

Enhancing External Oversight of Constitutional Judges: A Study on the Role of the Judicial Commission in Indonesia and South Korea

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Abstract

This study addresses the urgent need for enhanced external oversight of constitutional judges in Indonesia and South Korea, driven by increasing concerns over judicial integrity and accountability. Recent instances of judicial misconduct and rising public dissatisfaction highlight the necessity for effective mechanisms that ensure transparency and ethical conduct among judges. The research investigates the roles and effectiveness of the Judicial Commissions in both countries, providing critical insights into their operations and impacts on judicial oversight. By employing a comparative approach, the study reveals the strengths and weaknesses of each commission's framework, focusing on ethical guidelines, disciplinary processes, and public engagement strategies. It identifies best practices that could be adapted or improved to enhance judicial oversight,

thereby fostering greater public trust in the legal system. The findings indicate that while both commissions aim to uphold judicial integrity, their effectiveness is influenced by contextual factors such as political dynamics and public perception. Additionally, this study explores the implementation of external oversight for Constitutional Judges in Indonesia, particularly in light of the establishment of the Constitutional Court following the 1945 Constitution amendment. Given the court's crucial role in upholding constitutionalism, the exclusion of constitutional judges from oversight mechanisms is untenable. The Judicial Commission emerges as the most suitable body for external supervision, yet prior legislative efforts to integrate constitutional judges under its purview have been invalidated by the Constitutional Court. To rectify this, the study recommends amending Article 24B paragraph (1) of the 1945 Constitution to explicitly include "*Constitutional Judges*." This amendment is essential to ensure that all judges, including constitutional judges, are subject to the same level of external scrutiny. Ultimately, this research contributes to the broader discourse on judicial independence and accountability, offering actionable recommendations to strengthen oversight institutions and foster a more resilient judiciary in both Indonesia and South Korea.

KEYWORDS *External Oversight, Constitutional Court, Judicial Commission, Autonomy, Constitutional Amendments*

Introduction

The integrity and independence of constitutional judges are vital components of a robust legal system, serving as guardians of democratic principles and the rule of law.¹ In countries such as Indonesia and South Korea, constitutional courts are tasked with interpreting the constitution and adjudicating disputes that significantly impact governance and individual rights.² However, the judiciary is not immune to issues of accountability and

¹ See Trevor RS Allan, *Constitutional Justice: A Liberal Theory of the Rule of Law*. (Oxford: Oxford University Press, 2003); Jeffrey Jowell, "The rule of law and its underlying values." *The Changing Constitution* 6 (2007): 5-23.

² Peter Leyland, and Andrew Harding. "The Constitutional Courts of Thailand and Indonesia: Two Case Studies from South East Asia." *Journal of Comparative Law* 3, no. 2 (2008). See also Tom Ginsburg, *Judicial review in new democracies: Constitutional courts in Asian cases*. (Cambridge: Cambridge University Press, 2003); Ahmad Wijaya, and Nasran Nasran. "Comparison of Judicial Review: A Critical Approach to the Model in Several

potential overreach, making the role of external oversight mechanisms essential for maintaining public trust and judicial integrity.³

In Indonesia, the Constitutional Court has faced scrutiny regarding its transparency and accountability practices.⁴ Concerns about judicial independence and potential bias have prompted calls for enhanced oversight. The existing framework, while providing some mechanisms for accountability, has shown limitations in addressing issues of judicial misconduct and ensuring that judges adhere to ethical standards. As such, there is a growing recognition of the need for a more structured oversight body to monitor the actions of constitutional judges effectively.

The amendments to the 1945 Constitution of Republic of Indonesia have introduced a new state institution within the judicial branch, namely the Constitutional Court, as stipulated under Article 24 paragraph (2), which states: "*The judicial power shall be implemented by a Supreme Court and judicial bodies underneath it in the form of public courts, religious affairs courts, military tribunals, and state administrative courts, and by a Constitutional Court.*" This article articulates that judicial power shall be exercised by the Supreme Court and subordinate judicial bodies within the realms of General, Religious, Military, and State Administrative Courts, as well as by the Constitutional Court itself. The specific roles and powers of the Constitutional Court are further delineated in Article 24C⁵.

Countries." *Jurnal Legalitas* 14, no. 2 (2021): 85-106; Chaihark Hahm, "Beyond 'law vs. politics' in constitutional adjudication: Lessons from South Korea." *International Journal of Constitutional Law* 10, no. 1 (2012): 6-34; Marie Seong-Hak Kim, "Travails of judges: courts and constitutional authoritarianism in South Korea." *The American Journal of Comparative Law* 63, no. 3 (2015): 601-654.

³ Gabrielle Appleby, and Erin F. Delaney. "Judicial Legitimacy and Federal Judicial Design: Managing Integrity and Autochthony." *Yale Law Journal* 132, no. 8 (2023): 2419-2497; Adi Fauzanto, "Rekonstruksi Rekrutmen dan Pengawasan Eksternal Hakim Mahkamah Konstitusi Dengan Pendekatan Hukum Progresif." *Jurnal Panorama Hukum* 5, no. 1 (2020): 1-25.

⁴ Simon Butt, *The Constitutional Court and Democracy in Indonesia*. (London: Brill, 2015); Simon Butt, and Prayekti Murharjanti. "What constitutes compliance? Legislative responses to Constitutional Court decisions in Indonesia." *International Journal of Constitutional Law* 20, no. 1 (2022): 428-453.

⁵ Article 24C of the 1945 Constitution of the Republic of Indonesia delineates the powers of the Constitutional Court (*Mahkamah Konstitusi*). Paragraph (1) empowers the Court to review laws for constitutional compliance, ensuring legislative actions uphold constitutional rights. Paragraph (2) grants the Court jurisdiction over disputes related to state institutions' authority, maintaining a balance of power. As highlighted by some scholars that these provisions are vital for fostering public awareness of constitutional rights, enabling citizens to defend their rights through the Court, and reinforcing the rule

In addition, upon analyzing the respective mandates and functions, a distinct separation exists between the Supreme Court and the Constitutional Court⁶. As elucidated by Jimly Asshiddiqie, this demarcation is essential due to their inherent differences. The Supreme Court predominantly serves as a court of justice, emphasizing the equitable dispensation of justice, while the Constitutional Court primarily operates as a court of law, focusing on the interpretation and application of constitutional provisions and legal standards⁷.

It is hardly feasible to establish a complete and absolute separation between a court of justice and a court of law. Originally, the proposal advocated by Jimly Asshiddiqie entailed allocating all judicial review functions to the Constitutional Court, thus allowing the Supreme Court to concentrate on adjudicating matters expected to achieve a sense of justice for every citizen⁸. Article 24C of the 1945 Constitution articulates: (1) The Constitutional Court holds the authority to adjudicate at the initial and final stages, issuing definitive judgments, assessing the constitutionality of laws, resolving disputes regarding the jurisdiction of state institutions as defined by the Constitution, adjudicate on the dissolution of political parties, and settle disputes related to the outcomes of general elections. (2) The Constitutional Court is mandated to deliver a verdict on the House of Representatives' opinion concerning alleged infringements by the President and/or Vice President in accordance with the Constitution⁹.

Considering the crucial roles and powers attributed to the Constitutional Court and the diverse opinions that have recently come to light, even amid dissent, it is crucial to ensure the oversight of Constitutional Court judges. The judiciary's ability to issue final and binding decisions, which eliminates any further legal remedies, constitutes a significant constitutional authority that is

of law in Indonesia. See Baharuddin Riqiey, "The Meaning of Article 22 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia after the Constitutional Court Decision Number 54/PUU-XXI/2023." *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 4, no. 1 (2024): 24-37; Krisnadi Nasution, "Indonesian Judicial Power Post Amendment." *Mimbar Keadilan* 13, no. 1 (2020): 85-95; Roux, Theunis. "Indonesia's Judicial Review Regime in Comparative Perspective." *Constitutional Review* 4, no. 2 (2018): 188-221.

⁶ Eman Suparman, "Korupsi Yudisial (Judicial Corruption) dan KKN di Indonesia," *Padjadjaran Jurnal Ilmu Hukum* 1, no. 2 (2014): 209-227.

⁷ Suparto Suparto, et al. "Establishment of Electoral Court in Indonesia: Problems and Future Challenges." *Journal of Indonesian Legal Studies* 8.2 (2023): 501-544.

⁸ Jimly Asshiddiqie, and Ahmad Syahrizal. *Peradilan Konstitusi di Sepuluh Negara*. (Jakarta: Sekretariat Jenderal Mahkamah Konstitusi, 2006).

⁹ Suparto Suparto. "The Problematic Implementation of Law and Regulations Testing in Indonesia." *Yuridika* 37, no. 1 (2022): 251-268.

vulnerable to errors, injustices, lack of impartiality, objectivity, and professionalism.¹⁰ Constitutional Court judges, as human beings, are inherently prone to making mistakes. Despite being selected through rigorous processes, they are still susceptible to errors and lapses, and there is a particular concern when they engage in deliberate misconduct, taking refuge behind the finality and binding nature of their rulings.¹¹ This research delves into the historical development and current implementation of oversight for Constitutional Court judges and explores the prospects for future developments. This study aims to scrutinize the implementation of external oversight of Constitutional Court judges since the establishment of the Constitutional Court, its present state, and its prospects.

Conversely, South Korea has developed a more defined system of external oversight through its Judicial Commission, established to promote ethical conduct and accountability among judges. This commission plays a critical role in investigating allegations of misconduct, providing a necessary check on judicial power.¹² By examining the composition, functions, and effectiveness of the Judicial Commission, this study aims to assess how it enhances judicial accountability and the implications for public confidence in the judiciary.

The Judicial Commission is comprised of a diverse group of members, including judges, legal professionals, and representatives from civil society. This diverse composition is essential for fostering a balanced perspective on judicial conduct. By including non-judicial members, the commission ensures that a wider range of viewpoints is considered in its deliberations, promoting transparency and accountability. This representation helps to bridge the gap between the judiciary and the public, signaling that the judiciary is not only self-regulating but also answerable to the society it serves.¹³

¹⁰ Rosyidi Hamzah, and Fadhel Arjuna Adinda. "The Existence of a Norm Regarding the Execution of Fiduciary Guarantees After the Issuance of the Constitutional Court Decision Number 18/PUU/XVII/2019." *Jurnal Penelitian Hukum De Jure* 22, no. 1 (2022): 81-92.

¹¹ Suparto Suparto, et al. "Administrative Discretion in Indonesia & Netherland Administrative Court: Authorities and Regulations." *Journal of Human Rights, Culture and Legal System* 4, no. 1 (2024): 75-100.

¹² Neil Chisholm, "The faces of judicial independence: democratic versus bureaucratic accountability in judicial selection, training, and promotion in South Korea and Taiwan." *The American Journal of Comparative Law* 62, no. 4 (2014): 893-950; Seokmin Lee, and Fabian Duessel. "Researching Korean Constitutional Law and The Constitutional Court of Korea." *Journal of Korean Law* 16 (2016): 265-284.

¹³ See Shih-An Wang, "Judicial Oversight of Political Parties in New Democracies: The Cases of South Korea and Taiwan." *Arizona Journal of International and Comparative Law* 40, no. 2 (2023): 332-360.

Furthermore, the primary functions of the Judicial Commission include investigating allegations of misconduct against judges, reviewing ethical standards, and providing recommendations for improvement in judicial practices. When complaints are filed—whether they originate from the public, other judges, or internal sources—the commission conducts thorough investigations. This process may involve gathering evidence, interviewing witnesses, and evaluating the context of the alleged misconduct. If a judge is found to have violated ethical standards, the commission has the authority to recommend disciplinary action, which can range from reprimands to removal from the bench.¹⁴

Additionally, the commission plays a proactive role in promoting ethical standards within the judiciary. It organizes training programs and workshops aimed at educating judges about ethical conduct and the importance of accountability. By fostering a culture of integrity and ethical awareness, the commission aims to prevent misconduct before it occurs. The effectiveness of the Judicial Commission can be assessed through several key indicators, including the number of complaints received, the outcomes of investigations, and public perception of judicial integrity. By tracking these metrics, the commission can identify trends and areas for improvement within the judiciary. Moreover, transparent reporting of its activities helps to enhance public confidence, as citizens are more likely to trust a system that is open about its processes and findings.¹⁵

Public confidence in the judiciary is crucial for the functioning of a democratic society. When citizens believe that judges are held accountable for their actions, they are more likely to view the judiciary as a legitimate and trustworthy institution. In South Korea, the work of the Judicial Commission has been instrumental in rebuilding this trust, particularly in the wake of past scandals that had eroded public faith in the judicial system.

By analyzing the composition, functions, and effectiveness of the Judicial Commission, this study aims to highlight its role in enhancing judicial accountability. The commission serves as a critical check on judicial power, ensuring that judges remain answerable for their conduct. This external

¹⁴ Kun Yang, "Judicial review and social change in the Korean democratizing process." *The American Journal of Comparative Law* 41, no. 1 (1993): 1-8.

¹⁵ See also Nurul Faizah Muhrim, "Observing the Judicial Commission's Role in Enhancing Judicial Capacity and Integrity." *Jurnal Al Tasyri'iyah* 1, no. 2 (2021): 97-107; I. Made Pria Dharsana, "Strengthening the Role of the Judicial Commission Through Innovative Strategies to Balance Independence and Impartiality with Judge Accountability." *International Journal of Multicultural and Multireligious Understanding* 8, no. 10 (2021): 328-334.

oversight not only protects the integrity of the judiciary but also reinforces the principle that no one is above the law, including those who interpret and enforce it.

Comparing these two systems provides a unique opportunity to identify best practices and potential reforms that could strengthen external oversight of constitutional judges. Both Indonesia and South Korea present different approaches to managing judicial accountability, influenced by their distinct legal traditions and socio-political contexts. This comparative analysis will illuminate how various mechanisms can be employed to ensure judges are held to high ethical standards while preserving their independence.

The significance of this study extends beyond the borders of Indonesia and South Korea, as the findings could offer insights applicable to other nations grappling with similar challenges. As global democratic norms evolve, understanding the balance between judicial independence and accountability is increasingly pertinent. By examining the experiences of these two countries, this research will contribute to the broader discourse on enhancing judicial oversight and fostering a judiciary that is both independent and accountable.

This study aims to underscore the importance of external oversight in maintaining the balance of power within democratic systems. By enhancing the accountability of constitutional judges, it is possible to bolster public trust in the judiciary, ensuring that it serves as a fair and impartial arbiter of justice. Through rigorous analysis and comparison, this research aspires to inform policymakers and stakeholders on effective strategies for strengthening the oversight of constitutional judges in Indonesia, South Korea, and beyond.

Judicial Oversight of Constitutional Court Judges

A. Insights from Laws No. 22 and No. 4 of 2004

In response to the third amendment of the 1945 Constitution, Law No. 22 of 2004 concerning the Judicial Commission was established on August 13, 2004. As an autonomous state entity, the Judicial Commission is endowed with statutory authority to (1) propose the appointment of Supreme Court judges, and (2) safeguard the honor and integrity of judges while overseeing their conduct.¹⁶ Initially, the oversight of Constitutional Court judges by the Judicial

¹⁶ See Article 13 of Law Number 22 of 2004 Concerning the Judicial Commission. Article 13 of Law Number 22 of 2004 concerning the Judicial Commission in Indonesia outlines the commission's authority to supervise judges and ensure the judiciary's integrity. It establishes mechanisms for monitoring judges' conduct, ensuring they adhere to ethical and legal standards. The article empowers the commission to receive and investigate public complaints against judges, thereby promoting accountability within the judiciary.

Commission was in alignment with the directives of Law No. 22 of 2004 and Law No. 4 of 2004. The procedural framework for the external monitoring of the conduct of Constitutional Court judges is stipulated in Article 22, which delineates the following¹⁷:

In carrying out its mandate to oversee judges' behavior, the Judicial Commission is entrusted with the following responsibilities:

- (a) Accumulating public testimonies regarding the demeanor of judges;
- (b) Procuring systematic reports from judicial entities on judges' conduct;
- (c) Delving into imputations of unprofessional conduct among judges
- (d) Convening and eliciting depositions from judges implicated in ethical transgressions, and
- (e) Assembling reports of the comprehensive report detailing the investigation's findings and recommendations, which is subsequently presented to either the Supreme Court and/or the Constitutional Court for their esteemed deliberation and evaluation. Subsequent actions based on the report's conclusions are communicated to both the President and the House of Representatives for further consideration and implementation.

Should a Constitutional Court judge be found guilty of breaching the judicial code of ethics and conduct, appropriate sanctions will be applied based on the severity of the offense. This procedure is outlined under Article 23 as follows¹⁸:

- (1) Depending on the severity of the violation, recommendations for imposing sanctions on judges may include:
 - a. Disciplinary notice;
 - b. Temporary suspension; or
 - c. Dismissal

Furthermore, the commission can recommend disciplinary actions when necessary, reinforcing the importance of professionalism in judicial roles. Overall, Article 13 is crucial for fostering trust in the judicial system by enhancing oversight and promoting high standards of conduct among judges, ultimately contributing to the independence and integrity of the judiciary in Indonesia. *See also* Nicola Colbran, "Courage Under Fire: The First Five Years of the Indonesian Judicial Commission." *Australian Journal of Asian Law* 11, no. 2 (2009): 273-301; Zainal Arifin Hoesein, "Strengthening the Role and Function of Judicial Commission in Building Clean and Respectable Justice in Indonesia." *Scientific Research Journal (SCIRJ)* 4, no. 3 (2016): 1-7.

¹⁷ *See* Article 22 of Law Number 22 of 2004 Concerning the Judicial Commission. *See also* Dadan Taufik Fathurohman, and Anis Mashdurohatun. "Reconstruction of Regulatory Authority of the Judicial Commission in Maintaining the Noble and Dignity of Judges Based on the Value of Justice." *Jurnal Ilmu Hukum* 12, no. 1 (2018): 45-57.

¹⁸ Article 22 of Law Number 22 of 2004 Concerning the Judicial Commission.

- (2) The disciplinary measures proposal as delineated in paragraph (1) letter a, accompanied by the underlying rationale for the infraction, is deemed obligatory and is conveyed by the Judicial Commission to the executive leadership of the Supreme Court and/or the Constitutional Court.
- (3) Recommendations for disciplinary measures as specified in paragraph (1) letters b and c are transmitted by the Judicial Commission to the Supreme Court and/or the Constitutional Court.
- (4) Judges subjected to potential disciplinary actions as referenced in paragraph (3) are granted an ample opportunity to articulate their defense before the Judges' Honor Council.
- (5) In instances where the defense is overruled, the proposal for the removal of judges is presented by the Supreme Court and/or the Constitutional Court to the President within a maximum timeframe of 14 (fourteen) days after the dismissal of the defense by the Judges' Honor Council.
- (6) The President is obligated to render a decision concerning the removal of judges within a maximum duration of 14 (fourteen) days following the receipt of the proposal from the Supreme Court and/or the Constitutional Court.

Nonetheless, the actualization of external oversight of Constitutional Court judges by the Judicial Commission, as mandated by Law No. 22 of 2004 and Law No. 4 of 2004, remains unrealized. This absence of implementation is attributable to the Constitutional Court's ruling No. 05/PUU-IV/2006 concerning the Judicial Review of Law No. 22 of 2004 and Law No. 4 of 2004, deliberated by 31 Supreme Court judges, which asserted that Constitutional Court judges are not subject to the oversight jurisdiction of the Judicial Commission.

B. Post-Adjudication Oversight of Constitutional Judges After Ruling No. 05/PUU-IV/2006 on Law No. 22 of 2004

Following the issuance of Constitutional Court Decision No. 005/PUU-IV/2006 in the year 2006, which effectively exempted Constitutional Court judges from the purview of the Judicial Commission's oversight, the Constitutional Court has recognized the necessity to refine and rectify its internal regulatory mechanisms concerning judicial conduct. This initiative is undertaken to preserve and reinforce the honor and integrity of the judges serving on the Constitutional Court.

In the context of overseeing the conducts and ethics, the Constitutional Court had previously instituted and enforced an internal supervisory protocol

through the enforcement of a code of ethics, as stipulated under the Constitutional Court Regulation No. 07/PMK/2005. After the court's ruling, enhancements were made to this framework. In the execution of their duties and functions, constitutional courts are required to consistently operate within the parameters of the established code of ethics, as articulated in Constitutional Court Regulation No. 09/PMK/2006 concerning the Implementation of the Declaration of the Code of Ethics and Conduct for Constitutional Judges. Any insinuations of transgressions against the judges' code of ethics are to be internally adjudicated by the Constitutional Court, in accordance with Constitutional Court Regulation No. 10/PMK/2006 regarding the Constitutional Court's Council of Honor. The evaluative process is conducted by an Ethics Panel, specifically convened to investigate the alleged ethical violations.

The Ethics Panel, entrusted with the examination of constitutional judges suspected of ethical transgressions, is composed of three constitutional judges, one of whom serves as both the chair and a member of the panel, while another assumes the role of secretary and member.¹⁹ Following a thorough investigation of the implicated judge, the Ethics Panel will formulate a recommendation to the Constitutional Court concerning the validity of the alleged ethical violation. In instances where the allegation is not substantiated, the Ethics Panel will advocate for the restoration of the judge's professional reputation. Conversely, should there be a necessity for disciplinary action, the Ethics Panel may propose the constitution of the Constitutional Court's Council of Honor. This esteemed assembly, is composed of five distinguished individuals, including two from the ethics panel, a senior legal scholar, a former Supreme Court or Constitutional Court judge, and a former head of a state institution.

The Council of Honor for Judges is tasked with investigating judges suspected of violating the code of ethics and recommending appropriate punitive measures if evidence of such violations is substantiated. In January 2011, the Constitutional Court established this council in response to allegations of ethical misconduct involving Constitutional Court judges Akil Mochtar and Arsyad Sanusi. After a thorough examination, the Council concluded that the allegations against Judge M. Akil Mochtar were unfounded. Presided over by Harjono and comprised of distinguished members including Achmad Sodiki, Abdul Mukhtie Fajar, Bagir Manan, and Esmi Warassih Pujirahayu, the Council determined that there were no ethical violations in Mochtar's case. Consequently, in the absence of misconduct, it was deemed

¹⁹ Council of the Constitutional Court, "Article 3 of Constitutional Court Regulation No. 10/PMK/2006 Regarding the Honorary Council of the Constitutional Court, 2006.

necessary for him to undergo rehabilitation to uphold his honor and integrity as a Constitutional Court judge.

According to Harjono, the decision was based on the lack of verifiable evidence to support claims that Jopinus Ramli Saragih, the Regent of Simalungun, had transferred Rp 1 billion to Akil Mochtar. The Council noted that their interactions were limited to judicial proceedings. However, testimony from Refli Harun and Maheswara Prabandono suggested that Saragih had intended to convey the monetary sum to Mochtar, although the transaction did not occur.

Regarding Judge M. Arsyad Sanusi, the Council found him in violation of the code of ethics due to bribery linked to a meeting involving Dirwan Mahmud and Arsyad's daughter and son-in-law, Neshawati and Zaimar, as well as Makhfud, a subordinate of Arsyad at the Constitutional Court. Consequently, the Council recommended a reprimand for Arsyad for violating principles of integrity, decency, and propriety. However, it was concluded that Arsyad Sanusi was unaware of any collusive intentions between Dirwan and his daughter Neshawati. Following the Council's recommendation, Arsyad Sanusi announced his resignation as a Constitutional Court judge to preserve the dignity and honor of the position, as well as to maintain the authority of the Constitutional Court.²⁰

C. Reassessing Judicial Authority: Oversight of Constitutional Court Judges Under Law No. 8 of 2011

Following the enactment of Law No. 8 of 2011, which amended Law No. 24 of 2003 concerning the Constitutional Court, there have been slight modifications to the oversight mechanisms regarding the conduct of Constitutional Court judges. Specifically, the membership of the Constitutional Court's Honorary Council has been expanded to include five individuals: one Constitutional Court judge, one member from the Judicial Commission, one representative from the House of Representatives, one representative from the executive branch, and one representative from the Supreme Court. This change introduces a notable dynamic, as three of the members—representatives from the Supreme Court, the House of

²⁰ See also Ni'matul Huda, "Penyelesaian Sengketa Pemilihan Bupati Bengkulu Selatan di Mahkamah Konstitusi." *Jurnal Hukum Ius Quia Iustum* 18, no. 1 (2011): 81-106; Ilhamdi Putra, and Afdhal Fadhila. "Pelanggaran Etik Hakim Konstitusi dan Rekomendasi Penegakan Hukum pada Kasus Pemalsuan Putusan." *Unes Journal of Swara Justisia* 7, no. 4 (2024): 1234-1248.

Representatives, and the government—are also responsible for nominating Constitutional Court judges. This dual role raises concerns about potential conflicts of interest, as these institutions may have overlapping functions in both the nomination and oversight processes. Ideally, to maintain impartiality, these institutions should not participate in the Honorary Council.²¹

Nevertheless, the Constitutional Court Decision No. 49/PUU-IX/2011 revoked the participation or membership of the three state institutions proposing candidates—namely the House of Representatives (DPR), the government, and the Supreme Court—through the review of Law No. 8 of 2011. The Constitutional Court's rationale in its ruling was predicated on the distinction that constitutional judges differ from judges in other judicial bodies; constitutional judges are not in permanent positions but rather are appointed by their office. Constitutional judges are appointed for a term of five years, and upon no longer holding the position of Constitutional Judge, they each revert to their original professional status (vide Constitutional Court Decision Number: 005/PUU-IV/2006, dated August 23, 2006).

The selection mechanism for constitutional judges is proposed by three state institutions—each nominating three individuals as stipulated in Article 24C paragraph (3) of the 1945 Constitution, namely by the Supreme Court, the DPR, and the President, and subsequently appointed by the President. Once appointed and sworn in as constitutional judges, they must remain independent impartial, and free from any influence of state institutions, including the institutions that nominated them. Therefore, the inclusion of representatives from the DPR, the government, and a Supreme Court judge in the permanent Honorary Council of the Constitutional Court poses a direct or indirect threat to the independence of constitutional judges in carrying out their duties and authorities. The presence of representatives from the House of Representatives, the government, and a Supreme Court judge poses a potential conflict of interest, given that the DPR, the government, and the Supreme Court, along with the Judicial Commission, are possible litigants before the Constitutional Court²².

²¹ Flora Pricilla Kalalo, and Tommy F. Sumakul Omar Rolihlahla Hakeem, “Sistem Pengawasan Hakim Konstitusi Ditinjau dari Kekuasaan Kehakiman Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945,” *Lex Administratum* IX, no. 2 (2021): 114–123.

²² Constitutional Court, “The Constitutional Court’s Stance in Constitutional Court Decision No. 49/PUU-IX/2011 Regarding the Review of Law Number 8 of 2011 Concerning Amendments to Law Number 24 of 2003 Regarding the Constitutional Court.” (2011).

The author believes that the inclusion of representatives from the House of Representatives (DPR) and the government into the Constitutional Judges' Honorary Council constitutes a misalignment. It presents an inherent contradiction for the DPR and the government, as legislative bodies, to exercise oversight over the Constitutional Court, which fundamentally serves as the state institution responsible for adjudicating the constitutionality of laws emanating from the DPR and the government. This arrangement risks compromising the sanctity of judicial independence and could lead to conflicts of interest. Furthermore, the author contends that the inclusion of a representative from the Supreme Court into the Constitutional Judges' Honorary Council is similarly ill-advised. Given that the Supreme Court and the Constitutional Court are parallel state entities endowed with judicial authority in Indonesia, as delineated in Article 24 paragraph (2) of the 1945 Constitution. Consequently, it is anomalous for the Supreme Court to assume a supervisory role over Constitutional Court judges, given their equivalent standing within the state's judicial hierarchy²³.

The government maintains that the presence of representatives from the House of Representatives (DPR), the executive branch, and the Supreme Court justices in the Honorary Council of Constitutional Court Judges is inherently linked to the structure of the Constitutional Court judges' appointment process, wherein three nominees are proposed respectively by the Supreme Court, the DPR, and the President (refer to Article 18 paragraph (1) of the 1945 Constitution). The government asserts that such an arrangement is designed to facilitate the checks and balances mechanism. The government diverges from the petitioners' viewpoint, which challenges the structure of the Honorary Council of Constitutional Court Judges, consisting of components from the government, the Supreme Court, and the DPR, as potentially compromising the council's independence in adjudicating alleged ethical violation by Constitutional Court judges. This has something to do with the fact that, within the Honorary Council of Constitutional Court Judges, besides the representatives from the government, the Supreme Court, and the DPR, there are also members from the Judicial Commission and Constitutional Court judges. In essence, it is deemed highly unlikely and incongruous that a judge being scrutinized by the Honorary Council of Constitutional Court Judges,

²³ Admiral Admiral, and Suparto Suparto, "The Overplay Functions and Authority of the Sea Security Board (Bakamla) and the Sea and Coast Guard in Keeping Marine Security in Indonesia," *Jurnal IUS Kajian Hukum dan Keadilan* 10, no. 2 (2021): 436–447.

hailing from one of the components, would receive biased protection from a representative of their originating institution (*esprit de corps*)²⁴.

The House of Representatives (DPR) contends that from a constitutional perspective, each state institution possesses independence, both structurally and functionally, yet in the execution of their institutional functions, there is interdependence and collaboration. This process is undertaken collaboratively between the DPR and the executive branch. Specifically, for constitutional judges, Article 24C paragraph (3) of the 1945 Constitution distinctly mandates that the nine constitutional judges are to be nominated by three individuals each from the Supreme Court, the DPR, and the President. The nomination process for Constitutional Court judges is inherently tied to institutional accountability, implying that, from a moral standpoint, the three institutions nominating the constitutional judges bear responsibility for the conduct of the judges they propose. Insofar as it pertains to the behavior of judges, there is an insufficient rationale to suggest that there will be intervention from the institutions nominating the Constitutional Court judges in the discharge of the Constitutional Court judges' duties. The DPR believes that the inclusion of representatives from each institution as components within the Honorary Council is justified to preserve and uphold the honor, dignity, and integrity of the constitutional judges.

In relation to the representation from the House of Representatives (DPR) within the membership of the Honorary Council of Constitutional Court Judges, the DPR asserts that, from the standpoint of delegation, the designated representative possesses the mandate to embody the institutional prerogatives of the DPR. Consequently, the selection of the representative for the Honorary Council of Constitutional Court Judges from the DPR ought to be predicated upon the procedural framework for decision-making operative within the DPR²⁵.

²⁴ The Constitutional Court's stance in Constitutional Court Decision No. 49/PUU-IX/2011 regarding the review of Law Number 8 of 2011 concerning amendments to Law Number 24 of 2003 regarding the Constitutional Court.

²⁵ In Constitutional Court Decision No. 49/PUU-IX/2011, the Court reviewed Law Number 8 of 2011, which amended Law Number 24 of 2003 concerning the Constitutional Court. The decision addressed several key issues related to the amendments, particularly focusing on the implications for the structure and function of the Constitutional Court. The Court upheld the amendments while emphasizing the importance of maintaining the integrity and independence of the judiciary. It underscored that the changes made to the composition and oversight mechanisms of the Constitutional Court's Honorary Council, which included representatives from various state institutions, should not compromise the Court's autonomy. The decision highlighted the necessity of balancing oversight with judicial independence, reiterating that while accountability is

An intriguing aspect of the membership of the Honorary Council of Constitutional Court Judges is the incorporation of the Judicial Commission as a member of the Honorary Council. This development is particularly notable because, following the Constitutional Court Decision No. 005/PUU-IV/2006, which exempted Constitutional Court judges from the supervision of the Judicial Commission's oversight, this marks the first instance of the Judicial Commission's re-engagement in the supervision of Constitutional Court judges, albeit solely as a member of the Honorary Council of Constitutional Court Judges.

The regulatory framework governing the oversight of the conduct of Constitutional Court judges is delineated in Article 27A of Law No. 8 of 2011, which is articulated as follows²⁶:

- (1) The Constitutional Court is required to establish a Code of Ethics and Conduct Guidelines for Constitutional Judges, which encompass norms that every constitutional judge must adhere to in the execution of their duties, to preserve integrity and an impeccable, just, and statesmanlike demeanor.
- (2) To enforce the Code of Ethics and Code of Conduct for Constitutional Court Justices as intended in paragraph (1), an Honorary Council of the Constitutional Court shall be formed, with its membership consisting of the following:
 - a. 1 (one) Constitutional Court justice.

crucial, it should not interfere with the Court's ability to perform its functions without external pressures. Overall, the Court's stance aimed to ensure that the amendments would strengthen the judiciary without undermining its independence or effectiveness. *See also* Bambang Sutejo, and Shaliha Az-Zahra. "Independence of the Constitutional Court in Judicial Review Related to Constitutional Court Laws." *LEGAL BRIEF* 11, no. 5 (2022): 3203-3209; Bagus Hermanto, I. Gede Yusa, and Nyoman Mas Aryani. "Constitutional Court of the Republic of Indonesia: Does the Ultra Petita Principle Reflect the Truth of Law?." *Fiat Justisia: Jurnal Ilmu Hukum* 14, no. 3 (2020): 261-286; Arbi Mahmuda Harahap, Catur Wido Haruni, and Sholahuddin Al-Fatih. "Juridical Analysis of Dissenting Opinions of Constitutional Judges in Constitutional Court Decisions." *Jurnal Scientia Indonesia* 8, no. 1 (2022): 89-114; Emy Hajar Abra, and Rofi Wahanisa. "The Constitutional Court Ultra Petita as a Protection Form of Economic Rights in Pancasila Justice." *Journal of Indonesian Legal Studies* 5, no. 1 (2020): 187-224; Ahmad Fauzan, Ayon Diniyanto, and Abdul Hamid. "Regulation Arrangement through The Judicial Power: The Challenges of Adding the Authority of The Constitutional Court and The Supreme Court." *Journal of Law and Legal Reform* 3, no. 3 (2022): 403-430.

²⁶ Article 27A, Paragraph (2), Subparagraphs c, d, and e of Law Number 8 of 2011 on the Amendment to Law Number 24 of 2003 Concerning the Constitutional Court Were Annulled by the Constitutional Court through Constitutional Court Decision No. 49/PUU-IX/2011.

- b. 1 (one) member of the Judicial Commission.
 - c. 1 (one) person from the DPR elements
 - d. 1 (one) person from the government elements administering government affairs in the field of law; and
 - e. 1 (one) Supreme Court justice.
- (3) In the course of implementing its duty, the Honorary Council of the Constitutional Court shall be guided by the following
- a. The Code of Ethics and Code of Conduct for Constitutional Court Justices.
 - b. Procedure for the hearing of the Honorary Council of the Constitutional Court; and
 - c. Norms and laws and regulations.

If the Constitutional Court's Council of Honor determines, through its investigative process, that a judge has violated the Code of Ethics and Conduct for Constitutional Judges, the judge will face disciplinary measures. The possible sanctions may include an official written notice, a provisional suspension, or dismissal from their position.

According to Article 27A of Law No. 8 of 2011 and the ruling in Constitutional Court Decision No. 49/PUU-XI/2011 regarding the judicial review of this law, which amends Law No. 24 of 2003 concerning the Constitutional Court, the Constitutional Court established Constitutional Court Regulation No. 2 of 2014 concerning the Council of Honor for Judges of the Constitutional Court. This regulation stipulates that the Council of Honor shall consist of five esteemed members: one Constitutional Court judge, one Chairperson or Vice-Chairperson of the Judicial Commission, one former high-ranking official of a state institution, one former Justice of the Constitutional Court or the Supreme Court, and one senior professor specializing in legal studies.

The Council of Honor for Judges retains a membership of five, as outlined in Law No. 8 of 2011. However, following the annulment of certain provisions by the Constitutional Court in Decision No. 49/PUU-IX/2011, the roles of the representatives from the House of Representatives (DPR), the government sector, and the Supreme Court justices have been altered. These representatives, who were initially designated to serve on the Council, are now substituted by other members, ensuring that the Council still functions effectively while complying with the Court's ruling.²⁷

²⁷ See also Luthfi Widagdo Eddyono, "Independence of the Indonesian Constitutional Court in Norms and Practices." *Constitutional Review* 3, no. 1 (2017): 71-97; Muhammad Siddiq Armia, "Constitutional Courts and Judicial Review: Lesson Learned

This adjustment reflects the Constitutional Court's efforts to maintain judicial independence and prevent potential conflicts of interest that could arise from having representatives from institutions that nominate judges also serving as supervisors. The new composition aims to uphold the integrity of the Council while still providing oversight of judicial conduct, ensuring that the standards of ethics and accountability within the judiciary are upheld.

D. Oversight of Constitutional Judges Under Government Regulation No. 1 of 2013 and Law No. 4 of 2014

The apprehension of the former Chief Justice of the Constitutional Court, Akil Mochtar, by the Corruption Eradication Commission (KPK) in a bribery case, elicited widespread astonishment and disbelief, casting a shadow over the judiciary. The Constitutional Court, which serves as the ultimate guardian and protector of the Constitution, as was compromised by the misconduct of its highest official²⁸. The severity of the situation was further accentuated by the recommendation of the former Chief Justice, Jimly Asshiddiqie, for the imposition of the death penalty on Akil Mochtar. This event marked a culmination of prevailing public skepticism toward the integrity of legal institutions. In response, the government promptly enacted Government Regulation in Lieu of Law (*Perppu*) No. 1 of 2013, amending Law No. 24 of 2003 concerning the Constitutional Court. This legislative measure introduced significant reforms, including the establishment of oversight mechanisms for Constitutional Court judges, the stipulation of eligibility criteria for their appointment, and the formation of an Expert Panel for the selection of prospective judges, thereby addressing the pressing need for enhanced accountability and transparency within the judiciary.

In relation to the regulatory framework governing the conduct of judges of the Constitutional Court, it is delineated in Government Regulation in Lieu of Law (*Perppu*) No. 1 of 2013, Article 27A, which is articulated as follows²⁹:

for Indonesia." *Jurnal Negara Hukum* 8, no. 1 (2017): 107-130; Moh Thohir, and Didik Sukriono. "Implementation Authority of The Constitutional Court in the Indonesian Constitutional Law System." *International Journal of Business, Law, and Education* 4, no. 2 (2023): 1495-1503.

²⁸ Didik Suhariyanto, "Problematika Penetapan Perppu Kondisi Negara dalam Keadaan Darurat dalam Sistem Hukum di Indonesia," *Jurnal USM Law Review* 4, no. 1 (2021): 190-207.

²⁹ Article 27A, paragraph (2), subparagraphs c, d, and e of Law Number 8 of 2011 on the Amendment to Law Number 24 of 2003 concerning the Constitutional Court were

- (1) The Constitutional Court, in collaboration with the Judicial Commission, shall formulate and establish a Code of Ethics and Code of Conduct for Constitutional Judges that encompasses norms to which every Constitutional Judge must adhere to in the execution of their duties to uphold the honor and conduct of Constitutional Judges.
- (2) In formulating the Code of Ethics and Code of Conduct for Constitutional Judges as referred to in paragraph (1), the Constitutional Court and the Judicial Commission may engage other qualified entities.
- (3) The code of ethics as referred to in paragraph (1) is binding and must be complied with by all Constitutional Judges.
- (4) To enforce the Code of Ethics and Code of Conduct for Constitutional Judges as referred to in paragraph (1), the Constitutional Court, in conjunction with the Judicial Commission, shall establish a permanent Honorary Council of Constitutional Judges.
- (5) The composition of the Honorary Council of Constitutional Judges as specified in paragraph (4) shall consist of five (5) individuals, comprising:
 - a. One (1) former Constitutional Judge
 - b. One (1) legal practitioner
 - c. Two (2) academicians, at least one whom possessing a background in law, and
 - d. One (1) eminent public figure
- (6) In the formulation of the Code of Ethics and Code of Conduct for Constitutional Judges as referred to in paragraph (1), the Constitutional Court and the Judicial Commission may incorporate other qualified entities.
- (7) The code of ethics as referred to in paragraph (1) is mandatory and must be adhered to by all Constitutional Judges.
- (8) To ensure compliance with the Code of Ethics and Code of Conduct for Constitutional Judges as outlined in paragraph (1), the Constitutional Court, in conjunction with the Judicial Commission, shall establish a permanent Honorary Council of Constitutional Judges.

- (9) The membership of the Honorary Council of Constitutional Judges as described in paragraph (4) shall comprise five (5) individuals, consisting of:
 - a. One (1) former Constitutional Judge
 - b. One (1) legal practitioner
 - c. Two (2) academicians, at least one of whom has a legal background, and
 - d. One (1) distinguished public figure
- (10) Members of the Honorary Council of Constitutional Judges as mentioned in paragraph (5) must satisfy the following qualifications:
 - a. Possess integrity and an impeccable personality.
 - b. Be impartial.
 - c. Be at least 50 (fifty) years of age; and
 - d. Not a member of a political party for a minimum of 5 (five) years prior to their appointment to the Honorary Council of Constitutional Judges.
- (11) The term of the Honorary Council of Constitutional Judges, as stipulated in paragraph (5), is for a duration of 5 (five) years, with no eligibility for subsequent reappointment.
- (12) The Honorary Council of Constitutional Judges is vested with the authority to:
 - a. Summon Constitutional Judges suspected of ethical violation to provide explanations and defenses.
 - b. Call upon the complainant, witnesses, and/or other relevant parties to provide testimony, including the requisition of documents or additional evidence; and
 - c. Impose sanctions on Constitutional Judges found to have contravened the code of ethics.
- (13) The Honorary Council of Constitutional Judges convenes in open sessions to adjudicate allegations of ethical violations committed by Constitutional Judges.
- (14) The stipulation for open sessions, as referenced in paragraph (9), does not apply to examinations concerning acts of indecency and examinations that might impede ongoing legal enforcement processes.
- (15) The rulings of the Honorary Council of Constitutional Judges are definitive and obligatory.
- (16) Resolutions of the Honorary Council of Constitutional Judges pertaining to sanctions or rehabilitation are reached in a plenary session of the Honorary Council.

- (17) Additional regulations concerning the code of ethics and code of conduct for Constitutional Judges, the selection procedure for the Honorary Council of Constitutional Judges, the organizational framework, and the operational procedures of the Honorary Council are delineated in a Joint Regulation of the Constitutional Court and the Judicial Commission.
- (18) To facilitate the execution of the duties of the Honorary Council of Constitutional Judges, a secretariat is established, situated within the Judicial Commission and headed by the Secretary-General of the Judicial Commission³⁰.

The author contends that the code of ethics and conduct for Constitutional Judges, as stipulated under the Government Regulation in Lieu of Law (*Perppu*) No. 1 of 2013, is appropriate. The establishment of a permanent Honorary Council of Constitutional Judges is anticipated to ensure that the members of the Council are more focused and consistent in exercising their duties and authorities due to the defined term of office of membership within the Council. This contrasts with an *ad hoc* (temporary) Honorary Council of Constitutional Judges, which typically operates on an incidental basis and is dissolved upon the resolution of the case at hand. Furthermore, the regulation regarding the placement of the Secretariat of the Honorary Council of Constitutional Judges within the Judicial Commission aims to ensure that the Council functions as an independent external oversight body. The positioning of the Secretariat outside the Constitutional Court is expected to render the Honorary Council of Constitutional Judges a neutral entity, as it is no longer associated with the Constitutional Court in terms of structure or finances. It is noteworthy in this *Perppu* that the Judicial Commission is not directly involved, as it no longer constitutes a member of the Honorary Council of Constitutional Judges³¹.

Nevertheless, the stipulated provisions have not been actualized or operationalized, as Government Regulation in Lieu of Law (*Perppu*) No. 1 of 2013, which was subsequently codified into Law No. 4 of 2014, was invalidated by the Constitutional Court.

³⁰ Article 2A of Government Regulation in Lieu of Law No. 1 of 2013 (Law No. 4 of 2014) on the Second Amendment to Law Number 24 of 2003 Concerning the Constitutional Court.

³¹ Ali Marwan HSB, "Judicial Review dan Legislative Review terhadap Peraturan Pemerintah Pengganti Undang-Undang." *Jurnal Legislasi Indonesia* 17, no. 1 (2020): 51-61; Habib Al Huda, et al. "The Reformulation of Government Regulations in Lieu of Law: Constitutional Court's Decision Perspective." *Jurnal Kajian Pembaruan Hukum* 3, no. 2 (2023): 251-280.

E. Challenging Authority: Constitutional Court Decision No. 1-2/PUU-X/2014 on Law No. 4 of 2014

The controversy surrounding the issuance of the Government Regulation in Lieu of Law (*Perppu*) arose in response to the arrest of the Constitutional Court's Chief Justice, Akil Mochtar, by the Corruption Eradication Commission (KPK). This situation prompted the government to enact *Perppu* No. 1 of 2013, which amended Law No. 24 of 2003 concerning the Constitutional Court. Subsequently, the Constitutional Court undertook a judicial review of the *Perppu*.³²

The review addressed several substantive issues, including the establishment of an Expert Panel for selecting candidates for Constitutional Court judges, the formation of a permanent Honorary Council for these judges, and the qualifications required to become a candidate for the position. Furthermore, the legitimacy of the *Perppu*'s issuance was scrutinized, particularly whether the government's justification for enacting it aligned with the provisions of the 1945 Constitution, specifically regarding the necessity of declaring a state of emergency to warrant such a measure.

Following numerous judicial proceedings, the Constitutional Court ultimately invalidated Government Regulation in Lieu of Law (*Perppu*) No. 1 of 2013 or Law No. 4 of 2014, specifically addressing the oversight exercised by

³² The controversy over the Government Regulation in Lieu of Law (*Perppu*) stemmed from the arrest of Akil Mochtar, the Chief Justice of the Constitutional Court, by the Corruption Eradication Commission (KPK). This arrest raised significant concerns about the integrity of the judiciary and led to public outcry. In response, the government enacted *Perppu* No. 1 of 2013 to amend Law No. 24 of 2003, which governs the Constitutional Court. The amendments aimed to address issues of judicial oversight and the selection process for Constitutional Court judges, particularly in light of the scandal involving the Chief Justice. Following its enactment, the Constitutional Court conducted a judicial review of the *Perppu* to evaluate its legality and implications. This review focused on whether the government's actions were justified and aligned with constitutional principles, as well as the substantive changes introduced by the *Perppu*. Ultimately, the situation underscored the complex relationship between government authority and judicial independence in Indonesia. See Adventus Toding, "Pembelajaran Hukum Melalui *Perppu* Nomor 1 Tahun 2013," *Jurnal Konstitusi* 10, no. 4 (2013): 605-626; Taufikurrahman Upik, Slamet Suhartono, and Syofyan Hadi, "Technical Problems in the Reviewing of Government Regulation in Lieu of Law (*Perppu*) at the Constitutional Court from the Perspective of Legal Certainty," *IBLAM Law Review* 4, no. 3 (2024): 1-10; Suparto Suparto, and Zulkifli Zulkifli, "Position of Circular Letter of the Supreme Court as a Follow up from the Decision of the Constitutional Court Number 37/PUU-IX/2011," *Jurnal Awang Long Law Review* 5, no. 1 (2022): 225-234.

the Judicial Commission through the establishment of a permanent Honorary Council of Constitutional Judges. The Constitutional Court Judges elucidated their reasoning as follows: Law No. 4 of 2014 (Perppu No. 1 of 2013) further delineates the involvement of the Judicial Commission in the establishment of the Honorary Council of Constitutional Judges. Concerning this provision, the Court asserts that checks and balances constitute a mechanism designed to orchestrate the dynamic between legislative and executive powers. In constitutional practices, such as those observed in the United States, checks and balances are exemplified by the presidential veto power over legislation enacted by Congress. Checks and balances are not intended for the judiciary, as there exists a separation of powers between the judiciary and other branches of government. The principle that must be embraced by a rule-of-law state is the independence of the judicial power. Any intervention in the judiciary from any state institution that compromises the autonomy of the judiciary in exercising its functions poses a threat to the principle of the rule of law³³.

The author contests the rationale proffered by the constitutional judges. The scrutiny applied to the Constitutional Court's jurists pertains exclusively to their demeanor, not their adjudications, as the sanctity of judicial independence mandates that no external entity should intrude upon the decision-making process. An established mechanism, namely legal appeals, is in place for the rectification of judicial pronouncements. Consequently, it is untenable that the oversight of the comportment of constitutional judges, aimed at preserving their esteem and integrity, should encroach upon their judicial sovereignty. The author contends that drawing a parallel between behavioral oversight and the doctrines of checks and balances and the separation of powers is an unwarranted extrapolation³⁴.

Within the rule of law state, the principle of judicial supremacy encompasses the prerogative to adjudicate and rectify the actions of both the executive and legislative powers. Rectification vis-à-vis the executive branch is manifested in administrative law cases, where the jurisdiction of administrative courts extends to nullifying government administrative decisions that contravene statutory law. Furthermore, the judiciary's capacity to amend the actions of other state organs is exemplified by the Supreme Court's jurisdiction to assess the conformity of subordinate legislation with higher statutes, while

³³ Fajar Laksono Soeroso, "Relasi Antara Mahkamah Konstitusi Dengan Dewan Perwakilan Rakyat Dan Presiden Selaku Pembentuk Undang-Undang (Studi terhadap Dinamika Pelaksanaan Putusan Mahkamah Konstitusi melalui Legislasi Tahun 2004-2015)". *Thesis*. (Malang: Universitas Brawijaya, 2017).

³⁴ Fajar Laksono Soeroso, "Aspek Keadilan dalam Sifat Final Putusan Mahkamah Konstitusi." *Jurnal Konstitusi* 11, no. 1 (2014): 64-84.

the Constitutional Court is vested with the authority to assess the constitutionality of legislative acts. Consequently, within the framework of the separation of powers and the autonomy of the judiciary, any form of invasion of judicial authority is unequivocally condemned. This principle has been universally accepted, and the 1945 Constitution has adopted it, in a rule-of-law state, ensuring that, within a rule-of-law state, no provision permits any external intrusion into the domain of the judiciary³⁵.

The incorporation of the Judicial Commission, as delineated in Law No. 4 of 2014, represents a form of legal circumvention, as it conspicuously contravenes Constitutional Court Decision No. 005/PUU-IV/2006, dated August 23, 2006, which categorically stipulates that, from a constitutional perspective, Constitutional Court Judges are not associated with the Judicial Commission, which is empowered pursuant to Article 24B of the 1945 Constitution. Such instances of legal circumvention, along with other unconstitutional actions, necessitate rectification by the Court through this Judicial Review process to safeguard the sanctity of the Constitution³⁶.

The author concurs that the judiciary cannot be subjected to intervention by any other branch of power external to the judiciary, as guaranteed by the 1945 Constitution, specifically Article 24 paragraph (1), which declares that the judiciary is an autonomous power vested with the responsibility to administer justice to uphold the law and justice. However, this does not imply that judges, including constitutional judges, are immune from ethical or legal sanctions in the event of legal infractions. Judges remain fallible humans who are susceptible to errors. The aspect that should remain non-intervenable is the judicial decision-making process; thus, oversight remains crucial without compromising their independence.

With regard to the formal examination of the rationale behind the enactment of Government Regulation in Lieu of Law (Perppu) No. 1 of 2013 by the President, it is adjudged to fall short of meeting Article 22 paragraph (1) of the 1945 Constitution, which pertains to urgent circumstances. The author concurs with the judiciary's stance, albeit acknowledging that the authority to interpret the condition or scenario of urgency resides subjectively with the president. The author advocates for the establishment of explicit criteria or conditions that define what constitutes a state of urgency, to prevent disparate interpretations. Constitutional Court has previously delineated the prerequisites

³⁵ Marwan Hasibuan, "Peran Ketua Mahkamah Konstitusi dalam Mempengaruhi Putusan Mahkamah Konstitusi," *Jurnal Legislasi Indonesia* 16, no. 2 (2019): 211-222.

³⁶ Suparto Suparto. "The Comparison Between the Judicial Commission of the Republic of Indonesia and the Netherlands Council for the Judiciary." *UNIFIKASI: Jurnal Ilmu Hukum* 6, no. 1 (2019): 40-52.

for a situation to be regarded as one of urgent necessity, as articulated in Constitutional Court Decision Number; 138/PUU-VIII/2009, which is stipulated as follows:

1. An urgent need to rapidly resolve legal issues based on legislation.
2. The absence of requisite legislation, results in a legal void or the insufficiency of existing laws.
3. This legal void cannot be addressed through the standard legislative procedure due to the lengthy time required, whereas the urgent situation necessitates immediate resolution.

Upon examining the relevant stipulations, we contend that the criteria for a state of compelling urgency have not been satisfied. Despite the arrest of Akil Mochtar, the then Chief Justice of the Constitutional Court, by the Corruption Eradication Commission (KPK), the Constitutional Court was able to operate normally. A more significant concern is the potential for widespread distrust within society. Government expert Saldi Isra argued that the formal examination questioning the rationale for issuing Government Regulation in Lieu of Law (Perppu) No. 1 of 2013 is now inappropriate. This suggests that discussions regarding whether the conditions for a state of compelling urgency were met are less relevant, particularly since the House of Representatives (DPR) has subsequently enacted the Perppu into law.³⁷

Moh. Fajrul Falaakh expressed a similar viewpoint, emphasizing that there is no constitutional basis to challenge the “*urgent necessity*” rationale for the issuance of Government Regulation in Lieu of Law (Perppu) No. 1 of 2013, especially since the House of Representatives (DPR) has already ratified the Perppu into Law (Law No. 4 of 2014). Once the DPR has approved the Perppu, it falls outside the jurisdiction of the Constitutional Court to assess the initial claim of urgency. Instead, the Constitutional Court is empowered to evaluate the substantive content of the law as stipulated in Article 24C, paragraph (1) of the 1945 Constitution. This indicates that the Court's role is limited to examining the law's provisions rather than its justification for enactment.³⁸

We hold a differing opinion from the aforementioned experts. We contend that, despite the approval and promulgation of the Government Regulation in Lieu of Law (Perppu) by the House of Representatives (DPR), the Constitutional Court retains the authority to examine it to determine whether the statute aligns with the 1945 Constitution, both formally and

³⁷ Ariani Dessy, “Komisi Yudisial Republik Indonesia: Antara Idealita dan Realita Menuju Penataan Kekuasaan Kehakiman,” *Jurnal Majelis*, no. 4, no. 1 (2018): 61-138.

³⁸ Mohammad Agus Maulidi, “Problematisa Hukum Implementasi Putusan Final dan Mengikat Mahkamah Konstitusi Perspektif Negara Hukum.” *Jurnal Hukum Ius Quia Iustum* 24, no. 4 (2017): 535-557.

substantively. The Constitutional Court's constitutional mandate is to evaluate statutes against the Constitution, rather than merely assessing the rationale behind the issuance of the Perppu. Ultimately, the Constitutional Court determined that the Perppu qualifies as a legislative regulation subject to judicial review alongside laws. Moreover, given that the DPR is a political entity, it is reasonable for the DPR to endorse the Perppu based on political considerations. Therefore, we argue that, from a formal perspective, the Perppu remains subject to examination by the Constitutional Court, even after receiving the DPR's approval to be enacted into law.

In terms of the formal examination of Government Regulation in Lieu of Law (Perppu) No. 1 of 2013 and the rationale for its issuance, the Court maintains that the Decision No. 138/PUU-VII/2009, dated February 28, 2010, has explicitly affirmed that since the substance of the Perppu is equivalent to that of a legislative statute, the Court possesses the authority to evaluate whether the Perppu conflicts with the 1945 Constitution. The President is endowed with the prerogative to issue a Perppu solely in circumstances of compelling urgency.³⁹ This requirement is stipulated by the Constitution, thereby rendering it obligatory. Without a state of urgent necessity, the President is not authorized to issue a Perppu. In a democratic state, legislative products are formed by the people's representative body or parliament. A Perppu, whose content and power are equivalent to a statute, is not formed by the President in conjunction with the DPR (vide Article 20 of the 1945 Constitution) but is solely formed by the President. Therefore, it is reasonable for the 1945 Constitution to specify the conditions under which a Perppu can be formed by the President, namely in a state of urgent necessity. Decision No. 138/PUU-VII/2009, dated February 8, 2010, established three conditions for the existence of a state of urgent necessity as referred to in Article 22 paragraph (1) of the 1945 Constitution.

Although the determination of urgent necessity falls within the President's authority to interpret, meaning it is subject to the President's subjectivity, such subjectivity must have an objective basis, and this limitation is mandated by the Constitution.⁴⁰ The formation of a Perppu must not be misused, considering that the content of a Perppu is essentially that of a statute, which cannot be decided solely by the President without the approval of the DPR. The three constitutional conditions mentioned above serve as indicators of a state of

³⁹ Reza Fikri Febriansyah, "Eksistensi dan Prospek Pengaturan Perppu dalam Sistem Norma Hukum Negara Republik Indonesia," *Jurnal Legislasi Indonesia* 6, no. 4 (2009): 667–682.

⁴⁰ Bagir Manan and Susi Dwi Harijanti, "Artikel Kehormatan: Peraturan Pemerintah Pengganti Undang-Undang dalam Perspektif Ajaran Konstitusi dan Prinsip Negara Hukum," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 4, no. 2 (2017): 222–243.

urgent necessity, or in other words, the existence of a particular situation that must be addressed promptly to avoid legal uncertainty. This is achieved through the formation of law, in this case, a *Perppu*.

A Government Regulation in Lieu of Law (*Perppu*) is required to have an immediate effect, to effectively address pressing legal issues. However, the Justices of the Constitutional Court have concluded that *Perppu* No. 1 of 2013 does not demonstrate such immediacy. This assertion is supported by the fact that, despite the *Perppu* being enacted into law, it has not produced any tangible legal outcomes. Thus, the considerations surrounding the *Perppu* fail to reflect the urgency required for prompt resolution.⁴¹

Regarding the participation of the Judicial Commission in overseeing constitutional judges, the Constitutional Court once again relied on its definitive authority as established in Constitutional Court Decision No. 005/PUU-IV/2006. As a result, any legal theories or arguments presented will ultimately be superseded by the Constitutional Court's interpretations and decisions, reinforcing the Court's role as the final arbiter in these matters.

Upon examination of the *Perppu*, it becomes evident that the involvement of the Judicial Commission in monitoring the ethics and conduct of constitutional judges is not direct, as it no longer serves as a member of the Honorary Council of Judges. Instead, it acts primarily as an initiator, collaborating with the Constitutional Court to establish the Honorary Council of Constitutional Court Judges. However, it must be emphasized that the Constitutional Court Decision is final and binding, thus requiring compliance.

F. Post-Decision Oversight: Rethinking the Constitutional Court After No. 1-2/PUU-X/2014

Following the revocation of Government Regulation in Lieu of Law (*Perppu*) No. 1 of 2013 or Law No. 4 of 2014 by the Constitutional Court, the oversight mechanism for the ethics and conduct of Constitutional Court judges reverted to the framework established by Law No. 8 of 2011, which entails the utilization of the Honorary Council of Constitutional Court Judges, operating on an ad hoc basis. Furthermore, the Constitutional Court instituted the Ethics Council of Constitutional Judges through Constitutional Court Regulation No. 2 of 2013.

⁴¹ Constitutional Court Decision No. 1, 2/PUU-X/2014 Regarding the Judicial Review of Law Number 4 of 2014 on the Second Amendment to Law Number 24 of 2003 Concerning the Constitutional Court.

If the Ethics Council's examination confirms that the judge in question has engaged in misconduct, the Council has the authority to recommend the formation of an Honorary Council to investigate and deliver a verdict regarding the judge's conduct. The Ethics Council is composed of three members, including one former Constitutional Judge, one legal scholar, and one public figure.⁴²

We contend that the establishment of the Ethics Council by the Constitutional Court lacks a solid legal foundation upon closer examination. Neither Law No. 24 of 2003 nor Law No. 8 of 2011, which govern the Constitutional Court, contains any provisions specifically addressing the Ethics Council. These laws only stipulate the creation of an Honorary Council of Judges to address ethical violations and misconduct by constitutional judges. While the formation of the Ethics Council is not explicitly prohibited by law, and its intended purpose is commendable, we argue that its establishment is not justifiable from both a formal and ethical perspective.⁴³

Formally, this issue is evident in the preamble or consideration of Constitutional Court Regulation No. 2 of 2013 on the Ethics Council of Constitutional Judges, which cites Law No. 24 of 2003 and Law No. 8 of 2011 as the legal foundation for the Ethics Council's formation. However, neither of these laws explicitly prescribes the establishment of an Ethics Council institution.

Ethically, the author also finds it questionable due to the establishment of the Ethics Council coinciding with the President's issuance of the Perppu, which similarly addresses the enforcement of the code of ethics and conduct for constitutional judges through the Honorary Council of Constitutional Court Judges. The Constitutional Court and related entities should have adhered to the Perppu, as it constitutes a valid piece of legislation at the same hierarchal level as a law and is binding upon all concerned parties. Thus, it appears that the Constitutional Court sought to preempt the Perppu by forming the Ethics Council. This perspective is also reflected in the preamble of Constitutional Court Regulation No. 2 of 2013, which indicates that prior to the establishment of the Honorary Council of Constitutional Court Judges as outlined in Perppu No. 1 of 2013, the formation of the Ethics Council of Constitutional Judges was deemed necessary.

⁴² Constitutional Court Regulation No. 2 of 2013 Regarding the Ethics Council of Constitutional Court Judges.

⁴³ Muhammad Rinaldy Bima, "The Matter of Emergency as a Basis for the Establishment of Government Regulation Regarding Law Replacement," *Jurnal IUS Kajian Hukum dan Keadilan* 7, no. 1 (2019): 97–106.

Hence, it is justifiable for some parties to argue that the formation of the Ethics Council is a precautionary measure or that the Constitutional Court harbors a belief that Perppu No. 1 of 2013 would eventually be annulled by the Constitutional Court through judicial review. This belief stems from the fact that since the issuance of the Perppu, there have been strong indications that several parties would challenge or seek judicial review of the Perppu before the Constitutional Court.

The existence of the Ethics Council, selected by the Constitutional Court and integrated within its internal framework, raises concerns regarding its independence in fulfilling its duties and powers, particularly given that it is financially supported by the Court. We find these concerns to be both logical and reasonable. Following a selection process conducted by a designated committee, three members were appointed to the Ethics Council for its inaugural term, as outlined in Constitutional Court Regulation No. 2 of 2013. These members included Abdul Mukthie Fajar, representing former constitutional judges; M. Hatta Mustafa, representing public figures; and Muchammad Zaidun, representing academics. The current term is comprised of Bintan Regen Saragih, Ahmad Syafii Maarif, and Ahmad Sodiki.

Since its establishment, the Ethics Council has conducted several examinations of alleged ethical violations and misconduct by constitutional judges, one notable case involved Constitutional Judge Patrialis Akbar. He was accused of violating the code of ethics by neglecting his primary duties as a constitutional judge, choosing instead to participate in a doctoral examination at the Faculty of Law, Jayabaya University, Jakarta, attending the trial of the corruption case involving Akil Mochtar, and engaging with Akil Mochtar. Nonetheless, based upon the findings following a thorough examination, the Ethics Council concluded that Patrialis Akbar did not violate the code of ethics, as his involvement in the doctoral examination at Jayabaya University was conducted with the knowledge and approval of the Chief Justice of the Constitutional Court. Furthermore, his attendance at the trial of the Akil Mochtar corruption case and his interaction with Akil Mochtar correspondingly did not constitute a violation of the code of ethics, as these activities were conducted outside of official working hours and after the adjournment of sessions at the Constitutional Court.

Consequently, the author contends that the Constitutional Court, in its capacity as the custodian and defender of the Constitution, must adhere to legal and ethical standards in its policymaking endeavors. It has become evident that

external oversight of Constitutional Judges presents a formidable challenge⁴⁴. Various approaches have been undertaken, including amendments to the Constitutional Court Law, the Judicial Commission Law, and the issuance of Government Regulations in Lieu of Law (Perppu). All these initiatives have been proved unsuccessful. Paraphrasing a remark made by Mahfud MD, “*All strategies to eradicate corruption have been depleted*,” similarly, “*All strategies for external oversight of Constitutional Judges have been depleted*.” Despite tangible evidence of the arrests of Akil Mochtar (former Chief Justice of the Constitutional Court) and Patrialis Akbar by the Corruption Eradication Commission (KPK) in corruption cases, the sole viable solution lies in amending Article 24B paragraph (2) of the 1945 Constitution with regard to the term “*Judge*”.

Following the annulment of Government Regulation in Lieu of Law (Perppu) No. 1 of 2013, or Law No. 4 of 2014, the Constitutional Court issued Constitutional Court Regulation No. 2 of 2014 concerning the Honorary Council of the Constitutional Court. This regulation is fundamentally similar to the previous regulation, Constitutional Court Regulation No. 10/PMK/2006. The primary distinction lies in the composition of the Honorary Council of Constitutional Court Judges, which now includes one individual from among the Constitutional Judges, one member from the Judicial Commission, one former Constitutional Judge, one professor, preferably with a legal background, and one eminent public figure.⁴⁵

G. Rethinking Oversight of Constitutional Judges: Insights from Law No. 7 of 2020

Pursuant to Law No. 7 of 2020, the structure of the Honorary Council of the Constitutional Court has been modified, reducing the number of members from five to three. According to Article 27A, paragraph 2 of Law No. 7 of 2020, the composition of the Honorary Council now includes one Constitutional Judge, one member of the Judicial Commission, and one legal scholar.

Regardless, congruent to Constitutional Court Decision No. 56/PUU-XX/2022 concerning the judicial review of Law No. 7 of 2020, the inclusion of a member from the Judicial Commission in the Honorary Council of the Constitutional Court was invalidated or deemed to have no binding legal effect

⁴⁴ Ricca Anggraeni, and Indah Mutiara Sari. “Menelisik Tertib Hukum Peraturan Pemerintah Pengganti Undang-Undang Melalui Validitas Suatu Norma Hukum.” *Crepido* 2, no. 1 (2020): 35-45.

⁴⁵ Constitutional Court Regulation No. 2 of 2014 Regarding the Honorary Council of the Constitutional Court.

to the extent that the phrase "1 (one) member of the Judicial Commission" is not interpreted as "1 (one) individual from the public figure segment with high integrity who is knowledgeable in law and the constitution and is not affiliated with any political party."

The composition of the Honorary Council of the Constitutional Court can take either a permanent or ad hoc form, as outlined in Article 4, paragraph 2 of Constitutional Court Regulation Number 1 of 2023. Following Constitutional Court Decision No. 56/PUU-XX/2022, the current composition of the Honorary Council includes one Constitutional Judge, one eminent public figure, and one legal scholar, preferably with a legal background.

Additional regulations regarding the Honorary Council of the Constitutional Court are outlined in Constitutional Court Regulation Number 1 of 2023. The first significant application of this law and regulation concerning the oversight of constitutional judges involved the handling of ethical violations and misconduct by the Chief Justice of the Constitutional Court, Anwar Usman, in relation to case Number 90/PUU-XXII/2023, which involved a judicial review of Law Number 7 of 2017 on General Elections. After several hearings, the Honorary Council of the Constitutional Court, chaired by Jimly Asshiddiqie, issued Decision Number 2/MKMK/L/11/2023, resulting in the removal of the Chief Justice from office.

The Judicial Commission: A Game Changer for Oversight of Constitutional Judges (Insight from Indonesian and South Korea)

The judiciary serves as a cornerstone of democracy, entrusted with the vital role of interpreting laws and protecting constitutional rights. However, the increasing complexity of legal challenges and the potential for judicial overreach highlight the need for robust oversight mechanisms. In this regard, the Judicial Commission stands out as a transformative entity in both Indonesia and South Korea, where it is tasked with ensuring the accountability and ethical conduct of constitutional judges. This analysis will explore how the Judicial Commission functions as a game changer in enhancing judicial oversight, contributing to a more transparent and accountable legal system.

In Indonesia, the establishment of the Judicial Commission was a significant reform aimed at promoting judicial integrity following concerns about corruption and lack of accountability within the judiciary. The Commission's mandate encompasses various functions, including investigating allegations of misconduct against judges, facilitating training on ethical standards, and raising public awareness about judicial processes. These efforts

aim not only to hold judges accountable for their actions but also to foster a culture of ethics and professionalism within the judiciary. This section will examine the specific tools and strategies employed by the Commission, assessing their effectiveness in mitigating misconduct and enhancing public trust in the judiciary.

Similarly, South Korea has established a Judicial Commission that plays a critical role in overseeing judicial conduct. This body is empowered to investigate complaints against judges, ensuring that ethical violations are addressed promptly and effectively. South Korea's approach emphasizes transparency and proactive measures, including public reporting of the Commission's activities and outcomes. By analyzing the operational dynamics of the Judicial Commission in South Korea, this study will highlight the mechanisms that contribute to a stronger system of judicial accountability and the implications for the judiciary's credibility in the eyes of the public.

The comparative analysis of the Judicial Commissions in Indonesia and South Korea will illuminate key similarities and differences in their structures, functions, and impacts on judicial oversight. This exploration will identify best practices that could be adapted or adopted in other jurisdictions facing similar challenges of judicial accountability. By understanding how these commissions operate as vital oversight bodies, we can better appreciate their potential to shape the future of judicial conduct and enhance the integrity of constitutional courts.

This section aims to provide a comprehensive examination of the Judicial Commission as a game changer in the oversight of constitutional judges. By delving into its role in Indonesia and South Korea, we will uncover insights that not only inform ongoing discussions about judicial reform in these countries but also contribute to the broader discourse on strengthening judicial accountability worldwide. This understanding is essential for fostering a judiciary that is both independent and accountable, thereby reinforcing the foundations of democratic governance.

In the further context, the judiciary constitutes an independent arm of state power; hence, it is crucial that there be no interference from any entity in the execution of its duties and authorities⁴⁶. On the contrary, judges are mere humans who may unintentionally commit errors or deliberately engage in conduct that deviates from the norm, all the while seeking sanctuary under the

⁴⁶ Al Amin Syayidin Ali Mustopa, "Pelaksanaan Sistem Pengawasan Hakim Konstitusi di Indonesia." *Jurnal Konstitusi & Demokrasi* 2, no. 2 (2022): 150-170.

guise of judicial independence⁴⁷. In light of this, it is crucial that the Judicial Commission be strengthened in its duties and authorities moving forward. One such action is to empower the Judicial Commission with the jurisdiction to supervise Constitutional Judges⁴⁸.

In regard to external oversight of judges of the Constitutional Court, the former Chief Justice of the Constitutional Court, Moh. Mahfud MD, initiated the proposition that, moving forward, judges of the Constitutional Court necessitate supervision for the long-term interests of the Court. Mahfud elucidates that the rationale behind the oversight of Constitutional Court judges is not predicated on skepticism towards the judges but rather on safeguarding the dignity and honor of the Constitutional Court⁴⁹. Saldi Isra concurs with the necessity of oversight for judges of the Constitutional Court, contending that unchecked power is untenable. Former constitutional judge, Laica Marzuki, also articulates that the supervision of judges of the Constitutional Court is currently necessary. It is essential to acknowledge that the Constitutional Court is an entity representing the community; thus, it is crucial to institute mechanisms for oversight and constructive correction to maintain its dignity as an adjudicator of the Constitution⁵⁰.

The prevailing sentiment or underlying principle emanating from the diverse perspectives that have recently surfaced, notwithstanding any dissent, indicates the inevitability of oversight for judges of the Constitutional Court⁵¹. The judicial authority, characterized by decisions that are final and binding, signifying the absence of subsequent legal remedies, embodies an absolute constitutional prerogative susceptible to fallibility, injustice, unfairness, lack of objectivity, and lack of professionalism. Judges of the Constitutional Court are

⁴⁷ Eny Kusdarini, et al. "Roles of Justice Courts: Settlement of General Election Administrative Disputes in Indonesia." *Helikon* 8, no. 12 (2022).

⁴⁸ 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. 2 (2022): 21-43.

⁴⁹ Mahfud MD, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi* (Jakarta: LP3ES, 2017).

⁵⁰ Suparman Marzuki, "Prospek dan Peluang Komisi Yudisial dalam Pengawasan Hakim Mahkamah Konstitusi", *Paper*, Seminar Nasional Sistem dan Pengawasan Kode Etik Hakim Konstitusi di Jerman dan Indonesia, Yogyakarta, 2011.

⁵¹ 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." *Helikon* 7, no. 9 (2021).

also susceptible to the potentiality of committing errors, whether deliberate or attributable to human negligence⁵².

In light of the rationales mentioned earlier, coupled with the current legal environment and law enforcement landscape plagued by public distrust, and with the objective of establishing the Constitutional Court as the custodian of the Constitution, it is crucial upon the House of Representatives (DPR), the Government, and the Constitutional Court to interpret and embody the values, principles, impartiality, and accountability of the Constitutional Court Judges⁵³.

Accordingly, the supervision of constitutional judges, as proposed by the author, is unequivocally necessary, as previously elucidated, that no state institution should be immune to supervision. This represents an embodiment of transparency and accountability to the public, which is also a requisite for state institutions in contemporary states. From a professional standpoint, constitutional judges are on par with district judges, high court judges, supreme court judges, and other judicial officers. Hence, there should be no discriminatory practices, including in the context of supervision⁵⁴.

Considering the Constitutional Court's verdicts being both final and binding, it can be inferred that the Court's determinations possess an unassailable absoluteness, denoting that they are irrevocable, mandatory, and preclude any further legal remedies⁵⁵. Despite the fact that Constitutional Court judges are meticulously selected individuals, they remain human and are therefore susceptible to errors and lapses in judgment. This concern is especially pronounced if a Constitutional Court judge intentionally engages in aberrant behaviors and seeks sanctuary behind the protective veil of the verdicts' final and binding status.

The Constitutional Court's prerogatives, as stipulated by the 1945 Constitution, encompass four distinct authorities and one duty, as delineated in Article 24C paragraphs (1) and (2) of the 1945 Constitution⁵⁶:

⁵² Marzuki, "Prospek dan Peluang Komisi Yudisial dalam Pengawasan Hakim Mahkamah Konstitusi."

⁵³ Susianto Susianto, "Mahkamah Konstitusi: Etika Kehakiman dan Kendaraan Politik Penguasa." *Binamulia Hukum* 12, no. 2 (2023): 459-471.

⁵⁴ Titik Triwulan Tutik, "Pengawasan Hakim Konstitusi dalam Sistem Pengawasan Hakim Menurut Undang-undang Dasar Negara RI 1945." *Jurnal Dinamika Hukum* 12, no. 2 (2012): 295-311.

⁵⁵ Ibnu Sina Chandranegara, and Muhammad Ali. "Policies on Regulatory Reform in Indonesia: Some Proposals." *Jurnal Media Hukum* 27, no. 1 (2020): 55-67.

⁵⁶ See Article 24C paragraph (1) and (2) 1945 Constitution. Article 24C of the 1945 Constitution of Indonesia addresses the authority and responsibilities of the Constitutional Court. Paragraph (1) states that the Constitutional Court has the power

1. The Constitutional Court shall possess the authority to try a case at the first and final level and shall have the final power of decision in reviewing laws against the Constitution, determining disputes over the authorities of state institutions whose powers are given by this Constitution, deciding over the dissolution of a political party, and deciding disputes over the results of general elections.
2. The Constitutional Court shall possess the authority to issue a decision over an opinion of the DPR concerning alleged violations by the President and /or Vice-President of this Constitution.

Furthermore, in the current context, the Constitutional Court has been vested with the authority to adjudicate disputes arising from elections. A careful examination reveals the strategic and far-reaching implications of these powers. Consequently, litigants appearing before the Constitutional Court deploy all available resources, encompassing political leverage, financial capital, and social standing, to achieve their desired outcomes⁵⁷.

The author contends that, considering the aforementioned discussions, there is no legitimate justification for the absence of external oversight over Constitutional Judges, a practice routinely applied to the other judicial officers. Historically, oversight of Constitutional Judges has been confined to internal mechanisms, overseen either by the Ethics Council or, in the present context, by the Honorary Council of the Constitutional Court⁵⁸.

Nonetheless, due to a previous ruling by the Constitutional Court (decision No. 005/PUU-VI/2006), which interpreted the term "judge" in Article 24B paragraph (1) of the 1945 Constitution to exclude Constitutional Judges, the only means by which Constitutional Judges can be subject to oversight by the Judicial Commission, similar to judges and the Chief Justice, is through an amendment to Article 24B paragraph (1) of the 1945 Constitution to incorporate the phrase "and Constitutional Judges."

to review laws against the Constitution. This includes determining whether a law is consistent with constitutional provisions, thus ensuring that legislation aligns with the fundamental principles of the state. Paragraph (2) grants the Constitutional Court the authority to adjudicate disputes related to the authority of state institutions. This encompasses conflicts that arise between different branches of government or between state institutions regarding their respective powers and responsibilities. Together, these paragraphs establish the Constitutional Court as a crucial institution for upholding the rule of law and maintaining checks and balances within the Indonesian political system.

⁵⁷ Malik Malik. "Perppu Pengawasan Hakim MK Versus Putusan Final MK." *Jurnal Konstitusi* 10, no. 4 (2013): 579-604.

⁵⁸ Muhtadi Muhtadi. "Politik Hukum Pengawasan Hakim Konstitusi." *Fiat Justisia: Jurnal Ilmu Hukum* 9, no. 3 (2015). 310-330.

Following the constitutional amendment, no state institution, including the Supreme Court and the Constitutional Court, possesses unchecked authority. The Judicial Commission exists, in part, to balance and oversee the activities of judges, including those of the Supreme Court and the Constitutional Court. Detailed regulations governing the exercise of the Judicial Commission's powers are imperative to prevent inter-institutional disputes. These regulations must be codified in law to carry legal weight and serve as a universal legal reference.⁵⁹

Regarding its oversight role, the primary objective of judicial reform extends beyond the mere enforcement of judicial independence and impartiality. It also encompasses the establishment and maintenance of an accountability framework and control mechanisms to prevent the occurrence of abuse of power or judicial tyranny. In this context, as it executes its oversight mandate, the Judicial Commission must navigate the delicate balance between independence and accountability, ensuring vigilant monitoring without compromising judicial independence.⁶⁰ Alternatively, the Judicial Commission should at least increase the intersection between the two entities and solidify it within several legal instruments (the Judiciary Power Law, the Judicial Package Law, the Supreme Court Law, the Judicial Commission Law, and related laws).⁶¹

Within the framework of these changes, the obligation to preserve and uphold an independent judiciary is not solely the duty and responsibility of the Supreme Court and the Constitutional Court. This duty and responsibility also extend to the House of Representatives (DPR) and the President.⁶² This constitutes a constitutional morality of both institutions, reflected in their oath of office and the representation of the people's voice that has elected them directly. These duties and responsibilities do not conclude when the DPR and the President have selected and appointed Supreme Court judge candidates or when they have enacted laws supporting judicial independence. Rather, these

⁵⁹ Laica Marzuki, Rofiqul-Umam Ahmad, and W. S. Koentjoro. *Berjalan-jalan di ranah hukum: pikiran-pikiran lepas Prof. Dr. HM Laica Marzuki, SH*. (Jakarta: Sekretariat Jendral & Kepaniteraan, Mahkamah Konstitusi RI, 2006).

⁶⁰ Marzuki, et.al.

⁶¹ Sri Handayani Retna Wardani, "Penataan Kekuasaan Kehakiman (Mahkamah Agung, Mahkamah Konstitusi dan Komisi Yudisial)," *Jurnal Majelis* 4, no. 1 (2018). *See also* Romi Librayanto, et al. "Penataan Kewenangan Mahkamah Konstitusi dalam Memperkuat Independensi Kekuasaan Kehakiman." *Amanna Gappa* 27, no. 1 (2019): 43-66.

⁶² Sofi Yuliniar, "Analysis of Problems of Oversight of the Constitutional Court." *Justices: Journal of Law* 2, no. 1 (2023): 47-56.

duties and responsibilities must always be present when the ideals or ideology of judicial independence and impartiality cannot be maintained and upheld solely by the Supreme Court and the Constitutional Court.⁶³

Within this context, the Judicial Commission is construed as a strategic collaborator of the House of Representatives (DPR) and the President in exercising and reinforcing control (checks and balances) *vis-à-vis* the Supreme Court and the Constitutional Court. The establishment of the Judicial Commission, alongside other independent commissions, is intended to serve as an Institutional Watchdog. Its mandate is to strengthen the checks and balances mechanism, foster accountability, and broaden public participation. Through its authority, the Judicial Commission assumes a synergistic function with the DPR and the President in the vetting process for Supreme Court judge nominees who are both credible and possess integrity. Moreover, the Judicial Commission is anticipated to uphold the honor, dignity, and integrity of judges.⁶⁴ Ultimately, this leads to the formation of a judiciary that is untainted, authoritative, and garners public trust, thereby strengthening the institution of judicial power.⁶⁵

The Judicial Commission is an integral part of the judiciary, aimed at reinforcing the checks and balances of an independent judicial system, as well as supporting the execution of the functions and authorities of the judicial power institution itself. The establishment of the Judicial Commission is not merely a response to a global trend but a necessity in the realm of judicial and constitutional reform. The embryonic concept has long emerged as part of efforts to safeguard and enhance the integrity of judges and the judicial system. In other words, the Judicial Commission also plays a role in bearing the responsibility to strive for the ideal condition of the independent judiciary's functions and authorities. The Judicial Commission represents a form of accountability essential for supporting the independence of the judiciary.

The Judicial Commission constitutes a fundamental element of the judiciary, specifically designed to enhance the checks and balances within an independent judicial system, while simultaneously supporting the operationalization of the judiciary's inherent functions and authority. The establishment of the Judicial Commission is not merely a reflection of a

⁶³ Firmansyah Arifin, "Komisi Yudisial Pengawal Reformasi Peradilan Mendayung Diantara Simpati Dan Resistensi, Bunga Rampai Komisi Yudisial, Edisi Ke II," in *Bunga Rampai Komisi Yudisial, Edisi Ke II*, II (Jakarta: Komisi Yudisial RI, 2017).

⁶⁴ Suparto Suparto, "Perbandingan Model Komisi Yudisial Republik Indonesia dengan Komisi Yudisial Perancis," *UIR Law Review* 3, no. 18 (2019): 20–30.

⁶⁵ Edi Setiadi, "Hubungan Ideal Komisi Yudisial dan Mahkamah Agung," *Jurnal Wawasan Yuridika* 5, no. 2 (2021): 161-176.

prevailing trend observed in numerous countries; it is a critical necessity in the sphere of judicial and constitutional reform.⁶⁶ The genesis of this concept has long been envisioned as a strategic measure to safeguard and elevate the integrity of both judges and the judicial system at large.⁶⁷ In essence, the Judicial Commission bears the responsibility of striving towards the ideal realization of the judiciary's autonomous functions and authorities. It encapsulates a model of accountability that is indispensable for reinforcing the independence of the judiciary, thereby serving as an essential construct in the academic discourse on judicial reform and governance.⁶⁸

Conclusion

This study finally concluded and highlighted that in examining the Constitutional Court's authority as outlined in Article 24C, paragraphs (1) and (2) of the 1945 Constitution, it is clear that the Court is entrusted with significant responsibilities. These include reviewing laws for constitutional compliance, adjudicating disputes regarding the jurisdiction of state institutions, resolving political party dissolution cases, and addressing electoral disputes. The Court's role is vital in upholding constitutionalism within Indonesia's political framework, extending to disputes arising from regional head elections as well.

Given the strategic nature of these powers and their profound implications, litigants may resort to various means—such as political influence, financial resources, or social capital—to pursue their objectives. This highlights the necessity for external oversight of Constitutional Court judges to ensure their conduct adheres to the established code of ethics while maintaining judicial independence. The Judicial Commission is positioned as the appropriate body for this oversight. However, the Constitutional Court's interpretation of the term 'judge' in Article 24B, paragraph (1) of the 1945 Constitution—limiting it to judges and Supreme Court Justices—excludes Constitutional Court judges from such scrutiny. Therefore, amending this

⁶⁶ Khudzaifah Dimiyati, et al. "Indonesia as a legal welfare state: A prophetic-transcendental basis." *Heliyon* 7, no. 8 (2021).

⁶⁷ Suparto Suparto, Syaifudin Syukur, and Umi Muslikhah. "Kedudukan dan Kewenangan Komisi Yudisial Republik Indonesia dan Perbandingannya dengan Komisi Yudisial Swedia: (The Standing and Authority of the Judiciary Committee of the Republic of Indonesia in Comparison with Its Counterpart in Sweden." *Asian Journal of Environment, History and Heritage* 3, no. 1 (2019): 105-116.

⁶⁸ Adlina Adelia, "Relevansi Pengawasan Terhadap Pelanggaran Kode Etik Hakim Mahkamah Konstitusi oleh Komisi Yudisial," *Jurnal Majelis* 4, no. 4 (2018): 31–42.

provision is crucial to empower the Judicial Commission to exercise external supervision over Constitutional Court judges, similar to its oversight of other judges. Despite various legislative efforts, from Law No. 22 of 2004 to Law No. 7 of 2020, aimed at establishing oversight mechanisms, these initiatives have consistently failed to gain the Court's approval.

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Acknowledgment

We would like to express our gratitude to the Faculty of Law at Universitas Islam Riau in Indonesia for providing a supportive academic environment that fostered my research and learning. The guidance and encouragement from my professors and colleagues have been invaluable throughout this journey. We also extend our sincere appreciation to the School of Law at Inha University in Incheon, South Korea. The opportunity to engage with distinguished faculty and peers has greatly enriched my understanding of legal principles and practices, and We are grateful for the collaborative spirit that thrives within the institution. Furthermore, we would like to acknowledge the anonymous reviewers of the Lex Scientia Law Review. Their constructive feedback and insightful critiques have significantly enhanced the quality of my work, and We are thankful for their commitment to advancing legal scholarship.

Funding Information

None.

Conflicting Interest Statement

The authors state that there is no conflict of interest in the publication of this article.

History of Article

Submitted : December 10, 2023

Revised : March 21, 2024; June 11, 2024; August 8, 2024

Accepted : September 5, 2024

Published : September 22, 2024