising his authority: 1) limitation of authority in appointing state officials, 2) restrictions in the field of legislation, 3) limitations on legislative authority, including the House of Representatives and the President's functional connection, the People Consultative Assembly's power to remove the President while he is in office, and the Senate's supervision of the President, and 4) judicial power constraints, such as the Supreme Court's power to review the applicable statutes that the President has issued in contravention of the law, as well as the President's removal authority granted by the Constitutional Court.

When using its authority, the People Consultative Assembly is subject to several restrictions, including its ability to establish and amend the Constitution and name and remove the President and/or Vice President throughout their constitutionally mandated terms of office. The House of Representatives has limited authority in legislative, budgetary, and oversight functions, while the Senate's authority is limited to legislation related to regional autonomy.⁴⁷

In the judicial sector, there are two institutions with limited authority. The Supreme Court's authority is limited to non-constitutional Courts, which oversee general, religious, military, and state administrative Courts. A judicial body with limited power to decide cases involving constitutional dignity is the Constitutional Court. The Indonesian judiciary offers the Judicial Commissions and the two judicial institutions. As a guardian and upholder of judges' honor, dignity, and conduct, judicial commissions are only given limited jurisdiction to suggest the selection of Supreme Court justices.

The Constitution has provided limits of authority in constitutional life in Indonesia. It also covers the authority restrictions on choosing constitutional judges. Article 24C of the 1945 Indonesian Constitution states in paragraph 3 that nine people uphold constitutional rights. Three are selected by the President, three by the Supreme Court, and three by the House of Representatives. These clauses show that the House of Representatives' only power is as an institution that chooses three constitutional judges. However, the current conditions are different from what they should be.

Aswanto, the constitutional judge, had been fired by the House of Representatives. This conduct exemplifies Indonesia's chaotic power constraint. The House of Representatives has exceeded the limits of its authority, where the Constitution explicitly states that the House of

⁴⁷ Pan Mohamad Faiz, Saldi Isra, and Oly Viana Agustine, 'Strengthening Indonesia's Regional Representative Council Through Judicial Review by the Constitutional Court', *SAGE Open*, 13.4 (2023), 1-9. <https://doi.org/10.1177/21582440231204408>.

Representatives is only an institution proposing constitutional judges. The House of Representatives lacks the specific ability to dismiss constitutional judges from office under the terms of the document. Critical to the selection and dismissal of constitutional judges is the House of Representatives' involvement, which impacts the Constitutional Court's independence and impartiality. To ensure that the most qualified applicants are considered for the Constitutional Judge role, the House of Representatives Commission III members need to conduct themselves with integrity and transparency.

The House of Representatives must consider the dismissal request and provide a recommendation based on objective standards as part of the dismissal procedure. The House of Representatives recommendation must be based on clear and transparent criteria, and the process must be conducted transparently and impartially. Ensuring the Constitutional Court's independence and impartiality and sustaining public trust in the organization is critical. The House of Representatives' activities have damaged constitutional judges' independence. Constitutional judges' independence must be protected since the Constitutional Court is a respectable organization that offers constitutional justice to the populace. A rule of law requires that the government respect certain qualities, including judicial independence. The idea of a state under legal authority and the concept of power limitation has both been undermined by the actions of the House of Representatives.

4. Conclusion

An essential component of Indonesia's political and judicial institutions is that the House of Representatives appoints and removes constitutional judges. The House of Representatives must adhere to the requirements outlined in the 1945 Indonesian Constitution to ensure fairness, objectivity, and the application of objective standards characterize the decision-making process. Despite the possibility of the Judicial Commission's involvement in the House of Representatives constitutional judge appointment procedure, the House of Representatives will still choose constitutional judges. Consequently, the House of Representatives could contribute to ensuring the Constitutional Court's independence and impartiality and its continued role as a foundation of Indonesian democracy. Furthermore, the House of Representatives has no jurisdiction to dismiss constitutional justices. The dismissal of constitutional judge Aswanto represents a systematic attack on judicial independence and separation of powers in Indonesia.

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