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Progressive Law Dialectics: Statesmen's Role as Constitution Guardians and the Independence of Indonesia's Constitutional Court

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Abstract

This study examines the filling of public offices with special criteria, as outlined in the constitution, which applies specifically to Constitutional Court judges. However, the term "statesman" is not explicitly defined in the criteria. Progressive law, *de facto*, emphasizes the substantive dimension of justice in the pursuit of upholding the right to justice and democracy. This paper explores the reconstruction of recruitment and external supervision of constitutional judges, focusing on the qualifications of statesmen from a progressive legal perspective. It also discusses the relevance of the progressive legal understanding of statesman qualifications to the independence of the Constitutional Court in Indonesia. The method employed in this research is normative juridical, conducted through literature review. The findings suggest that constitutional decisions and policies should be based on a justice dimension grounded in progressive law. The qualification of a statesman can be assessed through a track record of daily actions and relationships with the broader environment. By applying statesman qualifications to constitutional judges, it signals their capability and compatibility in ensuring the independence of institutions that prioritize justice in state governance and public administration.

Keywords

Statesman; Progressive Law; The Constitutional Court.

I. Introduction

The practice of institutional administration and state administration is an instrument for realizing justice that prioritizes law and justice.¹ In the progressive legal view, rejecting the opinion that order only operates through state institutions. Progressive law is oriented to guide people towards an ideal legal order by rejecting the status quo, because progressive law closes the law as a technological instrument that is not conscience, but rather a moral institution.² However, progressive law is always at odds with the norm *analytical jurisprudence* or *legal dogmatics*, where this understanding only puts forward law in the form of regulations as a logical and systematic order. Meanwhile, things that are outside the law, such as welfare, humans and society are more directed towards the norm. Progressive law is more in agreement with *legal realism* and *freirechtslehre*, because this understanding does not prioritize legal aspects alone, but also looks at the aspect of social goals to be achieved from the operation of law.³

In the political dimension, the phrase constitution is usually applied in two explanations. First, it is used to represent the comprehensive constitutional system of a country, the association of a number of regulations that form and regulate or direct the government. Some of these regulations are legal, which shows that the law applies and recognizes the existence of existing regulations, and some are extra-legal or non-legal, in the form of customs, connections, mutual understanding, traditions or conventions, which are not ratified in court

¹ Philippe Nonet and Philip Selznick, *Hukum Responsif* (Bandung: Nusamedia, 2019).

² Nonet and Selznick.

³ Diandra Preludio R et al., *Dialektika Hukum Progresif Obrolan Ringkas Buku-Buku Satjipto Rahardjo*, ed. AP Edi Atmaja, 1st ed. (Pekanbaru: Kaum Tjipan, 2014).

as law. -laws, but have the possibility of contributing to organizing the constitution, rather than what is forcefully called law.

Based on Janpatar Simamora's perspective, the ideals of law in Indonesia refer to Pancasila which is *groundwork* philosophy and a common platform as the fundamental basis of a country. In this way, the activities of law-forming institutions must be based on the values of a common platform which is based on sustainable values, culture and wisdom in society.⁴ The Constitutional Court in Indonesia represents a constitutional institution which is the result of demands for reform of the 1945 Constitution (*Constitutional Reform*). The existence of the Constitutional Court in Indonesia's constitutional structure is a major civilizational progress, this is not only legal reform, but also the development of Indonesian democracy. Through the authority and obligations of the Constitutional Court, all of its authority and obligations are alleged to have undermined the belief in the supremacy of parliament (*parliamentary supremacy*) and change it with the understanding of constitutional supremacy.⁵

In Article 24 paragraph (2) of the 1945 Constitution, it is stated that, "Judicial power is exercised by a Supreme Court and general judiciary, general judiciary, religious judiciary, military judiciary, state administrative judiciary and a Constitutional Court". Understanding of judicial power cannot be separated from John Locke's work entitled "*Two Treatises of Government*" which provides an understanding that power in a country is divided or distributed into several different organs, such as: legislative power, executive power and federative power.

⁴ Theresa Yolanda Sirait et al., "Inkonsistensi Putusan Mahkamah Konstitusi Terhadap Keberadaan Komisi Pemberantasan Korupsi Sebagai Lembaga Negara Independen," *Nommensen Journal of Legal Opinion (NJLO)* 01, no. 01 (2020): 1–26.

⁵ Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia* (Semarang: Sinar Grafika, 2021).

Delegation of power to different organs, where judicial power is qualified as part of the organ of executive power, because executive power is the implementing organ for the formation of laws which includes adjudicatory actions.

There are two special concerns regarding the implementation of judicial power. Firstly, judicial power is a process of independent judicial institutions, and secondly it is an institutional agency in which there is a judicial institution, so that these two points are required to carry out independent and independent judicial power.⁶ As an actor who has a vital role in handling cases that are tried, the principle of carrying out obligations in upholding law and justice requires judicial power to be independent from intervention from outside parties and any form, so that to carry out its functions and authority, there is certainty that there is purity of judicial power, with the exception of in law enforcement and justice that is being faced.⁷ Therefore, the public has high hopes for judges to be professional and have integrity which shows the judge's independent attitude.

The dynamics of Constitutional Court decisions, in practice, have a broad impact not only on the litigants, but also have implications for public views. In line with the provisions for Constitutional Court judges, there are main requirements as stated in the 1945 Constitution Article 24C paragraph (3), which confirms that the Constitutional Court has nine members of constitutional judges who are appointed independently, totaling three from the Supreme Court, the People's Representative Council, and President. In dimensions *judicial review*, especially those that have a connection with review by the judiciary, there are two differentiations of phrases that can be proposed, namely, terminology *judicial review* and *judicial preview*. Grammatically, review

⁶ Asshiddiqie.

⁷ Salle, *Urgensi Kemandirian Kekuasaan Kehakiman*, ed. Abd. Kahar Muzakir (Makassar: CV. Social Politic Genius, 2019).

means checking, seeing, reviewing or assessing. Meanwhile, preview is an activity that looks at something before the ideal state of the object being viewed.⁸

In connection with the object of statutory law, it can be interpreted that when a law is not legally or perfectly binding for the public, and when the law is valid as a valid law, then there are two differentiated situations. If the Law has been implemented as a Law, then the test can be known *judicial review*. However, if the existence of the Law is still in draft form, then its review cannot be recognized as such *judicial review*, however *judicial preview*. This shows that the judiciary has the trusted authority to test legal products that have not been ratified, this retesting is included in its capabilities *ex-ante review*.

In this way, the judiciary has independent wisdom and authority to be able to oversee the constitution through statesman qualifications to the requirements of Constitutional Court judges. From the background described previously, it can be seen that the purpose of this writing is: to know and elaborate on the reconstruction of recruitment and external supervision of judges guarding the constitution (*the guardian of the constitution*) in the perspective of progressive legal dialectics in Indonesia; and to find out the relevance of progressive legal dialectics to the qualifications of statesmen as judges who guard the constitution (*the guardian of the constitution*) in the perspective of the independence of the Constitutional Court in Indonesia.

⁸ 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: ScienceDirect* 7, no. 9 (2021): 1–4, <https://doi.org/https://doi.org/10.1016/j.heliyon.2021.e07886>.

A. Theoretical Review

1.1 Public Administration/State Administration Approach

Some of the problems that arise in the world of state administration usually originate from people's lives. State administration is an order that answers society's problems. Gerald Caiden concluded that the discipline of state administration is closely related to the scientific discipline that responds to implementation problems in society.⁹ Currently, the flow of administration from both the government and business aspects is growing rapidly, so that the meaning of administration has different interpretations. Based on the opinion of Sondang P. Siagian which comes from the book Prof. Dr. H. Makmur, M.Sc. says that, administration is a process of integration between the cooperation of two or more people which originates from a certain rationality in order to achieve predetermined goals. One of the tasks of Public Administration is *policy maker* or policy makers, which is then known as public policy.¹⁰

1.2 Progressive Law

Progressive law is an ideology that tries to find alternatives to the decline in law enforcement. For the first time, progressive law was introduced and developed by Satjipto Rahardjo. In the dimension of law enforcement in Indonesia, judges generally only focus on the value of legal certainty and do not focus on law enforcement in the aspect of justice.¹¹ According to Harun

⁹ Muchlis Ari Handy, *Ilmu Administrasi: Sejarah Perkembangan, Teori, Dan Aplikasinya* (Sleman: PT Kanisius, 2023).

¹⁰ Umar Congge, *Patologi Administrasi Negara* (Makassar: SAH MEDIA, 2017).

¹¹ Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Kompas Media Nusantara, 2010).

Nasution, law enforcement problems can arise from the consequences of not being strict about a statutory provision which opens up opportunities for deviation by its implementers. The implementation of positivism in law takes the form of releasing metajudicial ideology regarding law, so that the existence of every legal norm is based on positive norms which represent relevant contextual agreements between society and community representatives. Broadly speaking, law is not conceptualized as an intangible meta-juridical moral principle regarding the essence of justice, but only to ensure what is meant by law and what is not law.¹²

II. Method

This research center uses normative juridical research methods which are carried out through 3 (three) stages of approach, such as: regulatory approach; a transcendental approach through the perspective and thinking of experts regarding legal understanding; as well as a philosophical approach. Based on the opinion of Soekanto & Mamudji, it is explained that the normative juridical approach is a stage of legal observation through researching library materials or secondary data as the main material by conducting re-research related to the problems observed.¹³ This type of research was applied because the author researched the dialectics of progressive law regarding the qualifications of statesmen as guardians of the constitution from the perspective of the independence of the Constitutional Court in Indonesia. In determining

¹² M. Yasin Al Arif, "Penegakan Hukum Dalam Perspektif Hukum Progresif," *Undang: Jurnal Hukum* 2, no. 1 (2019): 169–92, <https://doi.org/10.22437/ujh.2.1.169-192>.

¹³ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2015).

the answer to the problem formulation, starting from the interpretation of the problem which is the background of the title with various legal events which are then concretized with legal material. Legal material analysis techniques start from the Law; 1945 Constitution; Law Number 48 of 2009 concerning Judicial Power; and Law Number 22 of 2004 concerning the Judicial Commission. After analysis, it is reviewed by making more specific conclusions that are correlated with the title and discussion in writing a scientific paper.

III. Reconstruction of Recruitment and External Supervision of Constitutional Guardian Judges (the guardian of the constitution) in the Perspective of Progressive Legal Dialectics in Indonesia

Progressive legal dialectics in Indonesia is an approach to the legal system that emphasizes the role of law in encouraging positive social change and promoting justice. This approach was first introduced by Indonesian legal scholar, Satjipto Rahardjo, and has influenced legal thinking and practice in Indonesia since the early 2000s. Progressive law in Indonesia is said to be a progressive step as the government's obligation to protect the entire nation in achieving justice before the law.¹⁴ The need for progressiveness in law is not only limited to adapting new norms to the legal situation faced by society, but also involves

¹⁴ Satjipto Raharjo, *Membedah Hukum Progresif* (Jakarta: Buku Kompas, 2008).

highlighting the values and principles that underlie the formation of legal norms.¹⁵

One of the main principles of progressive legal dialectics is social justice. Progressivism teaches that law is not king, but a tool for explaining the basis of humanity which functions to provide grace to the world and humans. This approach emphasizes that law must be a tool to fight for social justice and reduce social inequality in society. In the Indonesian context, progressive legal dialectics places the protection of human rights as one of the main focuses. This includes protecting minority rights, women's rights, children's rights, and other rights that are often marginalized in traditional legal systems. This approach also emphasizes the importance of community empowerment in the legal process. This means that the public must be actively involved in making legal policies and decision-making processes. Progressive legal dialectics emphasizes the importance of law enforcement that is responsive to social, cultural and economic dynamics in society. This means that the law must be able to adapt to these changes and not be rigid in applying the rules. This perspective also demands the elimination of discrimination in law and society. This includes eliminating discrimination based on gender, religion, ethnicity and other factors.

Although the progressive legal approach has made a significant contribution in increasing awareness of the importance of social justice and human rights protection in Indonesia, its implementation is still faced with challenges such as resistance from conservative groups, limited resources, and an imbalance of power in society. Nevertheless, progressive legal dialectics remains an important basis in efforts to create a more inclusive and fair legal system in Indonesia.

¹⁵ Dewi Ambarwati, "Urgensi Pembaharuan Hukum Di Era 'Metaverse' Dalam Perspektif Hukum Progresif," *DIALEKTIKA: Jurnal Ekonomi Dan Ilmu Sosial* 7, no. 2 (2022): 151–67, <https://doi.org/10.36636/dialektika.v7i2.1306>.

In reconstructing the recruitment and external supervision of constitutional judges, it is necessary to reconstruct the norms contained in the external supervision system in Indonesia. Constitutional Court Regulations, such as Constitutional Court Regulations concerning the Honorary Council of the Constitutional Court, Constitutional Court Regulations concerning the Enforcement of the Declaration of the Code of Ethics and Behavior of Constitutional Judges, and Constitutional Court Regulations concerning Work Mechanisms and Procedures for Auditing Reports and Information, regulate external supervision of constitutional judges.¹⁶ In 2006, the Constitutional Court decision Number 005/PUU-IV/2006 changed the paradigm of supervision of constitutional judges in Indonesia. Previously, supervision was carried out externally through the Judicial Commission. However, after this decision, supervision of constitutional judges was only carried out internally. Currently, the system of internal supervision of constitutional judges is regulated by the Constitutional Court Law and Constitutional Court Regulations. This internal supervision is carried out by the Ethics Council and the Honorary Council, as regulated in Constitutional Court Regulation Number 2 of 2014 concerning the Honorary Council of the Constitutional Court. Thus, supervision of constitutional judges in Indonesia is currently carried out through an internal mechanism consisting of the Ethics Council and the Honorary Council of the Constitutional Court, in accordance with applicable legal provisions.¹⁷

There are several shortcomings and weaknesses in the recruitment and external supervision of the current guardian of the constitution judges in several countries, including Indonesia. The recruitment

¹⁶ Ambarwati.

¹⁷ Wiryanto, *Etik Hakim Konstitusi: Rekonstruksi Dan Evolusi Sistem Pengawasan*, 1st ed. (Depok: Rajawali Pers, 2019).

process for constitutional judges often lacks transparency.¹⁸ Kelsen and Schmitt describe constitutional supervision as a system that functions to ensure fairness and justice in the legal system.¹⁹ In fact, if you look at the Law of the Republic of Indonesia Number 24 of 2003 concerning the Constitutional Court, it states that:

Article 18

"3 (three) constitutional judges are nominated each by the Supreme Court, 3 (three) people by the DPR, and 3 (three) people by the President, to be appointed by Presidential Decree."

Article 19

"The nomination of constitutional judges is carried out in a transparent and participatory manner."

In fact, the selection criteria, selection process and considerations in appointment are often not disclosed openly to the public. There is a risk of politicization of the recruitment process, where the political interests of certain parties or groups influence the selection of constitutional judges. This can undermine the independence and integrity of the constitutional court institution. Supervision of constitutional judges from outside the constitutional court is still limited. Institutions responsible for oversight, such as ethics boards or independent agencies, may have limited powers or not have a strong enough presence. Sometimes constitutional judges are not adequately accountable for their performance or decisions. The lack of effective accountability mechanisms can reduce public trust in constitutional

¹⁸ Ade Adhari and Tundjung Herning Sitabuana, "Kebijakan Pembatasan Internet Di Indonesia : Perspektif Negara Hukum, Hak Asasi Manusia, Dan Kajian Perbandingan," *Jurnal Konstiusi* 18, no. 1 (2021): 262–93, <https://doi.org/https://doi.org/10.31078/jk1822>.

¹⁹ Hans Kelsen and Carl Schmitt, *The Guardian of the Constitution* (Cambridge, Inggris: Cambridge University Press, 2015), <https://doi.org/https://doi.org/10.1017/CBO9781316136256>.

courts. The composition of constitutional judges may not reflect the diversity of society as a whole. Lack of representation from diverse backgrounds and experiences can influence the diversity of perspectives in decision making. Some constitutional judges may lack the specialized training or qualifications necessary to handle complex constitutional cases. This can affect the quality of the resulting decisions. In fact, according to its function, the Constitutional Court is constructed as the only highest institution which has the vital function of officially interpreting the 1945 Constitution.²⁰

The process of recruiting and supervising constitutional judges can be time consuming and expensive. This can become an obstacle for the government to make necessary improvements or updates. It is important to continue to improve the system of recruitment and supervision of constitutional judges to ensure the independence, integrity and quality of constitutional court institutions, which are effective guardians of the constitution for the rule of law.

The recruitment process using a clear and standardized selection panel fulfills the main principles in filling the position of constitutional judge. The existence of internal supervisory institutions for constitutional judges is regulated in the Constitutional Court Regulations in order to maintain supervision over constitutional judges. Supervision of the Constitutional Court is carried out by the Ethics Council and MKMK to enforce violations of the code of ethics and maintain the dignity and honor of Constitutional Judges.²¹ In the perspective of progressive legal dialectics, the reconstruction of

²⁰ Feri Amsari, *Pengisian Jabatan Hakim Agung Dan Hakim Konstitusi*, 1st ed. (Jakarta: Rajawali Pers, 2016).

²¹ Wahyu Aji Ramadan, Irma Aulia Pertiwi Nusantara, and 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>.

recruitment and external supervision of constitutional judges must refer to progressive legal concepts which include concepts such as justice, welfare and freedom.

In reconstructing the recruitment and external supervision of constitutional judges, a progressive legal approach must be used to strengthen constitutional law and state law. In the reconstruction of recruitment and external supervision of constitutional judges, effective supervision must be carried out to ensure that constitutional judges think and think in accordance with the concept of progressive law. In reconstructing the recruitment and external supervision of constitutional judges, supervision must be integrated with the government system, legal system and education system. In reconstructing the recruitment and external supervision of constitutional judges, an integrated approach must be used to ensure that constitutional law and state law are integrated with community life. Satjipto Rahardjo considers a good life as the basis for good law, which means that the law must be regulated in accordance with good living conditions and good behavior.²²

In the perspective of progressive legal dialectics, the reconstruction of recruitment and external supervision of constitutional judges in Indonesia must include the aspects mentioned above. This will help create a monitoring system for constitutional judges that is effective, transparent, and integrated with the government system, legal system, and education system.

²² Satjipto Rahardjo, *Hukum Dan Perilaku: Hidup Baik Adalah Dasar Hukum Yang Baik* (Jakarta: Kompas Media Nusantara, 2009).

IV. The Relevance of Progressive Legal Dialectics to the Qualifications of Statesmen as Judges Guarding the Constitution (the guardian of the constitution) in Perspective of the Independence of the Constitutional Court Institution in Indonesia

The existence of law in practice is limited to the environment and circumstances in which the law applies, so that it is normal for there to be disharmony between what is oriented (*das sollen*) and what occurs in reality (*das sein*). In this way, the law should make society the subject and not the object of the law.²³ Grammatically in the Big Indonesian Dictionary, a statesman is a person who has competence in statecraft, namely an expert in carrying out constitutional functions. A statesman is a political actor who adheres to the principles of forming decisions on state policy with a future perspective or managing the state visionary with wisdom and authority.

Representation of the qualifications of statesmen for constitutional judges has been included in the 1945 Constitution and is vital in relation to the realization of justice in safeguarding the constitution. The qualifications of a statesman are inherent and have direct implications for every decision issued, this is because they are final for state administrators and citizens. The form of statesman qualifications can be seen through *track record* prospective constitutional judges through experience, published work in the form of books or scientific journals, connectivity of lifestyle with the

²³ Andri Yanto, *Mazhab-Mazhab Hukum: Suatu Pengantar Memahami Dimensi Pemikiran Hukum* (Jakarta: SEGAP Pustaka, 2021).

environment, in-depth understanding of science, as well as positions or professions related to thinking about state solutions.²⁴

Based on the perspective of J. M. Gaffar, he said that the representation of the meaning of the terminology of a statesman when occupying the position of constitutional judge must be independent in examining, mediating and ending cases for the continued upholding of substantive justice based on the constitution. J. M. Gaffar's perspective is also in line with the legal basis which states that there is a prohibition on holding other positions, such as members of political parties, business people, civil servants or advocates through positions as constitutional judges. Therefore, representing the qualifications of a statesman means giving up other professions or employment ties to prioritize functions and authority in overseeing the noble duties of the Constitutional Court.

Through comparative studies, it can be seen that the qualifications of statesmen as constitutional judges in Indonesia are the specifications of several countries, such as Colombia, Austria, Spain, Chile, the Dominican Republic and Turkey. This country does not prioritize the qualifications of statesmen to hold the position of constitutional judge in their country.²⁵ In fact, the constitution or derivative regulations only single-handedly require the qualifications of a statesman for the position of constitutional judge. For this reason, it is vital to understand the representation of statesmen as referred to in the constitution in Indonesia.²⁶ In this case, the concept of progressive law is a crucial approach as an answer to the state of law enforcement in

²⁴ Raniansyah, "Tinjauan Yuridis Terhadap Syarat Negarawan Hakim Konstitusi Dalam Undang-Undang Dasar," *Skripsi*, 2017, 1–79.

²⁵ By Philip C. Jessup, *A Modern Law of Nations: Pengantar Hukum Modern Antarbangsa* (Bandung: Nuansa Cendekia, 2019).

²⁶ Taufik Basari, "Hakim Konstitusi Harus Negarawan," dpr.go.id, 2020.

Indonesia, because justice in Indonesia is allegedly positivistic. This triggers public distrust in the law.

In essence, progressive law is not merely procedural, but law that prioritizes human morality. This interprets that, justice is not in terms of normative juridical, but also prioritizes sociological juridical regarding the ultimate goal of justice. In fact, legal dynamics is a never-ending progress. Progressive law is implemented in a normative juridical form which is formulated to achieve justice and benefit to life.²⁷ Meanwhile, the Constitutional Court is an institution that is given the trust of the public as an independent and independent institution in safeguarding the constitution and democratic activities. In implementing constitutional policies, the Constitutional Court should represent the primacy of the doctrine of justice.²⁸

The qualifications of a statesman in a progressive legal perspective, according to the author, explain that the procedural justice that is upheld is substantive justice and does not lie in normative law. The implementation of the Constitutional Court's decision should pay attention to the democratic value of constitutionality based on the application of the Pancasila ideology. Current facts show that the legal application of decisions issued by the Constitutional Court is inconsistent. This is because the applicant's request was granted in the decision in case Number 90/PUU-XXI/2023.²⁹ In fact, from a historical

²⁷ Khotbatul Laila, "Hukum Progresif Sebagai Solusi Kebebasan Berpendapat Dengan Asas Demokrasi Pancasila," *Jurnal Cakrawala Hukum* 10, no. 2 (2019): 177–86, <https://doi.org/10.26905/idjch.v10i2.3546>.

²⁸ Wira Purwadi et al., "Putusan Konstitusional Demokratis Terhadap Sengketa Pemilu Serentak 2024," *Jurnal Al-Mizan* 9, no. 2 (2022): 207–21, <https://doi.org/10.54621/jiam.v9i2.432>.

²⁹ Virgian Satria et al., "Persoalan Etis Putusan Mahkamah Konstitusi Mengenai Batas Usia Calon Presiden Terhadap Masa Depan Politik Indonesia," *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humanioral* 1, no. 2 (2023): 1–25, <https://doi.org/10.11111/nusantara.xxxxxxx>.

perspective, the democratic system was motivated by law to limit the power of authoritarian parties over minority parties. The connection between law and politics must not be interfered with by special elites. At the domination discourse stage, there are 2 (two) logical consequences, namely:

1. Discourse dominates by directing specific steps regarding objects that must be studied and read in connection with an understanding of a broader perspective.
2. A discursive arrangement that emphasizes that the value of an object is not absolute enough to become a truth, but rather limits wider and more cornered opinions.

In the dimension of power relations, knowledge forms a seriousness regime that is independently established, realized and developed.³⁰ In practice, judicial independence is a crucial form of achieving the sought value of justice. This realization can be carried out by judges in the nature of impartial decisions in line with justice and law and free from intervention or intimidation by other bodies such as the legislature, executive, non-legal government or the public. The impartiality of judicial independence shows independent judicial power and protects society from arbitrariness by the ruling elite, so that the crucial urgency that needs to be realized is constitutional independence as mandated by the 1945 Constitution of the Republic of Indonesia.³¹ Optimism about the creation of justice stems from the upholding of political ethics as an instrument of ideological criticism that is not

³⁰ Anthon F. Susanto, *Filsafat Dan Teori Hukum Dinamika Tafsir Pemikiran Hukum Di Indonesia*, 1st ed. (Jakarta: Prenada Media, 2019).

³¹ Elfid Nurfitra Mubarak and Alwi Al Hadad, "Pengawasan Terhadap Hakim Mahkamah Konstitusi: Perspektif Teori Checks and Balances Dalam Sistem Ketatanegaraan," *Khazanah Hukum* 3, no. 1 (2021): 8–19, <https://doi.org/10.15575/kh.v3i1>.

limited to law and the state, because legitimacy is a way to run the state. Ethics in carrying out activities will lead to competence in rational and critical attitudes which function as knowledge and responsibility regarding the capabilities and skills of statesmen.³²

V. Conclusion

In an effort to renew the selection and supervision process for constitutional judges, a progressive legal approach is the key to strengthening the legal basis of the constitution and the country's legal system as a whole. The importance of effective supervision of the recruitment process and performance of constitutional judges is emphasized so that they have an appropriate understanding of progressive legal principles. This supervision must be well integrated into the government structure, legal system and education. Progressive law is not only related to procedures, but also emphasizes aspects of human morality. This indicates that the concept of justice is not only seen from a normative legal perspective, but also considers the social dimension and the ultimate goal of justice. Legal development naturally reflects continuous progress. Progressive legal principles are implemented through a normative framework designed to achieve justice and social welfare. As an institution trusted by the public, the Constitutional Court has an important role as an independent institution tasked with protecting the constitution and democracy. In carrying out its constitutional functions, the Constitutional Court should emphasize the principle of justice as its main priority.

³² Aturkian Laia et al., *Hukum Sebagai Panglima Dan Politik Sebagai Raja*, ed. Bestari Laia (Sukabumi: CV Jejak (Jejak Publisher), 2023).

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Judex set lex laguens