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Nurturing Tomorrow's Jurists: Rethinking the Indonesian Constitutional Court's Clerkship System through a Comparative Lens

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ABSTRACT

This paper dives into the clerkship system at the Indonesian Constitutional Court (MK), an independent judicial organ that holds high importance as the guardian of the constitution. While the court's nine justices benefit from the existence of a clerk's office, its work is still very limited to administrative matters. The paper begins by questioning whether the current system is sufficient to assist justices in their work and fulfil the larger aims of judicial clerkship. Its ultimate objective as a follow-up to the question is to identify ways to improve MK's clerkship system. In order to assess the Indonesian



clerkship system, a comparative analysis study of three other countries' courts that similarly act as guardians of their respective constitutions – namely the Supreme Court of the United States, Constitutional Court of South Africa, and Supreme Court of India – is conducted. Although these courts vary in their scope of work, primarily with regard to their relationships with other courts in the countries' judicial systems, they share several synonymous key traits like their importance in the systems which thus make them great 'training grounds' for future jurists. It is found firstly that there is indeed a need to change the clerkship system in MK as there are multiple ways in which clerks can help the court and benefit from it. Consequently, the changes that should be made run deep into the very purposes and roles of clerks, the structure of the committee or program, and the expected qualifications and selection process. By drawing inspiration from the three aforementioned courts, a contextualized adoption can be identified by taking into account Indonesia's own circumstances.

Keywords: Comparative Study, Constitutional Court, Judicial Clerkship, Legal Education, Mahkamah Konstitusi

INTRODUCTION

Constitutional courts are an important feature of modern-day democratic systems. Starting out as an invention of legal systems in the European mainland, the court holds a unique and special position in comparison with other institutions of the state, especially the

executive and legislative branches of government.¹ The idea of the court, deriving from the scholarly work of the Austrian jurist Hans Kelsen, is that it should be an independent judicial organ that functions as the ‘guardian of the constitution’ by ensuring that the actions of the state, mainly in the form of legislations, are in accordance with the constitution.² At the most conventional level, the court performs judicial review – which has today been extrapolated in many systems by the invention of a so-called judicial preview – to check the constitutionality of legislations and invalidating those that do not fall in line with the explicit provisions and/or ideals promoted by the constitution of the state in question.³

In reality, just like other courts under the judiciary, there are multiple variations of the court. Two most distinguishable models can be found in the United States and Germany whereby the prior bestows an integrated role for the court as both the highest court of appeal and guardian of the constitution (though usually under different chambers), while the latter separates the two into individual courts with the appropriate names.⁴ This difference is just one of many that can be found between courts, with many more details from

¹ Lee Epstein, Jack Knight, and Olga Shvetsova, “The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government,” *Law & Society Review* 35, no. 1 (August 2001): 117–64, <https://doi.org/10.2307/3185388>.

² Pablo Castillo-Ortiz, “The Dilemmas of Constitutional Courts and the Case for a New Design of Kelsenian Institutions,” *Law and Philosophy* 39, no. 6 (2020): 617–55, <https://doi.org/10.1007/s10982-020-09378-3>.

³ Igam Arya Wada, Felix Alexander Kurniawan, and Agnes Sinta, “Ius Constituendum Kewenangan Judicial Preview Di Mahkamah Konstitusi Republik Indonesia,” *Jurnal Kajian Konstitusi; Vol 3 No 1* (2023): JUNE 2023, 2023, <https://doi.org/10.19184/j.kk.v3i1.37917>.

⁴ Luís Roberto Barroso, “Counter-majoritarian, Representative, and Enlightened: The Roles of Constitutional Courts in Democracies,” *The American Journal of Comparative Law* 67, no. 1 (June 2019): 109–43, <https://doi.org/10.1093/ajcl/avz009>.

the very visible structure of the court to its political standing being the determining factor of success and power.⁵

Indonesia is considered a late joiner as its constitutional court, Mahkamah Konstitusi (MK), was only established in 2001 upon the third amendment of its 1945 Constitution.⁶ Born with hard-learned lessons from the two previous constitutionally defiant regimes in mind, it was established with the aims of ensuring that the executive and legislative branches do not deviate from their constitutional powers such as by acting as a negative legislator and advisor in the event of impeachment.⁷ MK, just like in many other such courts, has a small number of justices or judges at nine people.⁸ With each of the government branches nominating three justices, it is expected that MK can perform their functions well and act in the best interest of the nation's hundreds of millions.⁹

For constitutional courts (and judicial courts in general) to serve their purposes well, another similarly important but often overlooked group of jurists are needed: judicial clerks or justice assistants. Clerks are often not prominent in contrast to the justices they assist as, additionally to the fact that they are not the main figures whose names are on judgments, their existence is usually a result of legal tradition for reasons such as pragmatism rather than part of the court's mandate by the constitution – i.e. clerkships are not mentioned

⁵ Stephen Gardbaum, "What Makes For More or Less Powerful Constitutional Courts?," *Duke J. Competition and International Law* 29, no. 1 (2018).

⁶ Republic of Indonesia, *Undang-Undang Dasar Negara Republik Indonesia 1945*, (1945), Arts. 7B, 24(2), 24C.

⁷ Abu Nawas, "Kedudukan Dan Kewenangan Mahkamah Konstitusi Sebagai Pelaku Kekuasaan Kehakiman," *Iblam Law Review* 1, no. 2 (2021): 157–68; Ika Kurniawati and Lusy Liani, "Kewenangan Mahkamah Konstitusi Sebagai Negative Legislator dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945," *ADIL: Jurnal Hukum* 10, no. 1 (2019): 112–32.

⁸ Republic of Indonesia, Art. 24C(3).

⁹ Republic of Indonesia.

anywhere within the text of constitutions but later stipulated either under special court-issued provision or as initiatives.¹⁰

From the court's perspective, clerks can help justices make more robust decisions or, at the very least, free them from administrative obligations.¹¹ Due to their high office duties, it is of utmost importance that court justices are most informed in rendering their judgments and not be bothered by somewhat menial matters that are redundant to their intellectual and moral work. On the flip side, clerkships are a proven means of training future jurists – especially those in litigation – and have even become an informal prerequisite to becoming a justice in some traditions.¹²

There is a stark difference between the clerkship system in Indonesia, be it in MK or other judicial courts, with that of more advanced countries. For instance, as will be elaborated further in this paper, clerks in MK do not work closely with judges on an individual basis but rather as a standalone committee of the court that is tasked with a more limited job description.¹³ While one may accredit overarching provisions related to state apparatus for its resemblance to other courts of the state's orthodoxy in this regard, it begs the question on how it can be improved to cater to the court's importance.¹⁴

This research examines the clerkship system in MK by first pointing out the disparity between the current model and the optimal

¹⁰ Nina Holvast, "The Power of the Judicial Assistant/Law Clerk: Looking behind the Scenes at Courts in the United States, England and Wales, and the Netherlands," *International Journal for Court Administration* 7, no. 2 (2016).

¹¹ Sha-Shana Crichton, "Using Law Clerks To Improve Efficiency In Jamaican Courts," *Georgia Journal of International and Comparative Law* 50, no. 2 (2022).

¹² Luis Muñiz-Argüelles and Migdalia Fraticelli Torres, "Selection and Training of Judges in Spain, France, West Germany, and England," January 1985.

¹³ Mahkamah Konstitusi Republik Indonesia, "Tugas Pokok Dan Fungsi," n.d.

¹⁴ Budi Suhariyanto, "Quo Vadis: Status Jabatan Dan Sistem Karir Kepaniteraan Peradilan," *Jurnal Hukum Dan Peradilan* 3, no. 1 (2014).

one in accordance with the aims of judicial clerkship, both for the court and the clerk. After conclusive evidence has been presented, the paper moves on to addressing the ways in which it can be improved. In doing so, inspiration would be drawn from a number of other legal systems and their best practices. In the end, concrete contextual recommendations will be provided as to how the system clerkship structure should be remodeled to optimize its role in the court. It is expected that the paper will provide evidence and persuasion for the proposed ideas to be implemented in MK.

The research employs a normative legal approach. It starts with understanding how the system currently operates and subsequently uses that knowledge to identify ways to improve it. For the latter component, a comparative analysis is used. In particular, a functional approach is applied by comparing judicial organs ascribed similar role of guardian of the constitution.¹⁵

Courts from three countries are used as the main comparisons. First, the Supreme Court of the United States (SCOTUS) is chosen as it is considered the first court still standing that performs constitution guardianship and the first to implement a clerkship system as known today.¹⁶ The Constitutional Court of South Africa (ConCourt) is the second court to be compared as it distinguishes between the constitutional and appeal courts—similar to Indonesia—and it also has one of the most unique clerkship systems.¹⁷ The Supreme Court of India (SCI) stands as the third comparison as its clerkship program is one of if not the biggest and is also considered to be very robust such

¹⁵ Geoffrey Samuel, *An Introduction to Comparative Law Theory and Method* (Mark Van Hoecke & François Ost eds., 2014), 65-78.

¹⁶ Mark C. Miller, "Law Clerks and Their Influence at the US Supreme Court: Comments on Recent Works by Peppers and Ward," *Law & Social Inquiry* 39, no. 3 (September 2014): 741-57, <https://doi.org/https://doi.org/10.1111/lisi.12074>.

¹⁷ I. M. Rautenbach, "The Relation Between the Constitutional Court and the Supreme Court of Appeal in South Africa," in *Universality of the Rule of Law: Slovenian and South African Perspectives* (African Sun Media, 2021).

that it forms a pipeline of prominent jurists nationally and internationally.¹⁸

The discussion would make many references to the courts' documents and digital resources such as circulars and publicly available information on the courts' websites because, as aforementioned, clerkships are rarely highlighted by legal practitioners and scholars due to their less illustrious presence, thus making scholarly discourse on the matter quite scarce, primarily in Indonesia. Nonetheless, a number of prior researches would be cited, mainly those pertaining to SCOTUS clerkships, as law students and professionals have already become more aware of its importance.

AIMS of JUDICIAL CLERKSHIP

Judicial clerkships involve at least two parties: the clerk and the court (i.e. the institution and the judges within). Regardless of how clerkship is positioned within the institution and how the program or system is run, there is a consensus that clerks' existence helps courts run and is therefore essential to the institution itself.¹⁹ What becomes the question really is how far courts can optimize the program in order to also benefit the clerks. Principally, clerkships could and should be utilized as an avenue for advanced legal education beyond law school – to nurture future jurists.

I. The Court's Perspective

The judiciary, at any level from district to supreme or constitutional courts, is a complex organization with many judges, assistants, and other personnel within a single structure. Despite dozens if not

¹⁸ Abhinav Chandrachud, "From Hyderabad to Harvard: How U.S. Law Schools Make Clerking on India's Supreme Court Worthwhile," *HLS Program on the Legal Profession Research Paper No. 2014-15*, 2014.

¹⁹ Crichton, "Using Law Clerks To Improve Efficiency In Jamaican Courts."

hundreds of people involved, courts often still struggle to be efficient in their work.²⁰ Among the challenges of productivity are the absence of a proper case management system and the lack of proficient human capital that can meaningfully contribute to the substantive work done by the relatively small number of judges.²¹ This is especially true in jurisdictions where cases have to go through a lengthy process, involving judges themselves, before being decided upon.²²

Clerks – or whatever particular attributes they are given – are an important component of any judicial system at least throughout recent human history.²³ In the broadest sense of the term, clerks are quite literally the backbone of many judiciary institutions, performing tasks that are preferably left not for the judge to administer. There are a myriad of ways in which judges and clerks in different courts interact with each other, with some courts having very specialized clerks doing very unique jobs such as recording court proceedings to making case briefs for judges.²⁴ The functions of these clerks can be narrowed down to two large categories: administrative and substantive.

On the administrative side, clerks are what can be considered as the first responders to cases being submitted to the court. As seen

²⁰ Marko Bratković, “In Search of Efficiency: Court Structure and Case Management in Croatia BT - Civil Case Management in the Twenty-First Century: Court Structures Still Matter,” ed. Peter C H Chan and C H van Rhee (Singapore: Springer Singapore, 2021), 169–91, https://doi.org/10.1007/978-981-33-4512-6_12.

²¹ Chiranjib Bhattacharya et al., “Illuminating Judicial Productivity in India’s District Courts: An Empirical Analysis,” SSRN, 2023.

²² Haeranah Haeranah et al., “Comparison Of The Pretrial System In Indonesia And The US,” *International Journal of Education, Vocational and Social Science* 2, no. 03 SE-Articles (June 2023): 153–67, <https://doi.org/10.99075/ijevss.v2i03.290>.

²³ Capucine Nemo-Pekelman, “Jewish Judicial Patrons and Advocates in the Western Empire (5th Cent.),” in *Legal Engegement : The Reception of Roman Law and Tribunals by Jews and Other Inhabitants of the Empire. - (Collection de l’École Française de Rome ; 579)*, 2021.

²⁴ Dadakhon A. Khudoynazarov, “Participation of A Judge’s Assistant (Court Secretary) in The Economic Process: National and Foreign Experience,” *The American Journal of Interdisciplinary Innovations and Research* 4, no. 9 (2022).

in various jurisdictions like Brazil, clerks serve the very important role of ensuring that cases are being managed properly and docketed such that a court can provide justice efficiently.²⁵ Clerks act as both the court's 'front office' and the judges' secretarial staff. While, put that way, the existence of clerks may seem to be a miscellaneous matter, they are essential to the running of courts and maintaining the public's satisfaction and trust in the system. This, as numbers have proven, is mainly because clerks ensure that judges – who are predominantly entrusted with the responsibility of finding truth to the fullest possible extent – do not have to be concerned with liaison and paperwork.²⁶

On the other hand, there is the equally if not potentially more urgent role of clerks as substantive assistants to judges. While judges are seen as astute and even described as 'the extension of God's hands in the realm of man', they are still humans after all. Judges are similarly prone (though arguably to a lesser degree than laypersons due to their extensive education and rigorous recruitment) to factors such as personal biases and tiresomeness, making courts work less effectively and/or, more dangerously, unjustly.²⁷ This is where clerks come in. Though it would be a stretch to call them 'saviors' of the justice system, they can help and have helped judges perform their functions to a satisfactory degree by contributing their knowledge and expertise – a fact that is especially true, as will be demonstrated in the next section of this paper, in cases where the judge and the clerk

²⁵ Adalmir Oliveira Gomes, Tomas Aquino Guimaraes, and Luiz Akutsu, "Court Caseload Management: The Role of Judges and Administrative Assistants," *Revista de Administração Contemporânea* 21, no. 5 (2017).

²⁶ Andrea Mattaliano, Sergio Riotta, and Manfredi Bruccoleri, "Organizational Model and Operations Performance: A Longitudinal Study of Italian Judicial Courts," *Institutional Research Archive of the University of Palermo*, 2023.

²⁷ Alan Uzelac and Marko Bratković, "Croatia: Supreme Court Between Individual Justice and System Management BT - Supreme Courts Under Pressure: Controlling Caseload in the Administration of Civil Justice," ed. Pablo Bravo-Hurtado and Cornelis Hendrik van Rhee (Cham: Springer International Publishing, 2021), 127–52, https://doi.org/10.1007/978-3-030-63731-6_7; Allison P Harris and Maya Sen, "Bias and Judging," *Annual Review of Political Science* 22, no. 1 (May 2019): 241–59, <https://doi.org/10.1146/annurev-polisci-051617-090650>.

are connected through a one-to-one or one-to-few organizational relationship.

There are different ways in which this role is manifested depending on the edicts of the court and/or the discretion of judges themselves. Explained from a principal-agent theory, judges can delegate some degree of authority to clerks—usually fact-finding tasks—as they deem appropriate in order for them to come up with judgment later on.²⁸ A good example can be taken from the Netherlands (the country from which the Indonesian legal system itself is derived) whereas the decisions of judges have been admittedly influenced by the recommendations of the clerks in accordance with their fact-finding missions' results.²⁹

Putting things into context, it goes without saying that the substantive contribution of clerks would be more exigent in the chambers of higher courts such as supreme and constitutional courts. As is evident from the United Kingdom, for example, it is of utmost importance that such courts maintain the highest standards of excellence in rendering judgments through the inclusion of expertise of the widest range and deepest level.³⁰ In their capacity as the material helpers of judges, clerks constitute a part of a specialist clique whose intellectual (and moral) contributions actually amount to the appreciable advancement of the legal system of a nation.

²⁸ Peter Mascini and Nina L. Holvast, "Explaining Judicial Assistants' Influence on Adjudication with Principal-Agent Theory and Contextual Factors," *International Journal for Court Administration* 11, no. 3 (2020).

²⁹ Nina L. Holvast, "In the Shadow of the Judge: The Involvement of Judicial Assistants in Dutch District Courts" (University of Amsterdam, 2017); Nina Holvast and Peter Mascini, "Is the Judge or the Clerk Making the Decision? Measuring the Influence of Judicial Assistants via an Experimental Survey among Dutch District Court Judges," *International Journal for Court Administration* 11, no. 3 (2020).

³⁰ Chris Hanretty, *A Court of Specialists: Judicial Behavior on the UK Supreme Court* (New York: Oxford University Press, 2020).

II. Legal Education Perspective

The other side of the coin which has unfortunately not been given as much due regard to in some jurisdictions such as Indonesia is the potency of clerkship in becoming a complementary learning ground after law school. Inspired mainly by the movement in the United States, countries have used clerkships as not just a short-term tool for courts to get extra help in performing their work but also a breeding ground for future leaders in the legal industry in the long-term by structuring it as an extensive apprenticeship for recent law graduates.³¹ From district to supreme and constitutional courts, fresh faces to the industry are trained in various disciplines of the law in accordance with the courts' respective jurisdictions.

It has become very apparent that the way law is taught at schools today globally is not sufficient to sustain the rapidly changing dynamics of the world.³² With more degree holders entering the job market every year, it takes more than textual understanding of the law to thrive or even merely survive in the very competitive landscape.³³ In the same manner that at-campus legal clinics help students attain knowledge and skills that the job market demands, judicial clerkships are full-time appointments that serve as incubating mediums for young people who aspire to become academics and practitioners by exposing them to the realities of law enforcement in

³¹ Anne Sanders, "Judicial Assistants in Europe – A Comparative Analysis," *International Journal for Court Administration*, 2020, <https://doi.org/10.36745/ijca.360>.

³² Nauman Reayat, Anwar Shah, and Syed Arshad, "The Problems of Legal Education in Pakistan: Teaching and Learning, Curriculum, and Assessment Methods," *International Review of Management and Business Research* 9 (December 2020): 357–68, [https://doi.org/10.30543/9-4\(2020\)-30](https://doi.org/10.30543/9-4(2020)-30).

³³ Francina Cantatore et al., "A Comparative Study into Legal Education and Graduate Employability Skills in Law Students through pro Bono Law Clinics," *The Law Teacher* 55, no. 3 (July 2021): 314–36, <https://doi.org/10.1080/03069400.2020.1818464>.

the judicial system, including especially to the written and unwritten ways of courts' working.³⁴

Clerkship even holds precedence in terms of substantiality in learning in comparison to practical subjects in law school due to their direct attachment to the judicial system, offering unique privileges that can't be found elsewhere.³⁵ Among the things that clerks can do to augment and apply their law school learnings are writing real materials like case briefs used by judges in obtaining preliminary understanding of submissions, court documents including first drafts of judgments, and even research on topics of interest.³⁶ Other legal skills such as analytical thinking and legal reasoning are also honed through clerkship due to the nature of clerks' work which is autonomous, again, by way of delegation.³⁷ Seen conjointly, the relationship between the clerk and the court is a mutually beneficial one. The question then is only how far courts can optimize such relationships through its scheme design so that clerks can take as much away from the experience as possible.

CLERKSHIP SYSTEM AT THE INDONESIAN CONSTITUTIONAL COURT

I. Overview of the Current System

The Constitutional Court of Republic Indonesia (hereinafter as MK) employs clerks in helping justices of the court handle cases

³⁴ Jeff Giddings and Jacqueline Weinberg, "Experiential Legal Education: Stepping Back to See the Future," in *Modernizing Legal Education* (Cambridge, New York, Melbourne, New Delhi: Cambridge University Press, 2020).

³⁵ Merritt McAlister and Katherine Mims Crocker, "The Clerkship-Academia Continuum Perspectives," *Judicature* 105, no. 1 (2021).

³⁶ Rachel Morris, "A Legacy of Mentorship: A Tribute to the Honorable Judge Joel DeVore," *Oregon Appellate Almanac* 19 (2022).

³⁷ Daniel M. Moore, "Tribute to Chief Judge Joseph M. Getty: The Clerkship as a Modern Form of 'Reading Law,'" *Maryland Law Review*, 2022.

administratively in its effort to safeguard the constitution. According to Justice Enny Nurbaningsih, in order to defend citizens' fundamental rights and preserve the Constitution, the fundamental court was established with the function of ensuring, in more concrete terms, that there would no longer be any legal products that violate the Constitution.³⁸ The court also prevents constitutional problems brought on by legal norms.³⁹ This has to do with the court's function of conducting judicial review, which clerks come in to help contribute by assisting the judges through specific managerial functions.

Each of the personnel in the clerk's office in MK has their own purposes and roles. The clerk's function is stipulated in Article 3 paragraph (2) of Presidential Decree No. 51 Year 2004.⁴⁰ Further elaborated, there are several functions the clerk holds. Initially, the clerk orchestrates the technical execution of judicial-administrative processes within the court.⁴¹ By keeping cases moving through the court system smoothly, this helps to maximize the use of time and resources. They also contribute to the development and execution of case administration.⁴² As a result, the court receives a thorough scanning of which cases to be proceeded with and which ones not to by the help of clerks.

Furthermore, the clerks assist in formulating technical services to assess laws against the Constitution.⁴³ By ensuring that only laws that are in line with the constitutional framework are put into effect, this strengthens the court's position as the guardian of the constitution. The clerks also aid in formulating the court decision product created by the Judges for disputes involving state institutions' authority granted by the Constitution, dissolution of political parties, disputes over election outcomes, and matters where the president

³⁸ Utami Argawati, "Court's Function as Guardian of Constitution," The Constitutional Court of the Republic of Indonesia, 2022.

³⁹ Argawati.

⁴⁰ Bambang Sutiyoso, "Pembentukan Mahkamah Konstitusi Sebagai Pelaku Kekuasaan Kehakiman Di Indonesia," *Jurnal Konstitusi* 7, no. 6 (2010).

⁴¹ Sutiyoso.

⁴² Sutiyoso.

⁴³ Sutiyoso.

and/or vice president are suspected of violating the law or not meeting the requirements.⁴⁴ Their assistance helps proceedings move more quickly, allowing the court to concentrate on important legal analyses and concerns. Lastly, the clerk undertakes additional tasks as directed by the chief justice of the in alignment with their role.⁴⁵ Their many responsibilities would help the court adapt, enabling it to effectively handle a variety of legal situations.

In regards to the structure and committee of the clerkship office, the office of clerk in MK is led by one main clerk, followed by three junior clerks.⁴⁶ As a clerk, there are several job descriptions to be undergone.⁴⁷ The main clerk's role encompasses a range of vital tasks to ensure the effective functioning of the judiciary. They prepare detailed work plans and budgets for approval, coordinate the technical aspects of the judiciary, and offer guidance for case administration.⁴⁸ Additionally, the clerk plays a crucial role in crafting administrative decisions by meticulously reviewing drafts and ensuring accuracy.⁴⁹ They facilitate the development of judicial activities through tasks like scheduling sessions and overseeing trials, collaborate with junior clerks to refine decision concepts, and execute tasks designated by the chief justice.⁵⁰ They also regularly report their duties, which contributes to ongoing evaluation and improvement processes.

The first of the three, appropriately named the first junior clerk, bears the duty of assisting the clerk in performing oversight over the technical execution of the judiciary and facilitating the management of case administration through various functions.⁵¹ The responsibilities include overseeing the technical aspects through tasks

⁴⁴ Sutyoso. *See also* Republic of Indonesia, Art. 24C(1).

⁴⁵ Sutyoso, "Pembentukan Mahkamah Konstitusi Sebagai Pelaku Kekuasaan Kehakiman Di Indonesia."

⁴⁶ Mahkamah Konstitusi Republik Indonesia, "Struktur Organisasi," n.d.

⁴⁷ Mahkamah Konstitusi Republik Indonesia, "Uraian Jabatan Panitera," n.d.

⁴⁸ Mahkamah Konstitusi Republik Indonesia.

⁴⁹ Mahkamah Konstitusi Republik Indonesia.

⁵⁰ Mahkamah Konstitusi Republik Indonesia.

⁵¹ Mahkamah Konstitusi Republik Indonesia, "Tugas Pokok Dan Fungsi."

such as coordinating cases, facilitating the implementation of case administration, which involves consulting on applications, processing records, preparing application reviews, summaries, and decisions, as well as supporting the panel of judges in handling cases.⁵² Additionally, there's a focus on guiding and supervising the roles of substitute clerks, evaluating their performance, and collaborating with relevant agencies to manage cases effectively.⁵³

Other than the first junior clerk, there is a second junior clerk. In the capacity of a junior clerk, his responsibilities as the second junior clerk encompass aiding the clerk in coordinating the execution of judicial methods and advancing technical support for judicial operations within MK. These tasks encompass various functions aimed at fostering effective judicial techniques and services.⁵⁴ Initially, the role involves overseeing the technical execution of the judiciary, including the creation of trial minutes and draft decisions.⁵⁵ Subsequently, it entails guiding and supervising the technical aspects of judicial activities, encompassing trial proceedings, scheduling, document submissions, and decision distribution.⁵⁶ Additionally, responsibilities include assisting the court and coordinating judges while managing cases, as well as monitoring, evaluating, and advising on the performance of substitute clerks.⁵⁷ Finally, the role involves collaboration with pertinent agencies to manage cases remains a key component.⁵⁸

The third and last junior clerk is in charge of aiding the clerk in coordinating the technical execution of justice and ensuring the thorough preparation of case documents through various functions.⁵⁹ Their responsibilities include firstly, overseeing and directing the technical execution of the judiciary by preparing case file minutes and

⁵² Mahkamah Konstitusi Republik Indonesia.

⁵³ Mahkamah Konstitusi Republik Indonesia.

⁵⁴ Mahkamah Konstitusi Republik Indonesia.

⁵⁵ Mahkamah Konstitusi Republik Indonesia.

⁵⁶ Mahkamah Konstitusi Republik Indonesia.

⁵⁷ Mahkamah Konstitusi Republik Indonesia.

⁵⁸ Mahkamah Konstitusi Republik Indonesia.

⁵⁹ Mahkamah Konstitusi Republik Indonesia.

verdict summaries.⁶⁰ Secondly, they're tasked with managing administrative resolutions and case documents, involving data management, decision administration, legal interpretations of decisions, jurisprudence, decision compilation, and law annotations in alignment with MK's decisions.⁶¹ Additionally, they provide trial support, coordinate judge panels, guide substitute clerks' duties, monitor their performance, prepare duty reports, and collaborate with relevant agencies for case management.⁶² Other than that, the main clerk and junior clerks are assisted with substitute clerks. With all of these functions and duties brought by the clerks in MK, the court's purpose to deliver fair and effective justice should be achieved in a more efficient way.

In regards to the qualifications to become a clerk in the MK, there are several requirements which are elucidated in Article 7 of Presidential Regulation No. 49 Year 2012.⁶³ People aspiring to be appointed as a clerk, must possess some of these requirements to qualify. They need to hold a bachelor's degree, pass a competency test, have experience in clerking, possess at least the rank of junior guidance inspector grade IV/c, and fulfill the criterias stipulated further in the presidential regulation. Similarly, the other ranks of clerks must meet comparable standards tailored according to their ranks and roles. This alone implies that the position of clerk is one that falls under a certain hierarchical structure on its own which, while different in terms of expectations of clerks' abilities, is conspicuously resemblant of its counterpart—Mahkamah Agung.⁶⁴

⁶⁰ Mahkamah Konstitusi Republik Indonesia.

⁶¹ Mahkamah Konstitusi Republik Indonesia.

⁶² Mahkamah Konstitusi Republik Indonesia.

⁶³ Pemerintah Pusat, "Peraturan Presiden (PERPRES) Tentang Kepaniteraan Dan Sekretariat Jenderal Mahkamah Konstitusi" (2012).

⁶⁴ Kepaniteraan Mahkamah Agung, "Tentang Kepaniteraan," n.d.

II. Drawbacks and the Need to Reform

Despite the contributions the office of clerk gives to MK, there are several inadequacies of the clerkship system that shall be reformed in order to elevate the efficiency of the court's workings and fulfill other aims of judicial clerkship beyond what is now seen. It is apparent that while the court holds great importance to the country's running and even constitutional democratic system itself, its structuring of the clerkship system still has innate imperfections.

The core problem with the current system is that the current primary legal bases for clerks' role in the judiciary, Presidential Decree No. 51 Year 2004 and Presidential Regulation No. 65 Year 2017, have not provided enough specificity on the roles and responsibilities of clerks in the related sections.⁶⁵ Aside from the noticeable absence of sufficient elucidation on substitute clerks' job descriptions, the way the provisions are phrased indicates that clerks are expected only to contribute on technicalities rather than substance. Worryingly, this is inconsistent and even counterproductive to the role which former Chief Justice Mahfud MD envisioned whereas clerks are expected to be highly knowledgeable so that they can be involved in the dynamics of discussions of the justices.⁶⁶

This seemingly redundant use of the clerks' pedigree is exacerbated by the fact that there are layers of the career ladder for clerks that are disconnected with the justices' selection process that is political in nature.⁶⁷ Like other functional roles in state institutions, career advancement at the clerk's office is constrained by factors like time-in-service, in this case four years per rank before being even

⁶⁵ Pemerintah Pusat, "Peraturan Presiden (PERPRES) Nomor 65 Tahun 2017 Tentang Perubahan Kedua Atas Peraturan Presiden Nomor 49 Tahun 2012 Tentang Kepaniteraan Dan Sekretariat Jenderal Mahkamah Konstitusi" (2017); Pemerintah Pusat, "Keputusan Presiden (KEPPRES) Tentang Sekretariat Jenderal Dan Kepaniteraan Mahkamah Konstitusi" (2004).

⁶⁶ hukumonline.com, "Panitera Pengadilan, Tak Sekadar Jenjang Karir," 2010.

⁶⁷ Dedy Syahputra and Zulman Subaidi, "Kedudukan dan Mekanisme Pengisian Hakim Mahkamah Konstitusi dalam Sistem Ketatanegaraan Indonesia," *REUSAM Jurnal Ilmu Hukum* 9, no. 1 (2021).

considered for the next role.⁶⁸ This rigidity is the cause why, as will be seen as being the case in other countries, the clerks (main and junior clerk) are very senior in terms of both experience and age.

Taking a macro perspective and linking back to the ideals which clerkship programs are supposed to accomplish, it is evident that MK is far from being efficient with its clerks for at least two fundamental reasons. First, it fails to justify the need for highly qualified, senior individuals to fill the position of clerks as the kind of work performed – at least formally – does not require much expertise to begin with. Second, there is a huge missed opportunity to utilize clerkship as a program (instead of an entire career) to train young graduates from law schools who would benefit the most from valuable learning opportunities from the most qualified individuals of the nation in a practical sense.⁶⁹

MK, being one of the two most important courts of the state alongside the Mahkamah Agung (or the Supreme Court), is one that upholds high standards when it comes to its procedures. Among those that the court maintains as its standards, in line with Law No. 24 of 2003 which established the court, are the ‘quick, simple, and cost-efficient procedures’ and ‘independent and impartial’ principles.⁷⁰ While it is arguable that the clerk’s office has done that to some extent through the performance of its administrative works, there is still room for improvement through better maximization of the human capital. As the court seeks to host the most capable individuals to fill

⁶⁸ Pemerintah Pusat, Peraturan Presiden (PERPRES) tentang Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi.

⁶⁹ Cantatore et al., “A Comparative Study into Legal Education and Graduate Employability Skills in Law Students through pro Bono Law Clinics”; Giddings and Weinberg, “Experiential Legal Education: Stepping Back to See the Future.”

⁷⁰ Almaura Mutiara Sahara and Purwono Sungkono Raharjo, “Asas-Asas Hukum Acara Mahkamah Konstitusi,” *Sovereignty* 1, no. 2 SE-Articles (September 2022): 373–78, <https://doi.org/10.13057/sovereignty.v1i2.143>; Nur Indra Socawibawa and Arif Wibowo, “Independensi Kekuasaan Kehakiman Hukum Acara Mahkamah Konstitusi: Independensi, Kekuasaan Kehakiman, Mahkamah Konstitusi,” *Jurnal Penelitian Multidisiplin* 2, no. 1 SE-Articles (February 2023): 101–7, <https://doi.org/10.58705/jpm.v2i1.103>.

the ranks of clerks, it is only proper to expand the utility of said group of jurists to do more valuable tasks such as helping justices in undergoing fact-finding missions and providing nuances to case discussions.

Putting two and two together, it would still be such a waste if the system is changed to host young people as clerks but still limited only to the job descriptions clerks have now. A radical shift of a number of things pertaining to clerkship should be done as a package, from the roles played to the people sought. As such, it is expected that the impact would be positively compound in a way that allows for a win-win situation for the court and the clerks.

COMPARATIVE ANALYSIS WITH OTHER COUNTRIES

I. Purposes and Roles of Clerks

At SCOTUS, clerkship is considered as the coveted culmination of any young person's legal career after years of schooling. In a country with more than 35.000 people earning a Juris Doctor (J.D.) degree each year, it is not without surprise that judicial clerkships at higher courts such as courts of appeal and SCOTUS itself are a pathway to prestigious jobs such as academia and judiciary.⁷¹ This career pattern of former SCOTUS clerks have also been canonized as some sort of a red carpet to a bright future career, shaped by a close three-way relationship of the court, the clerk, and academia.⁷² This is enforced by the fact that before becoming judges and advancing through the appellate ladders,

⁷¹ Anurag Bhaskar, "Law Clerks and Access to Judges: A Comparative Reflection on the Recruitment Process of Law Clerks in India," *Comparative Constitutional Law and Administrative Law Journal* 6, no. 1 (2021).

⁷² William E. Nelson et al., "The Liberal Tradition of the Supreme Court Clerkship: Its Rise, Fall, and Reincarnation?," *Vanderbilt Law Review* 62, no. 6 (2009).

many clerks often go back to law schools and teach.⁷³ This tradition that took centuries to shape has given birth to the likes of The Legal Accountability Project, an independent initiative that advocates for a good clerkship experience, and Above the Law, a media that provides glimpses of what the professions are like.

From the SCOTUS' perspective, the existence of clerks helps the court and its justices sort through submissions from both appellate and original jurisdiction matters, and consequently make writs of certiorari.⁷⁴ While it is ultimately the justices' discretion whether or not to read submissions themselves and set the court's agenda, clerks are often trusted with preliminary works such as this. This is likely because the court receives between 7.000 to 8.000 submissions each year while it can only realistically hear 80 of them, a maximum of only 10 percent of cases.⁷⁵ Thus, clerks have the job of briefing judges and advising whether a submission is worth the time, effort, and capital by proceeding with.

Once a case is heard by the judges, the role of clerks shifts to a deeper level and on a more one-to-one basis. Clerks firstly formulate lists of questions to be asked by justices during the oral arguments.⁷⁶ They then help justices make bench memorandums, brief documents that are used by the justice to whom clerks are assigned to come up with a stance on the case. While the clerks' views contained within the memos are not always agreed upon by the justices they assist, the rate of their usage in the final arguments of the justices is notably high vis-a-vis that among judges during conference votes on-the-merits.⁷⁷

⁷³ Howard M. Wasserman, "Academic Feeder Judges: Are Clerkships the Key to Academia?," *Judicature* 105, no. 1 (2021).

⁷⁴ Ryan C. Black and Christina L. Boyd, "The Role of Law Clerks in the U.S. Supreme Court's Agenda-Setting Process," *American Politics Research* 40, no. 1 (September 2011): 147–73, <https://doi.org/10.1177/1532673X11401814>.

⁷⁵ University of Michigan Law Library, "U.S. Supreme Court Research Guide: Overview," n.d.

⁷⁶ United States Courts, "Supreme Court Procedures," n.d.

⁷⁷ Jan Palmer and Saul Brenner, "The Law Clerks' Recommendations and the Conference Vote On-the-Merits on the U.S. Supreme Court," *Justice System*

Clerks are the extension of justices' hands that provide them with artificially more time to do research in finding information that may otherwise not be found and advise the justices with the important findings that should be considered in the judgment.⁷⁸

ConCourt, despite or even perhaps due to the fact that it is specialized and not mixed with appellate function, extends the scope of clerks' involvement in the court's work beyond handling cases. Internally, clerks help justices in both administrative and substantive matters such as making summaries of court proceedings, doing detailed research on particular topics per justices' directions, and managing committees' organization.⁷⁹ As for the outward-looking functions, clerks help the court create public events like lectures and even lead tours of the courthouse in Johannesburg.⁸⁰

ConCourt generally provides similar benefits such as that in SCOTUS for those participating in its clerkship program. The program aims to educate future jurists who will go on to work in various legal industries across the country and even abroad. Aside from the stipend for clerks of South African nationality (more on this later), being a clerk "offers opportunities to enhance personal and professional development and improve research, writing and people skills, while contributing to the development of constitutional principles and decision-making."⁸¹ Upon completion of service, participants of the program enter a close-knit community of former clerks. In addition, South African clerks are eligible to apply for two overseas scholarships designated for them.⁸²

SCI follows the same pattern as to the purposes of the program and the roles played by the clerks during their time of service. An

Journal 18, no. 2 (September 1995): 185–97, <https://doi.org/10.1080/23277556.1995.10871232>.

⁷⁸ Christopher D Kromphardt, "US Supreme Court Law Clerks as Information Sources," *Journal of Law and Courts* 3, no. 2 (2015): 277–304, <https://doi.org/DOI:10.1086/682136>.

⁷⁹ Constitutional Court of South Africa, "About Law Clerks," n.d.

⁸⁰ Constitutional Court of South Africa.

⁸¹ Constitutional Court of South Africa.

⁸² Constitutional Court of South Africa, "Scholarships From The Court," n.d.

interesting point to note here is that clerks are deemed to be very important in India because SCI has both appellate and original jurisdiction, adjudicating civil, criminal, and constitutional law cases.⁸³ This need for substantive helping hand is likely the reason why clerks at SCI are officially named law clerk-cum-research associates. While SCI may seem to be similar to SCOTUS, it is practically different in the sense that the US system of states allows for fewer cases (though still many number wise) to proceed to SCOTUS as they mostly stop at each state's supreme court. The chief justice and 33 judges – which is many by any standard – even also have to lead committees of the court, ranging from financial management to publication.⁸⁴

That being said, each clerk at SCI would undertake a multitude of work scopes, starting with the main one which is handling cases to the helping judges of the chief justice himself in committee works. Nevertheless, SCI's commitment to the clerkship program is demonstrated by the fact that those law students who wish to pursue a career in litigation would usually resort to becoming an SCI clerk as the experience has become standardized to optimize learnings through day-to-day work.⁸⁵

What is very vividly contrasting between these examples and Indonesia's MK is the amount of involvement clerks have. The three courts provide a wide range of job descriptions for the clerks that can be divided into two layers: internal (administrative and substantive) and external (outreach and education). In Indonesia, not only is the scope of work confined to inward-looking matters, it is also limited just to administration, namely only the first level of case processing at the court.⁸⁶ Clerks are not just then involved in 'menial' works that

⁸³ Legislative Department, "The Constitution of India" (2022).

⁸⁴ Supreme Court of India, "Committees," n.d.

⁸⁵ Supreme Court of India, "Scheme for Engaging Law Clerk-Cum-Research Associates on Short-Term Contractual Assignment in the Supreme Court of India – April, 2023," 2023.

⁸⁶ Diya Ul Akmal, Fatkhul Muin, and Pipih Karsa, "Prospect of Judicial Preview in the Constitutional Court Based on the Construction of Constitutional Law" 8 (December 2020).

justices do not want or have to be concerned with, but are also responsible for being the justices' own advisors or checkers.

The three courts really put emphasis on the need for clerkship to be a mutually beneficial relationship in order to ensure that once clerks end their term of service, they would be able to go on to use the vast array of knowledge and skills gained for use in various fields of their own choices. A fundamental disparity of this is found, at least on paper, in Indonesia.⁸⁷ Closely tied with the issue of structure and qualifications, the way the system is built paints a picture of complete distribution of work between the justices and the clerks where there is not much of any material coordination taking place.

II. Structure of the Committee or Program

SCOTUS takes the definition of mentoring between the justice and the clerk to the next level. Clerkship, in spite of the fact that it is facilitated by the government through the court, is not necessarily a structured program tied to the court itself. One needs to distinguish between SCOTUS clerkship and fellowship, as the second is a structured program where four fellows are given the opportunity to conduct work (mainly research) in one of four federal judicial institutions, with SCOTUS being one of them.⁸⁸

There is a total of up to 36 clerks at SCOTUS in one court term which commences on the first Monday of October and wraps up late June or early July of the following year.⁸⁹ The amount is a total of the clerks that each of the nine justices have, with each justice having the freedom of choosing between three to four clerks at once. Because of the connection between the justice, clerk, and court, each of the three to four clerks to a justice may have different roles to play depending on how the justices sees fit. Some groups may have each clerk help the

⁸⁷ Pemerintah Pusat, Keputusan Presiden (KEPPRES) tentang Sekretariat Jenderal Dan Kepaniteraan Mahkamah Konstitusi.

⁸⁸ Supreme Court of The United States of America, "About the Fellowships," n.d.

⁸⁹ United States of America, "28 U.S. Code" (n.d.). § 2.

justice by doing different things while some may see all the clerks do all the same tasks in pursuit of diversity of opinions.

ConCourt's system is a contrast to SCOTUS' as the court as a body is very involved in the appointment and management of clerks. Each judge of the court would have less two South African clerks and an optional foreign clerk where possible.⁹⁰ Through the court's administration, the state appoints which clerks assist which judge. Clerks then help one of the 11 court judges in doing their job in the scope of work they are assigned in chambers of the court. Beside case matters, most of the internal administrative and external tasks are administered in these chambers.

What is most notable from ConCourt is the fact that there are not only domestic clerks but also foreign law clerks, something that can only be found in one other court in the world, the Supreme Court of Israel.⁹¹ Law students and recent law school graduates from around the world may work for judges of the court for a duration of six months, with the exception of German trainee lawyers that have a four-month specialized program.⁹² These appointments are shorter compared to the duration of service that domestic law clerks, who have the option to move from one chamber to another, get.⁹³

The court's clerkship program, in line with its purposes, has its own committee. Once admitted to join the program, the court provides training and a two-week orientation.⁹⁴ During the course of the four months to a year in service, however, the clerks through a committee of their own have the opportunity to initiate and lead activities that can range from academic discussions and public education to social work and fun sports events.⁹⁵

⁹⁰ Constitutional Court of South Africa, "About Law Clerks."

⁹¹ Supreme Court of Israel, "Foreign Clerkships at the Supreme Court of Israel," n.d.

⁹² Constitutional Court of South Africa, "Clerk Programme for German Trainee Lawyers," n.d.

⁹³ Constitutional Court of South Africa, "About Law Clerks."

⁹⁴ Constitutional Court of South Africa.

⁹⁵ Constitutional Court of South Africa, "Clerk Initiatives," n.d.

SCI's clerkship program hosts a total of up to 136 clerks by default each year, with the potential of going up to 170. This is because the chief justice and each of the 33 justices may appoint four clerks, with a fifth being possibly subject to the justice or judge's workload.⁹⁶ Clerks engage in a short-term contractual assignment for a duration of one year, starting alongside the court's sessions commencement after summer break ends and concluding the following year at the end of the summer break.⁹⁷ This term may be afterwards extended by the court, with a set amount of remuneration being allocated for each clerk in the first twelve months and a raise after the original contract has elapsed.⁹⁸

The program's prominence and high interest across the country is also thanks to the structured learning provided for those participating. When inducted into the program, clerks are given basic training which covers a diverse range of skills needed to properly do their work for the next year and that would be useful for their careers in the long run. These skills include the preparation of briefs, case notes, and research notes.⁹⁹ The learnings are delivered in the form of modules developed and delivered by the court's own Centre for Research and Planning or Training Cell.¹⁰⁰

Clerkship in Indonesia, as is the case in MK and other courts of the nation, is an actual profession that takes years to build. This entails the way clerks work, which is mostly focused on improving the efficiency of the court by way of taking off administrative burden from the court. Clerks have a committee of their own in each court, including MK.¹⁰¹ There is only one person who is named the clerk, while the other staff members under him are given other titles such as

⁹⁶ Supreme Court of India, "Scheme for Engaging Law Clerk-Cum-Research Associates on Short-Term Contractual Assignment in the Supreme Court of India – April, 2023."

⁹⁷ Supreme Court of India, 2.

⁹⁸ Supreme Court of India, 3.

⁹⁹ Supreme Court of India, 7.

¹⁰⁰ Supreme Court of India.

¹⁰¹ Mahkamah Konstitusi Republik Indonesia, "Tugas Pokok Dan Fungsi."

'young clerks', and each of these young clerks would also later have people that they manage as assistants.

In essence, there is a difference in the essence of clerkship between MK and the courts above. While the position in Indonesia is categorized as a hierarchical one whereby each person has to climb up the career ladder within a structure separate from the judges themselves, it takes form as more of an apprenticeship in other countries where clerks are trained directly under the supervision of judges. By that, clerks are positioned in an egalitarian system among themselves as everyone has their own work to do according to the justices' requests and nobody has to report to each other aside from certain things like joint projects and clerk-organized extracurricular activities. Furthermore, clerks are able to really make the most out of their short term in service before going on to do things outside of the court (or in it if they so choose) with a substantially improved capacity and resume.

III. Qualification and Selection Process

Like the justices themselves, there is no formal written requirement to be clerks at SCOTUS. In fact, justices (and as a result, their clerks) don't always have to hold a J.D. degree to be in office.¹⁰² Be that as it may, after centuries of the system being implemented, there is an unspoken rule of thumb that judges would choose the best graduates from law schools who are not just qualified but are smart, quick-witted, and able to defend their opinion in the face of great legal thinkers and practitioners.¹⁰³ That said, most if not all clerks would not be more than five years away from law school.

What is perhaps most unique about the court's clerkship stems not from the court itself but rather the larger legal tradition in the United States whereby clerks have usually taken a similar position in lower courts such as district and appellate courts. Due to the judges'

¹⁰² Supreme Court of The United States of America, "FAQs - General Information," n.d.

¹⁰³ Patricia M. Wald, "Selecting Law Clerks," *Michigan Law Review* 89, no. 152 (1990).

discretionary powers in the program, there are noticeable trends in the choices of clerks. For example, most SCOTUS clerks today are what are called 'serial clerks'. Those are people who have previously clerked at two or even three courts before going on to continue their careers at SCOTUS.¹⁰⁴ It is also intriguing that a big portion of SCOTUS clerks previously clerked for a select few lower court judges, making competition very prevalent from even the very start of post-law school journey.¹⁰⁵ To top that all off, the United States' two-party political dichotomy makes for a very political court which influences even the selection of clerks. It is very apparent that SCOTUS justices and other courts' judges would make preference toward candidates that are similarly conservative or liberal, and who usually possess identity traits as themselves.¹⁰⁶

Reflecting the program's structure, the selection process for SCOTUS clerks is also very justice-centered. What is meant by this is that though the process is primarily done through the Online System for Clerkship Application and Review (OSCAR), an online platform provided by the Administrative Office of the United States Courts (AO), justices are the ones that have real control on when to open the selection of their clerks or even whether to open any vacancies for the term or not.¹⁰⁷ In most cases, judges and justices nationwide would receive hundreds if not thousands of applications around April.¹⁰⁸ Given the preferences of SCOTUS judges seen in recent years, applicants for the court are usually less than that of lower courts.

ConCourt is a bit similar to SCOTUS in its general preference of younger clerks who are final year law students and recent LL.B. degree holders, both for the domestic and international law clerks.¹⁰⁹

¹⁰⁴ Karen Sloan, "At U.S. Supreme Court, 'serial' Clerks Are More the Norm, Study Finds," Reuters, 2023.

¹⁰⁵ Lawrence Baum and Corey Ditslear, "Supreme Court Clerkships and 'Feeder' Judges," *The Justice System Journal* 31, no. 1 (2010).

¹⁰⁶ Aliza Shatzman, "Diverse Judges and Their Diverse Clerks: A Rare Window Into Appellate Law Clerk Hiring," *The Journal of Things We Like (Lots)*, no. 1 (2023).

¹⁰⁷ OSCAR, "About OSCAR," n.d.

¹⁰⁸ Wald, "Selecting Law Clerks."

¹⁰⁹ Constitutional Court of South Africa, "About Law Clerks."

Though, unlike in the United States, there is no tradition of levels of clerkship prior to clerking at ConCourt, the court would take the best candidates from the pool who have excellent academic standing and professional portfolio. These are indicated by the components of application such as curriculum vitae, motivational letter, sample of written work, as well as academic and professional references.¹¹⁰

While the general flow of recruitment is standard across the three different clerk appointments (one domestic and two foreign), there are different timelines for each. For instance, appointments of South African clerks for both the January and July intakes are decided in May of the preceding year, only around two months after the deadline for document submission on 31 March and once candidates have been interviewed on a one-on-one basis with their soon-to-be managers, the judges.¹¹¹ On the other hand, foreign clerks are welcome to apply year-round on a rolling basis, but decisions usually come out also in May.¹¹²

SCI is arguably the most advanced when it comes to their selection process, especially because there are between 60.000 to 70.000 law graduates every year – nearly twice the amount in the United States – that are spread throughout the country, making the 136 positions a very miniscule amount.¹¹³ To become an SCI clerk, one has to be at least and not older than 30 year-old by the final day of registration.¹¹⁴ They should also have possessed or are expected to have possessed a normal LL.B. (three years of school) or integrated LL.B. (five years of school) from a bar examination-granting institution in India by the time they would be starting their service at the court.¹¹⁵ On a more substantive level, the court expects to host those that have “research and analytical skills, writing abilities, and

¹¹⁰ Constitutional Court of South Africa.

¹¹¹ Constitutional Court of South Africa.

¹¹² Constitutional Court of South Africa.

¹¹³ The Bar Council of India, “Vision Statement 2011-2013,” n.d.

¹¹⁴ Supreme Court of India, 8.

¹¹⁵ Supreme Court of India, “Scheme for Engaging Law Clerk-Cum-Research Associates on Short-Term Contractual Assignment in the Supreme Court of India – April, 2023.”

knowledge of computers, including retrieval of desired information from various search engines/processes such as eSCR, Manupatra, SCC Online, LexisNexis, Westlaw, etc.”¹¹⁶

What is profound about SCI's selection is that it is done on a nationwide scale with multiple layers of examinations that afford more transparency. The court's Registry would be the party facilitating the process of selection every year which starts with the determination of the amount of positions opened based on their consultation with the chief justice and judges, followed thereafter by a public announcement and advertisement on a large scale.¹¹⁷ This process, which takes place in January each year, utilizes an online platform, allowing document uploads and payments to be made directly to the system.

Three phases of examination then take place, with the first two being done on the same day in multiple test centers across the country's many states and using the same paper-based, online, or hybrid mode. The first phase involves the candidates answering 100 multiple choice questions within a three-hour span to check the candidates' ability to understand and apply the law, and comprehension skills. The second phase, done right after the first, is a three and a half-hour subjective written exam where applicants are asked to make short writings in response to two writing prompts: one brief and one draft research memo. Only upon reaching a set threshold – 40 and 50 percent respectively or at a cut-off percentage as appropriate – would candidates proceed to the next stages, culminating in the third phase.¹¹⁸ Should a candidate make it through the two rigorous stages, they would see their name up on the court's announcement board and would subsequently be asked to fill the name of the judge they wish to clerk for who will become their one-to-one interviewer in the third and final phase.¹¹⁹

¹¹⁶ Supreme Court of India.

¹¹⁷ Supreme Court of India, 8-10.

¹¹⁸ Supreme Court of India, 10-13.

¹¹⁹ Supreme Court of India, 15.

The three examples provided, though very different from one another, provide some enriching perspective as to how the selection process can be done for a clerkship system that takes the form of a program as opposed to a fixed career path. What is similar across these three, however, is the fact that the courts prefer to have younger rather than older people to clerk. By doing so, judges or justices would be able to get the assistance they need from fresh, young minds and also help nurture the selected bright jurists to one day become the leaders of the countries' legal systems.

As it stands, MK shows the complete opposite of what has been done by them. The court's rigid career ladder system makes seniority in service a requirement to progress.¹²⁰ What this means is that while the main clerk and the three junior clerks would certainly have years of experience behind them, there are the issues of excessiveness to the actual tasks performed and the inability for the system to fulfill the aims of clerkship with regard to legal education for the next generation of legal professionals.

CONTEXTUAL ADOPTION IN THE INDONESIAN CONSTITUTIONAL COURT

The three courts compared above present both uniform and unique practices when it comes to clerkship. It should be recognized that the courts came to the decision of formulating their systems in the way that they are at the moment are unique to them as a result of factors such as their legal system, geographic and demographic conditions, and legal education landscape. Drawing inspiration from ConCourt, MK is a strategic starting point for this kind of change as it is a comparably small organization that can be used as a method for experimentation before large-scale adoption across the archipelago's more than 400 courts.¹²¹ Notwithstanding that, some degree of

¹²⁰ Pemerintah Pusat, Peraturan Presiden (PERPRES) tentang Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi.

¹²¹ Constitutional Court of South Africa, "About Law Clerks."

contextualization needs to be resorted to when changing the clerkship system at MK.

First, a fundamental shift of perspective on the purpose of clerkship and the roles played by clerks at MK needs to happen. What is seen as a pattern across the three is that they don't derive from the sole perspective of the court in order to make itself more efficient. Instead, they also consider how the program can be a medium to train future jurists who would go on to various fields and assume various important roles in the country. The job description of the clerk, therefore, should also be enlarged as to not only cover managerial matters but also more substantive ones. Again taking South Africa's ConCourt as an example, the clerks can even be involved in doing outward-looking initiatives that even the current clerk – the highest office holder of the clerk's office in MK – do not have.¹²² Doing that would not only be able to help clerks learn, it would also substantiate the justices' work by providing them with fresh pairs of eyes that may enrich their judgments' nuances.

Something that should be articulated here is that the level of said substantive contribution of clerks should not be mistaken as the full or even majority transfer of judges' job to the clerks. Being a recently established body of the government which is built to set high standards for judiciary institutions' prudential running, the court should maintain its attention to merits, especially when it comes to justices and their performance of duties.¹²³ Even SCOTUS – the arguably most liberal among the three courts on the roles of clerks – do not make it a practice for clerks to be overly associated with the

¹²² Constitutional Court of South Africa; Mahkamah Konstitusi Republik Indonesia, "Tugas Pokok Dan Fungsi."

¹²³ Meysa Silvia Putri and Zulfa Harirah MS, "Implementasi Sistem Merit Dalam Manajemen Aparatur Sipil Negara Di Mahkamah Konstitusi Republik Indonesia," *Journal of Public Administration and Local Governance* 7, no. 1 (2023); Iwan Satriawan and Tanto Lailam, "Implikasi Mekanisme Seleksi Terhadap Independensi Dan Integritas Hakim Konstitusi Di Indonesia," *Jurnal IUS Kajian Hukum Dan Keadilan* 9, no. 1 SE-Articles (April 2021): 112–38, <https://doi.org/10.29303/ius.v9i1.871>.

final-most works of judges themselves.¹²⁴ Following the principal-agent theory, clerks should be involved in things such as making summaries of submissions, collecting detailed information on parts of the case, and conducting research on certain legal topics that can enrich the court's library of reference to preemptively respond to contemporary constitutional issues.¹²⁵ What is quintessential is for the clerk to be able to hone their skills such as writing and reasoning by simultaneously aiding or challenging the argumentation of justices.¹²⁶

Second, the program should be structured in such a way that it becomes a means of apprenticeship between the clerk and the justice. The current system which detaches the politically appointed justices and the ladder-constrained clerks should be changed. This is first done by attaching clerks not to the court as part of a separate committee from the justices. Just the reverse, clerks should interact directly with justices on a one-to-few basis. From the examples presented, anywhere between three to five clerks per justice would suffice, making a total of 27 to 45 clerks serving a term.

The length of term itself, as demonstrated from the courts' programs, range between six months to a year. In the interest of practicality, a one-year term starting the middle of the year (June or July) in time for four-year degrees' standard graduation dates would be preferable as the court can make the most out of each clerk's service. The program should be preceded with a short induction training of around two weeks.¹²⁷ As per the mandate of the Presidential Regulation No. 65 Year 2017, the Secretariat General should be in charge of arranging the induction program for the

¹²⁴ Palmer and Brenner, "The Law Clerks' Recommendations and the Conference Vote On-the-Merits on the U.S. Supreme Court"; Kromphardt, "US Supreme Court Law Clerks as Information Sources."

¹²⁵ Palmer and Brenner. *See also* Mascini and Holvast, "Explaining Judicial Assistants' Influence on Adjudication with Principal-Agent Theory and Contextual Factors".

¹²⁶ Morris, "A Legacy of Mentorship: A Tribute to the Honorable Judge Joel DeVore"; Moore, "Tribute to Chief Judge Joseph M. Getty: The Clerkship as a Modern Form of 'Reading Law.'"

¹²⁷ Constitutional Court of South Africa, "About Law Clerks."

incoming batch of clerks.¹²⁸ The induction program should be tailored to properly introduce the new joiners to the ways that MK operates with its own procedures that deviate from the common practices of general and administrative courts which would likely have been the only two procedural clinics most law students have taken.¹²⁹ It would be especially fruitful to build rapport among clerks and the justices they assist on the matter of ways of working so that the prior can properly help the latter in rendering better judgments by becoming an internal checks and balances mechanism.¹³⁰

An argument that some may bring in defending against the change would be that a short one-year term is not long enough for the clerks to understand the administrative workings of the court. That brings about the idea of an alternative sub-scheme in which the clerks should focus only on substantive work (still on the same engagement basis with the justices) while the current 'clerks' of the court, who would then have to be designated another title such as 'administrative assistants', would perform all the managerial work as they have been doing thus far. The inclusion of such works to the clerks' job description, as can be deduced from the three courts, form only one half of the program's purpose which is to help free up time and space for the justices. Delegating the task to another group of people would not cause damage to the clerks' learning experience.

Third, the qualification and selection process need to be adjusted to fit the program's purpose and structure. Clerks should be recent law graduates who possess a Sarjana Hukum (S.H.) title. As seen from the examples above, clerks have usually only graduated from school between under a year to around seven years (depending on the clerk's age upon graduation). If the court aims to further

¹²⁸ Mahkamah Konstitusi Republik Indonesia, "Uraian Jabatan Sekretaris Jenderal," n.d.

¹²⁹ Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia*, 2nd ed. (Jakarta: Sinar Grafika, 2011).

¹³⁰ Almaura Mutiara Sahara and Purwono Sungkono Raharjo, "Asas-Asas Hukum Acara Mahkamah Konstitusi"; Socawibawa and Wibowo, "Independensi Kekuasaan Kehakiman Hukum Acara Mahkamah Konstitusi: Independensi, Kekuasaan Kehakiman, Mahkamah Konstitusi."

expedite the selection and/or make it more 'prestigious', an additional institutional requirement can be added, that is that only applicants graduating from law degree-granting institutions with a certain accreditation level – usually 'B' – would be considered. By extension, the criteria for clerks would not and should not involve components such as political leanings like in SCOTUS as the very essence and strength of Indonesia as a unitary state is the fact that its people are not divided into two equally strong nemesis *per se*.¹³¹

Lastly, once the expectations of an ideal clerk are set, the selection process should be able to cater to the Indonesian context with the many law graduates entering the professional world each year. A best practice across the three countries that is translatable to Indonesia can be found in India's SCI.¹³² Multiple layers of examination should be done, starting with a simple written test, in order to filter out candidates more quickly. While there is yet to be an in-depth analysis on the efficacy of the first two phases of examination for clerkship at SCI, it is thus far the most efficient seen across the three to respond to a very large pool of candidates.

Being the constitutional court of a democratic country based on the rule of law with its 1945 Constitution as the highest law of the land, MK should embed the nation's values in the selection of its clerks. The first written examination can test the candidates' knowledge of the law and national values which make for the essence of the court itself.¹³³ The second stage of examination should focus on

¹³¹ Rudi Santoso and Agus Hermanto, "Analisis Yuridis Politik Hukum Tata Negara (Suatu Kajian Tentang Pancasila Dan Kebhinnekaan Sebagai Kekuatan Negara Kesatuan Republik Indonesia)," *Nizham: Jurnal Studi Keislaman*; Vol 8 No 01 (2020): *Jurnal Nizham*, 2020, <https://doi.org/10.32332/nizham.v8i01.2093>; Shatzman, "Diverse Judges and Their Diverse Clerks: A Rare Window Into Appellate Law Clerk Hiring."

¹³² Supreme Court of India.

¹³³ Syahrul Romadan, "Peran Pendidikan Tinggi Hukum dan Urgensi Mahasiswa dalam Mewujudkan Hukum Yang Berkeadilan," *CREPIDO*; Vol 3, No 1 (2021): *Jurnal Crepido Juli 2021*, 2021, <https://doi.org/10.14710/crepido.3.1.33-44>; Basri and Heni Hendrawati, "Pendidikan Hukum Indonesia Yang Berorientasi Pada Nilai- Nilai Pancasila dalam Era Revolusi Industri 4.0," *Jurnal PPKn & Hukum* 14, no. 1 (2019).

assessing the candidates' ability to do legal reasoning and writing with proper linguistic rules of Bahasa Indonesia, two things that should have been a given for lawyers but is ironically a problem with many recent graduates of the field in Indonesia.¹³⁴ Once the pool of candidates are narrowed down to a more manageable size, approximately one and a half to twice the amount of admitted clerks, one-to-one interviews with the justices of their choice should be done in order to find the most suited candidates based on the justices' personal preference of people to work with.

CONCLUSION

The paper has elucidated its two objectives. First, it has explained in the first two parts of the discussion that there is a need for the clerkship system at MK to be remodeled. There are two sides of a clerkship engagement: the court (and its justices) and the clerk. While the current model benefits the court's justices by lifting their non-substantive obligations, it can still be optimized. Moreover, it has not yet been able to serve the legal education purpose which may be attained by clerks who engage in a program as part of their learning process.

The second half of the discussion then provides a number of changes that need to be made in order to solve the problem by benchmarking to three other courts that assume the similar function of 'guardians of the constitution': SCOTUS, ConCourt, and SCI. It has been synthesized thereon that three main proponents of the clerkship system need to change. These are the purposes and roles of clerks, structure of the committee or program, as well as the required qualifications and selection process. While each of the courts have their own unique combination of approaches to the three components,

¹³⁴ Richard K. Neumann Jr., Ellie Margolis, and Katheryn M. Stanchi, *Legal Reasoning and Legal Writing*, 9th ed. (Aspen Publishing, 2021); Zainal Asikin, "Menggugat Pendidikan Hukum di Indonesia," in *Menemukan Kebenaran Hukum Dalam Era Post-Truth*, ed. Tristam Pascal Moeliono and Widodo Dwi Putro, 1st ed. (Mataram: Sanabil, 2020).

the possible changes at MK that they inspire are feasible to be adopted with certain adjustments. In essence, clerkship at the court needs to be modeled as an apprenticeship between recent law graduates with justices for a set duration before they go on to work as a legal professional such as in big law, academia, or even the judiciary. As such, it is hoped that the court can leverage the brightest young legal minds of the nation to the fullest extent while also opening doors of opportunity for those who pursue the path.

It needs to be admitted that the current research is not without its gaps, especially due to the fact that there is yet to be an actual discourse on the matter of clerkship in Indonesia as it is often taken for granted by many in academia. On a positive note, the paper serves as a solid foundation and starting point for the issue to be raised in the future. More scholarly work should address the issue as, despite the system being as lacking as it is today, seems to have gone without being meaningfully challenged for long. While pessimists would dismiss the cause the paper and its authors advocate by saying that change is not likely, it is hoped that the paper would be a strong wake-up call for those who seek improvement in order to better nurture Indonesia's future jurists.

REFERENCES

- Almaura Mutiara Sahara, and Purwono Sungkono Raharjo. "Asas-Asas Hukum Acara Mahkamah Konstitusi." *Sovereignty* 1, no. 2 SE-Articles (September 2022): 373–78. <https://doi.org/10.13057/sovereignty.v1i2.143>.
- Argawati, Utami. "Court's Function as Guardian of Constitution." *The Constitutional Court of the Republic of Indonesia*, 2022.
- Asikin, Zainal. "Menggugat Pendidikan Hukum Di Indonesia." In *Menemukan Kebenaran Hukum Dalam Era Post-Truth*, edited by Tristam Pascal Moeliono and Widodo Dwi Putro, 1st ed. Mataram: Sanabil, 2020.
- Barroso, Luís Roberto. "Countermajoritarian, Representative, and Enlightened: The Roles of Constitutional Courts in

- Democracies." *The American Journal of Comparative Law* 67, no. 1 (June 2019): 109–43. <https://doi.org/10.1093/ajcl/avz009>.
- Basri, and Heni Hendrawati. "Pendidikan Hukum Indonesia Yang Berorientasi Pada Nilai- Nilai Pancasila Dalam Era Revolusi Industri 4.0." *Jurnal PPKn & Hukum* 14, no. 1 (2019).
- Baum, Lawrence, and Corey Ditslear. "Supreme Court Clerkships and 'Feeder' Judges." *The Justice System Journal* 31, no. 1 (2010).
- Bhaskar, Anurag. "Law Clerks and Access to Judges: A Comparative Reflection on the Recruitment Process of Law Clerks in India." *Comparative Constitutional Law and Administrative Law Journal* 6, no. 1 (2021).
- Bhattacharya, Chiranjib, Varsha Aithala, Srijoni Sen, Anushka Sachan, and Himanshu Payal. "Illuminating Judicial Productivity in India's District Courts: An Empirical Analysis." SSRN, 2023.
- Black, Ryan C., and Christina L Boyd. "The Role of Law Clerks in the U.S. Supreme Court's Agenda-Setting Process." *American Politics Research* 40, no. 1 (September 2011): 147–73. <https://doi.org/10.1177/1532673X11401814>.
- Bratković, Marko. "In Search of Efficiency: Court Structure and Case Management in Croatia BT - Civil Case Management in the Twenty-First Century: Court Structures Still Matter." edited by Peter C H Chan and C H van Rhee, 169–91. Singapore: Springer Singapore, 2021. https://doi.org/10.1007/978-981-33-4512-6_12.
- Cantatore, Francina, David McQuoid-Mason, Valeska Geldres-Weiss, and Juan Carlos Guajardo-Puga. "A Comparative Study into Legal Education and Graduate Employability Skills in Law Students through pro Bono Law Clinics." *The Law Teacher* 55, no. 3 (July 2021): 314–36. <https://doi.org/10.1080/03069400.2020.1818464>.
- Castillo-Ortiz, Pablo. "The Dilemmas of Constitutional Courts and the Case for a New Design of Kelsenian Institutions." *Law and Philosophy* 39, no. 6 (2020): 617–55. <https://doi.org/10.1007/s10982-020-09378-3>.
- Chandrachud, Abhinav. "From Hyderabad to Harvard: How U.S. Law Schools Make Clerking on India's Supreme Court

- Worthwhile." *HLS Program on the Legal Profession Research Paper No. 2014-15*, 2014.
- Constitutional Court of South Africa. "About Law Clerks," n.d.
- . "Clerk Initiatives," n.d.
- . "Clerk Programme for German Trainee Lawyers," n.d.
- . "Scholarships From The Court," n.d.
- Crichton, Sha-Shana. "Using Law Clerks To Improve Efficiency In Jamaican Courts." *Georgia Journal of International and Comparative Law* 50, no. 2 (2022).
- Epstein, Lee, Jack Knight, and Olga Shvetsova. "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government." *Law & Society Review* 35, no. 1 (August 2001): 117–64. <https://doi.org/10.2307/3185388>.
- Gardbaum, Stephen. "What Makes For More or Less Powerful Constitutional Courts?" *Duke J. Competition and International Law* 29, no. 1 (2018).
- Giddings, Jeff, and Jacqueline Weinberg. "Experiential Legal Education: Stepping Back to See the Future." In *Modernizing Legal Education*. Cambridge, New York, Melbourne, New Delhi: Cambridge University Press, 2020.
- Gomes, Adalmir Oliveira, Tomas Aquino Guimaraes, and Luiz Akutsu. "Court Caseload Management: The Role of Judges and Administrative Assistants." *Revista de Administração Contemporânea* 21, no. 5 (2017).
- Haeranah, Haeranah, Achmad Dzulfikar Musakkir, Jims Oktovianus, and Miftah Idris. "Comparison Of The Pretrial System In Indonesia And The US." *International Journal of Education, Vocational and Social Science* 2, no. 03 SE-Articles (June 2023): 153–67. <https://doi.org/10.99075/ijevss.v2i03.290>.
- Hanretty, Chris. *A Court of Specialists: Judicial Behavior on the UK Supreme Court*. New York: Oxford University Press, 2020.
- Harris, Allison P., and Maya Sen. "Bias and Judging." *Annual Review of Political Science* 22, no. 1 (May 2019): 241–59. <https://doi.org/10.1146/annurev-polisci-051617-090650>.
- Holvast, Nina. "The Power of the Judicial Assistant/Law Clerk:

- Looking behind the Scenes at Courts in the United States, England and Wales, and the Netherlands." *International Journal for Court Administration* 7, no. 2 (2016).
- Holvast, Nina L. "In the Shadow of the Judge: The Involvement of Judicial Assistants in Dutch District Courts." University of Amsterdam, 2017.
- Holvast, Nina, and Peter Mascini. "Is the Judge or the Clerk Making the Decision? Measuring the Influence of Judicial Assistants via an Experimental Survey among Dutch District Court Judges." *International Journal for Court Administration* 11, no. 3 (2020).
- hukumonline.com. "Panitera Pengadilan, Tak Sekadar Jenjang Karir," 2010.
- Jr., Richard K. Neumann, Ellie Margolis, and Kathryn M. Stanchi. *Legal Reasoning and Legal Writing*. 9th ed. Aspen Publishing, 2021.
- Kepaniteraan Mahkamah Agung. "Tentang Kepaniteraan," n.d.
- Khudoynazarov, Dadakhon A. "Participation of a Judge's Assistant (Court Secretary) in The Economic Process: National And Foreign Experience." *The American Journal of Interdisciplinary Innovations and Research* 4, no. 9 (2022).
- Kromphardt, Christopher D.. "US Supreme Court Law Clerks as Information Sources." *Journal of Law and Courts* 3, no. 2 (2015): 277–304. <https://doi.org/DOI: 10.1086/682136>.
- Kurniawati, Ika, and Lusy Liani. "Kewenangan Mahkamah Konstitusi Sebagai Negative Legislator dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945." *ADIL: Jurnal Hukum* 10, no. 1 (2019): 112–32.
- Legislative Department. *The Constitution of India* (2022).
- Mahkamah Konstitusi Republik Indonesia. "Struktur Organisasi," n.d.
- — —. "Tugas Pokok Dan Fungsi," n.d.
- — —. "Uraian Jabatan Panitera," n.d.
- — —. "Uraian Jabatan Sekretaris Jenderal," n.d.
- Mascini, Peter, and Nina L. Holvast. "Explaining Judicial Assistants' Influence on Adjudication with Principal-Agent Theory and Contextual Factors." *International Journal for Court Administration*

- 11, no. 3 (2020).
- Mattaliano, Andrea, Sergio Riotta, and Manfredi Bruccoleri. "Organizational Model and Operations Performance: A Longitudinal Study of Italian Judicial Courts." *Institutional Research Archive of the University of Palermo*, 2023.
- McAlister, Merritt, and Katherine Mims Crocker. "The Clerkship-Academia Continuum Perspectives." *Judicature* 105, no. 1 (2021).
- Miller, Mark C.. "Law Clerks and Their Influence at the US Supreme Court: Comments on Recent Works by Peppers and Ward." *Law & Social Inquiry* 39, no. 3 (September 2014): 741–57. <https://doi.org/https://doi.org/10.1111/lsi.12074>.
- Moore, Daniel M.. "Tribute to Chief Judge Joseph M. Getty: The Clerkship as a Modern Form of 'Reading Law.'" *Maryland Law Review*, 2022.
- Morris, Rachel. "A Legacy of Mentorship: A Tribute to the Honorable Judge Joel DeVore." *Oregon Appellate Almanac* 19 (2022).
- Muñiz-Argüelles, Luis, and Migdalia Fraticelli Torres. "Selection and Training of Judges in Spain, France, West Germany, and England," January 1985.
- Nawas, Abu. "Kedudukan Dan Kewenangan Mahkamah Konstitusi Sebagai Pelaku Kekuasaan Kehakiman." *Iblam Law Review* 1, no. 2 (2021): 157–68.
- Nelson, William E., Harvey Rishikof, L Scott Messinger, and Michael Jo. "The Liberal Tradition of the Supreme Court Clerkship: Its Rise, Fall, and Reincarnation?" *Vanderbilt Law Review* 62, no. 6 (2009).
- Nemo-Pekelman, Capucine. "Jewish Judicial Patrons and Advocates in the Western Empire (5th Cent.)." In *Legal Engegement : The Reception of Roman Law and Tribunals by Jews and Other Inhabitants of the Empire. - (Collection de l'École Française de Rome ; 579)*, 2021.
- OSCAR. "About OSCAR," n.d.
- Palmer, Jan, and Saul Brenner. "The Law Clerks' Recommendations and the Conference Vote On-the-Merits on the U.S. Supreme Court." *Justice System Journal* 18, no. 2 (September 1995): 185–97. <https://doi.org/10.1080/23277556.1995.10871232>.

- Pemerintah Pusat. Keputusan Presiden (KEPPRES) tentang Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi (2004).
- — —. Peraturan Presiden (PERPRES) Nomor 65 Tahun 2017 tentang Perubahan Kedua atas Peraturan Presiden Nomor 49 Tahun 2012 tentang Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi (2017).
- — —. Peraturan Presiden (PERPRES) tentang Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi (2012).
- Putri, Meysa Silvia, and Zulfa Harirah MS. "Implementasi Sistem Merit Dalam Manajemen Aparatur Sipil Negara Di Mahkamah Konstitusi Republik Indonesia." *Journal of Public Administration and Local Governance* 7, no. 1 (2023).
- Rautenbach, I. M.. "The Relation Between the Constitutional Court and the Supreme Court of Appeal in South Africa." In *Universality of the Rule of Law: Slovenian and South African Perspectives*. African Sun Media, 2021.
- Reayat, Nauman, Anwar Shah, and Syed Arshad. "The Problems of Legal Education in Pakistan: Teaching and Learning, Curriculum, and Assessment Methods." *International Review of Management and Business Research* 9 (December 2020): 357–68. [https://doi.org/10.30543/9-4\(2020\)-30](https://doi.org/10.30543/9-4(2020)-30).
- Republic of Indonesia. Undang-Undang Dasar Negara Republik Indonesia 1945 (1945).
- Romadan, Syahrul. "Peran Pendidikan Tinggi Hukum dan Urgensi Mahasiswa dalam Mewujudkan Hukum Yang Berkeadilan." *CREPIDO; Vol 3, No 1* (2021): *Jurnal Crepido Juli 2021*, 2021. <https://doi.org/10.14710/crepido.3.1.33-44>.
- Samuel, Geoffrey. *An Introduction to Comparative Law Theory and Method*. Edited by Mark Van Hoecke and François Ost. Oxford and Portland: Hart Publishing, 2014.
- Sanders, Anne. "Judicial Assistants in Europe – A Comparative Analysis." *International Journal for Court Administration*, 2020. <https://doi.org/10.36745/ijca.360>.
- Santoso, Rudi, and Agus Hermanto. "Analisis Yuridis Politik Hukum

- Tata Negara (Suatu Kajian Tentang Pancasila Dan Kebhinnekaan Sebagai Kekuatan Negara Kesatuan Republik Indonesia).” *Nizham: Jurnal Studi Keislaman* 8 no. 1 (2020). <https://doi.org/10.32332/nizham.v8i01.2093>.
- Satriawan, Iwan, and Tanto Lailam. “Implikasi Mekanisme Seleksi Terhadap Independensi Dan Integritas Hakim Konstitusi Di Indonesia.” *Jurnal IUS Kajian Hukum dan Keadilan* 9, no. 1SE- (April 2021): 112–38. <https://doi.org/10.29303/ius.v9i1.871>.
- Shatzman, Aliza. “Diverse Judges and Their Diverse Clerks: A Rare Window Into Appellate Law Clerk Hiring.” *The Journal of Things We Like (Lots)*, no. 1 (2023).
- Siahaan, Maruarar. *Hukum Acara Mahkamah Konstitusi Republik Indonesia*. 2nd ed. Jakarta: Sinar Grafika, 2011.
- Sloan, Karen. “At U.S. Supreme Court, ‘serial’ Clerks Are More the Norm, Study Finds.” Reuters, 2023.
- Socawibawa, Nur Indra, and Arif Wibowo. “Independensi Kekuasaan Kehakiman Hukum Acara Mahkamah Konstitusi: Independensi, Kekuasaan Kehakiman, Mahkamah Konstitusi.” *Jurnal Penelitian Multidisiplin* 2, no. 1 SE (February 2023): 101–7. <https://doi.org/10.58705/jpm.v2i1.103>.
- Suhariyanto, Budi. “Quo Vadis: Status Jabatan Dan Sistem Karir Kepaniteraan Peradilan.” *Jurnal Hukum Dan Peradilan* 3, no. 1 (2014).
- Supreme Court of India. “Committees,” n.d.
- — —. “Scheme for Engaging Law Clerk-Cum-Research Associates on Short-Term Contractual Assignment in the Supreme Court of India – April, 2023,” 2023.
- Supreme Court of Israel. “Foreign Clerkships at the Supreme Court of Israel,” n.d.
- Supreme Court of The United States of America. “About the Fellowships,” n.d.
- — —. “FAQs - General Information,” n.d.
- Sutiyoso, Bambang. “Pembentukan Mahkamah Konstitusi Sebagai Pelaku Kekuasaan Kehakiman Di Indonesia.” *Jurnal Konstitusi* 7, no. 6 (2010).

- Syahputra, Dedy, and Zulman Subaidi. "Kedudukan dan Mekanisme Pengisian Hakim Mahkamah Konstitusi dalam Sistem Ketatanegaraan Indonesia." *REUSAM Jurnal Ilmu Hukum* 9, no. 1 (2021).
- The Bar Council of India. "Vision Statement 2011-2013," n.d.
- Ul Akmal, Diya, Fatkhul Muin, and Pipih Karsa. "Prospect of Judicial Preview in the Constitutional Court Based on the Construction of Constitutional Law" 8 (December 2020).
- United States Courts. "Supreme Court Procedures," n.d.
- United States of America. 28 U.S. Code (n.d.).
- University of Michigan Law Library. "U.S. Supreme Court Research Guide: Overview," n.d.
- Uzelac, Alan, and Marko Bratković. "Croatia: Supreme Court Between Individual Justice and System Management BT - Supreme Courts Under Pressure: Controlling Caseload in the Administration of Civil Justice." edited by Pablo Bravo-Hurtado and Cornelis Hendrik van Rhee, 127–52. Cham: Springer International Publishing, 2021. https://doi.org/10.1007/978-3-030-63731-6_7.
- Wada, Igam Arya, Felix Alexander Kurniawan, and Agnes Sinta. "Ius Constituendum Kewenangan Judicial Preview Di Mahkamah Konstitusi Republik Indonesia." *Jurnal Kajian Konstitusi* 3, no. 1 (2023). <https://doi.org/10.19184/j.kk.v3i1.37917>.
- Wald, Patricia M. "Selecting Law Clerks." *Michigan Law Review* 89, no. 152 (1990).
- Wasserman, Howard M.. "Academic Feeder Judges: Are Clerkships the Key to Academia?" *Judicature* 105, no. 1 (2021).

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