

Changes to the Term of Office of Constitutional Justices in Law Number 7 of 2020 concerning the Constitutional Court: Discourse on Legal Reform in the Independence of Judicial Power in Indonesia

Muhammad Wahyu Saiful Huda✉

Court Decision Studies Center, Universitas Negeri Semarang, Indonesia

✉ saifulhuda@students.unnes.ac.id

Abstract

Indonesia, as a nation governed by the rule of law, meticulously regulates all activities, including government positions. In 2020, a significant legal reform took place with the enactment of Law Number 7 of 2020 concerning the Constitutional Court. Nevertheless, this law has encountered several issues, both in form and substance. A notable alteration within this legislation was the elongation of the term of office for Constitutional Court judges, extending it from 5 years to a maximum of 15 years. This substantial change caught the Indonesian populace by surprise and prompted numerous requests for a review of the Constitutional Court Law, as it potentially infringes upon the constitutional rights of individuals aspiring to serve as Constitutional Judges, thereby undermining the concept of legal justice. Moreover, an extended term of office also poses a threat to the independence of judges. Consequently, the author seeks to address this issue using normative juridical methods and

conduct a comparative analysis with several other countries to arrive at a comprehensive assessment. Through this research, it becomes evident that the extended term of office is excessively prolonged and carries the potential for abuse of power. Additionally, it appears to be entangled in political transactions between Constitutional Court Judges and the institutions that support them. In essence, this study underscores the excessive duration of the term of office as a potential avenue for power misuse and highlights its connection to political dealings among Constitutional Court Judges and their affiliated institutions.

Keywords

Constitutional Justice, Law Reform, Constitutional Court, Judicial Power

Introduction

Power and the law share a profound interdependence, as each holds a pivotal role in the functioning of state institutions, government units, officials, and the government itself. The law serves as a mechanism for formalizing and legitimizing power, providing the necessary legal framework for the exercise of authority. It establishes the legal foundation upon which power operates, thus imbuing it with a legitimate basis. Conversely, the law assumes the vital role of overseeing and regulating power, ensuring that its exercise remains both ethical and within the bounds of legality. In essence, it acts as a guardian, holding those in power accountable for their actions in alignment with ethical and legal standards. As aptly noted by Hidayat¹, power in itself is not solely a tool for creating legislation (*lawmaking*) but also serves as a crucial instrument for enforcing and upholding the law (*law enforcement*). In the context of Indonesia, it is imperative that the legal outcomes of power align with the mandates of the constitution to fulfill the principles enshrined in the 1945 Constitution of the Republic of Indonesia.

However, in 2020, the Indonesian government enacted Law Number 7 of 2020, known as the Constitutional Court Law. This legislative move sparked a significant debate among legal experts, garnering both support and criticism. Notably, Allan Fatchan Gani Wardhana—Constitutional Law

¹ Arif Hidayat, “Dialektika Fungsional Antara Hukum dan Otoritas Kekuasaan Negara”. *Masalah-Masalah Hukum* 42, No. 4 (2013): 565–575

expert—took legal action by challenging this law at the Constitutional Court, particularly contesting the reduction of the minimum age requirement for Constitutional Judges from 55 years to 47 years. Moreover, the Coalition to Save the Constitutional Court also mounted a challenge against this law, focusing on two critical aspects: the maximum term of office for Constitutional Judges, set at 15 years, and the procedures for the recruitment of judges.² In the same year, 2020, the Constitutional Court rendered three significant decisions pertaining to the Constitutional Court Law, identified as decisions 90/PUU-XVIII/2020, 96/PUU-XVIII/2020, and 100/PUU-XVIII/2020. These decisions further shaped the legal landscape surrounding the Constitutional Court Law and its implications.

In Decision 90/PUU-XVIII/2020, the applicant, Allan Fatchan Gani Wardhana, holds the position of Head of the Center for Constitutional Law Studies (PSHK) at the Faculty of Law, Indonesian Islamic University (FH UII) and is a lecturer. He questioned specific provisions within the Constitutional Court Law, namely Article 15 paragraph (2) letter d, Article 22 in conjunction with Article 23 paragraph (1) letter d, Article 26 paragraph (1) letter b, and Article 87 letter b. These provisions primarily pertain to the age requirements for Constitutional Judges. Allan Fatchan's challenge was centered on the unexplained shift in age requirements from 47 years to 55 years as stipulated in the new law, with no clear justification provided within the law's academic text. On the other hand, Decision 96/PUU-XVIII/2020 was initiated by Dr. Ir. Priyanto, SH, MH, MM, who contended that Article 87 letter b violated his constitutional rights. This specific article allowed for an extension of the term of office for a sitting Constitutional Judge, increasing it from 5 years to 15 years, with the possibility of re-election. The court, in this case, partially upheld Priyanto's petition, rendering Article 87 letter a null and void.

Finally, in Decision 100/PUU-XVIII/2020, multiple petitioners - R. Viola Reinida Hafidz (Petitioner I); M. Ihsan Mualana (Petitioner II); Rahmah Mutiara (Petitioner III); Korneles Materay (Petitioner IV); Beni Kurnia Divine (Applicant V); Giri Ahmad Taufik (Applicant VI); and Prime

² Tiara Aliya Azzahra, "Koalisi Masyarakat Gugat UU MK soal Sistem Rekrutmen-Masa Jabatan Hakim". *Online Detik News*, November 3 (2020). Retrieved from <https://news.detik.com/berita/d-5240050/koalisi-masyarakat-gugat-uu-mk-soal-sistem-rekrutmen-masa-jabatan-hakim>. See also Winda Wijayanti, and Nuzul Quraini. "Transparansi dan Partisipasi Publik dalam Rekrutmen Calon Hakim Konstitusi." *Jurnal Konstitusi* 12, No. 4 (2015): 663-690; Muhammad Reza Baihaki, "Problematisasi Open Legal Policy dalam Periodisasi Masa Jabatan Hakim Konstitusi". *Thesis* (Jakarta: Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2019); Rezky Panji Perdana Martua Hasibuan, "Penerapan Asas Independensi dalam Rekrutmen Hakim Konstitusi di Indonesia". *Thesis* (Jakarta: Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2020).

Son Ahmad Saifulloh (Petitioner VII)—collectively sought a formal and material review of various provisions within the Constitutional Court Law. They challenged Article 15 paragraph (2), Article 20 paragraph (1) and (2), Article 23 paragraph (1) letter c, Article 59 paragraph (2), as well as Article 87 letters a and b. Their objections revolved around the rapid and insufficiently participatory process of drafting the law, and they raised concerns about the constitutionality of the recruitment system and the minimum age requirement for Constitutional Judges, asserting that these elements infringed upon constitutional rights.³ In essence, these legal actions brought before the Constitutional Court reflect a comprehensive set of challenges to different aspects of the Constitutional Court Law, touching upon issues of age requirements, term limits, and the legislative process itself.

Indonesia, firmly anchored in the 1945 Constitution of the Republic of Indonesia and guided by Pancasila, unequivocally strives to establish an orderly, prosperous, transparent, and equitable framework for its national and state affairs. Within this legal landscape, the Constitutional Court emerges as a significant actor in the realm of judicial authority, bearing the crucial responsibility of upholding the constitution and championing the principles of the rule of law, all in consonance with its obligations and authority as outlined in the 1945 Constitution of the Republic of Indonesia.

In light of the evolving legal needs of both the Indonesian populace and state administration, modifications to the Constitutional Court Law are undeniably warranted. However, the process of amending this law has not been without its complications. The focal point of the author's inquiry centers on Article 87 letter b, which prescribes a maximum term of 15 years for Constitutional Judges and, intriguingly, allows currently serving judges who meet specific criteria to extend their service until reaching the age of 70.

It is unequivocally established that the Preamble to the 1945 Constitution of the Republic of Indonesia serves as the foundational norm of the state, articulating the state's fundamental ideals in a clear and explicit manner. The framing of the Preamble was a deliberate act by the nation's founding figures, intended to serve as the wellspring and cornerstone for the development of various articles and provisions within the 1945 Constitution of the Republic of Indonesia.⁴ Crucially, the specific article under scrutiny by

³ Constitutional Court of Republic of Indonesia. "Siaran Pers Mahkamah Konstitusi: MK Putuskan Uji Materi Ketentuan Masa Jabatan Hakim MK [Constitutional Court Press Release: Court Decides on Material Review of Terms of Service for Court Judges]". *Online*, June 20 (2022). Available online at https://www.mkri.id/public/content/informum/press/pdf/press_2344_20.6.22%20Rilis%2090.96.100.PUU-XVIII.2020%20UU%20MK%20IX%20-%20Putusan%20FY.pdf

⁴ Ahmad Yani, "Sistem Pemerintahan Indonesia: Pendekatan Teori dan Praktek Konstitusi Undang-Undang Dasar 1945". *Jurnal Ilmiah Kebijakan Hukum* 12, No. 2 (2018): 55-68.

the author runs counter to the principles enshrined in Article 28D, which guarantees every Indonesian equal rights and opportunities for participation in government. The existence of Article 87 letter b within the aforementioned law poses challenges to the attainment of a role as a Constitutional Judge, making it a formidable endeavor. Furthermore, Article 24C paragraph (5) further emphasizes the prerequisites for becoming a Constitutional Judge, mandating qualities such as unwavering integrity, an impeccable reputation, a profound understanding of constitutional and state administration matters, impartiality, and the exclusion of any dual positions within the state apparatus.

This aligns with John Rawls' theory of justice, which posits that any conception of justice must originate from an original position where each individual is afforded an equal standing or status. This foundational principle ensures that every person enjoys the same fundamental rights and liberties.⁵ Rawls refers to this equilibrium as "*justice as fairness*," underscoring that justice, in his view, entails the well-being of society as a whole.⁶ It emphasizes the significance of goodness within social institutions⁷ and vehemently prohibits any violation of the well-being of the people, particularly the vulnerable segments of society.⁸

On the other hand, Jeremy Bentham's utilitarian theory contends that the primary aim of legislation is to maximize the happiness and well-being of the populace. In accordance with this perspective, legislation should strive to achieve four fundamental objectives: ensuring livelihood, providing an ample food supply, ensuring protection, and promoting equality. In the process of crafting laws, it is imperative for legislators to incorporate ideas that foster societal well-being while carefully considering actions that can prevent harm.⁹ In the context of extending the term of office for Constitutional Justices, it becomes apparent that such a move does not align with the four objectives outlined in Jeremy Bentham's utilitarian theory. Indeed, it raises questions about the underlying urgency driving the amendments to the term limits

⁵ Zakki Adhlyati, and Achmad Achmad. "Melacak Keadilan dalam Regulasi Poligami: Kajian Filsafat Keadilan Aristoteles, Thomas Aquinas, dan John Rawls". *Undang: Jurnal Hukum* 2, No. 2 (2019): 409–431.

⁶ Faizal Kurniawan, Erni Agustin, and Rizki Amalia. "Unsur Kerugian dalam Unjustified Enrichment Untuk Mewujudkan Keadilan Korektif (Corrective Justice)". *Yuridika* 33, No. 1 (2018): 19-40.

⁷ Pan Mohamad Faiz. "Teori Keadilan Jhon Rawls". *Jurnal Konstitusi* 6, No. 1 (2009): 135–149.

⁸ Adhlyati and Achmad, 2019.

⁹ Zainal B. Septiansyah, and Muhammad Ghalib. "Konsep Utilitarianisme dalam Filsafat Hukum dan Implementasinya di Indonesia". *Ijtihad* 34, No. 1 (2019): 27–34; Endang Pratiwi, Theo Negoro, and Hassanain Haykal. "Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?". *Jurnal Konstitusi* 19, No. 2 (2022): 268-293.

within the existing law. Moreover, this revision appears to neglect the inherent challenges within the Constitutional Court itself, calling into question its effectiveness in addressing the court's internal issues.

Extending the length of a public official's tenure carries the inherent risk of fostering the abuse of power, a phenomenon well encapsulated by the adage "*power tends to corrupt, and absolute power corrupts absolutely.*" In the specific context of Constitutional Justices, prolonging their terms further amplifies their authority, potentially enabling them to wield their influence for extended periods. Such an extension not only has the potential to undermine the vital mechanisms of checks and balances within Indonesia's constitutional system but also raises concerns regarding the independence of judicial authority. This tenure elongation not only disrupts the delicate equilibrium of power but also casts a shadow over the perception of a truly impartial judiciary.

Judicial power is a term derived from the Dutch phrase "*rechterlijke macht*" and is deeply rooted in Montesquieu's theory of the separation of powers. The term "*power*" itself is multifaceted, encompassing elements of ability, authority, and strength. Within this context, "*power*" takes on a dual role, signifying both an object or entity and a characteristic or trait. This analysis distills the fundamental essence of "*power*" into three distinct dimensions: capability, legitimacy, and influence. The concept of "*power*" is intimately intertwined with "*authority*," which necessitates a clear understanding of its definition, denoting the rightful possession of permissions, rights, and responsibilities to perform specific actions.¹⁰ Moreover, Miriam Budiardjo elucidates that "*power*" embodies the authorization granted to individuals or groups to execute assigned tasks, contingent upon the condition that such authority remains within prescribed limits and is not exceeded.¹¹

Nevertheless, when examining the term lengths for constitutional justices in various countries, it becomes evident that there is a wide spectrum of approaches, some allowing re-election and others not. For instance, in South Korea, constitutional judges serve six-year terms with the possibility of re-election. Italy and Spain maintain a nine-year tenure for their Constitutional Court judges. In the Czech Republic, constitutional judges hold their positions for up to ten years. In contrast, Russia's system mandates a twelve-year term for constitutional judges, but they are ineligible for re-election. This diversity in the duration of office for constitutional judges across different nations presents an intriguing facet for consideration when analyzing the relevant legal provisions. Given the aforementioned challenges, the authors

¹⁰ Rimdan Rimdan. *Kekuasaan Kehakiman Pasca-Amandemen Konstitusi*. (Jakarta: Kencana, 2013).

¹¹ Miriam Budiardjo. *Dasar-Dasar Ilmu Politik*. (Jakarta: Gramedia, 2022).

have framed the problem statement as follows: *first*, what amendments, if any, have been introduced to the terms of office for constitutional judges under Law Number 7 of 2020 concerning the Constitutional Court, and *second* how does the term length for constitutional judges, as stipulated in Law Number 7 of 2020 concerning the Constitutional Court, impact the independence of judicial power?

Method

In this research, the authors employ normative juridical research methods that rely on legal sources encompassing legislation, court rulings, and legal theory, as outlined by Muhaimin.¹² These methods comprise a statutory approach, emphasizing legislation and regulations, a conceptual approach grounded in established legal doctrines, and a comparative approach, involving a comparative analysis of legislation from multiple countries, as highlighted by Marzuki.¹³ The primary legal materials utilized in this study include the following: (1) Law of the Republic of Indonesia Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court, (2) Decision 90/PUU-XVIII/2020, (3) Decision 96/PUU-XVIII/2020, (4) Decision 100/PUU-XVIII/2020, and (5) The 1945 Constitution of the Republic of Indonesia. In addition to primary sources, the author incorporates secondary data gathered through an extensive review of literature, encompassing various books, journal articles, laws and regulations, as well as online resources. Subsequently, the collected data undergoes meticulous analysis employing descriptive qualitative analytical methods.

Changes in the Term of Office of Constitutional Judges in Law Number 7 of 2020 Concerning the Constitutional Court

In Law Number 24 of 2003 concerning the Constitutional Court in Article 22 it is stated that the term of office for constitutional judges is 5 years and can be re-elected for one term of office. However, Law Number 7 of 2020 concerning the Constitutional Court changes the tenure of constitutional judges to 15 years with 1 term of office or until they reach 70 years of age. The

¹² Muhaimin Muhaimin. *Metode Penelitian Hukum*. (Mataram: Unram Press, 2020)

¹³ Peter Mahmud Marzuki. *Penelitian Hukum*. (Jakarta: Kencana Prenadamedia, 2005).

change from 5 years to 15 years certainly raises concerns regarding the abuse of power by constitutional judges because of the long term of office.

In the 1945 Constitution of the Republic of Indonesia, the term limit for the President and Vice President is 5 years and they can be re-elected for 1 term. This is done to prevent absolute power from being exercised by the previous president. Therefore, it can be concluded that constitutionally the 1945 Constitution of the Republic of Indonesia prohibits the existence of long powers because they can create absolute power.

The essence of establishing the Constitutional Court is to protect the constitution. Therefore, the Constitutional Court has the nickname The Guardian of the Constitution and is primarily responsible for safeguarding and protecting human rights, especially the constitutional rights of Indonesian citizens. And in Article 28D of the 1945 Constitution of the Republic of Indonesia there is a citizen's right to the opportunity to participate in government. With the extension of the term of office of Constitutional Court Judges, this right has the potential for violations.

In principle, a constitution is a form of social contract that is used as a benchmark for social interactions carried out by society. As an agreement between the government and the people, it means that the rule of power originates from and is based on the agreement of the people. In essence, Bagir Manan believes that the form of understanding regarding the constitution or constitutionalism is the limits of power for the government and the rights of its people. These rights consist of basic rights, such as property rights, the right to life as well as welfare and freedom.¹⁴

The presence of the Constitutional Court as a judicial power is an independent power in administering its courts because it is present to enforce applicable laws and uphold justice as stated in Pancasila and the 1945 Constitution of the Republic of Indonesia. legislative, then the people's right to life and liberty will be held by arbitrary power. However, if judicial power is side by side with executive power, the judges will continue to carry out violence and oppression.¹⁵ And in the existing regulations in Indonesia, judicial power is one that has independence but does not have absolute power in accordance with Law Number 24 of 2003 concerning the Constitutional Court.

¹⁴ Dwi Andayani Budisetyowati, "Kewenangan Mahkamah Konstitusi RI sebagai Dasar Perlindungan Hak-Hak Warga Negara". In Dri Utari Christina Rachmawati, and Ismail Hasani (Eds). *Masa Depan Mahkamah Konstitusi RI: Naskah Konferensi Mahkamah Konstitusi dan Pemajuan Hak Konstitusional Warga*. (Jakarta: Pustaka Masyarakat Setara, 2013), pp. 279-298.

¹⁵ Bagir Manan. *Lembaga Kepresidenan*. (Yogyakarta: UII Press, 2008).

The presence of Constitutional Justices in carrying out their duties and being responsible has a relationship with the quality of their institutions. This means that there is individual responsibility that is embedded in institutional responsibility which has mutual relationships and dependencies. Along the way, Constitutional Justices must have a leadership spirit that is predicted to be a driving force in effective actions in law enforcement and leadership that is predicted to be an example for the environment they lead regarding the integrity of obedient human nature.¹⁶

However, the Constitutional Court decision Number 90/PUU-XVIII/2020 states that if article 87 letter b regarding the term of office of Constitutional Judges is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal provisions, there will be a legal vacuum for the judges currently serving. In fact, in the Constitutional Court's decision regarding the Job Creation Law case, there is a ruling which is essentially to reform *a quo* Law with a period of 2 years. However, the Constitutional Court Law does not apply the same.

Term of Office of Constitutional Justices in Law Number 7 of 2020 concerning the Constitutional Court Against the Independence of Judicial Power

To form a judicial power that is independent and oriented towards just law, it is necessary to have an instrument that functions to prevent interference from the public. *First*, the presence of the principle of the presumption of innocence which can result in the absence of public opinion that gives the impression that the accused is guilty. *Second*, the prohibition of trials by the press because trials conducted by the press have violated personal rights, which means civil death or murder on the nature and characteristics of other people or groups. *Third*, the principle of fairness contains content that is not only the responsibility of the judge to act honestly and not to take sides with the parties. but it contains content that each party in litigation has the same chance of winning in their respective cases. Justice is not only the right of the victim or the public, but also the rights of the parties suspected of being guilty or those being tried. And the *fourth* is about the principle of freedom of judges where this freedom is in the category of being free from feelings of indecision and fear from judges because of pressure from the public in the form of destroying court buildings or abusing judges.¹⁷

¹⁶ Jimly Asshiddiqie. *Konstitusi dan Konstitusionalisme Indonesia*. (Jakarta: Sekretaris Jenderal dan Kepaniteraan MKRI, 2006).

¹⁷ Manan, 2008.

After the United States declared its independence, they adopted a model of judicial independence. They want judges who can act independently. From the beginning, judges in the United States began to apply the principle of judicial review, even before the country's constitution was drafted. They use judicial review to overturn parliamentary decisions deemed unlawful, both against the written constitution and with the principles of natural law, including rights that are not listed in writing in the constitution.¹⁸

The independence of judges lies in a mysterious area, namely the mind and conscience of a judge. Even though there are laws and regulations, judges cannot be fully determined by them. In the process of settling cases by an independent judge, there may be errors, mistakes, or disagreements with the judge's judicial decision, but this cannot be corrected by the government administratively. Errors, errors or disagreements related to judicial decisions can only be corrected through legal remedies, not through administrative remedies. Therefore, judges must have freedom in carrying out their judicial duties. It is not permissible to have preventive or repressive actions that try to influence judges, except through legal remedies regulated by law.¹⁹ In Article 1 of Law Number 4 of 2004 concerning Power which is interpreted as Judicial, Judges have the freedom to examine and decide on a case, but this freedom is not absolute. The task of the judge is to uphold law and justice based on Pancasila, by interpreting the law and looking for the foundations and principles on which it is based through the cases submitted to him, so that his decisions reflect the sense of justice of the Indonesian people.

From the above, the freedom of judges has limits determined by Pancasila, laws, the interests of the parties, and public order. In other words, the judge's decision must be in accordance with Pancasila and must not conflict with the interests of the Indonesian state and nation. The freedom of judges is influenced by the system of government, politics, economy, and other factors. As ordinary human beings, judges cannot be separated from various interests and influences around them, including personal and family interests. This situation can create a conflict of interest for judges, so that the judge's actions or behavior can tarnish the honor, dignity and proper behavior, such as taking sides with one party in carrying out judicial duties. In this case, the judge must not be influenced by internal behavioral impulses that can cause him to make unfair and neutral decisions because his mind and conscience no longer speak about honesty. In dealing with such situations, judges are

¹⁸ Suzanna Sherry, "Independent Judges and Independent Justice". *Law and Contemporary Problems* 61, No. 3 (1998): 15-19 .

¹⁹ Kusnu Goesnadhie Slamet. "Prinsip Pengawasan Independensi Hakim". *Jurnal Hukum IUS QUIA IUSTUM* 14, No. 3 (2007): 434-447.

expected to have integrity and a good personality, be honest, fair and professional in carrying out their duties and authority.

Article 24C of the 1945 Constitution of the Republic of Indonesia clearly relates to the powers and obligations of the Constitutional Court, which in carrying out its duties is to achieve the goals of a rule of law and provide protection for human rights. First, acting as a guard/protector for democracy and protector for the constitutional rights of the Indonesian people as well as being a protector for human rights. Second, being the guardian of the constitution and at the same time having the role of being the interpreter of the constitution towards the constitution which is the highest law.²⁰ Of the three functions mentioned above, the Constitutional Court is understanding the relationship between the state, democracy and the need for constitutional justice, which of these three functions is used as a systematic framework for strengthening the rights and obligations of democratic public law. Because community sovereignty cannot be restricted or divided, but is required to be defended by the state itself.²¹

From the concept of judicial independence, it can be understood that the freedom of judges must be balanced with judicial accountability. In this context, the concept of judicial accountability has emerged which includes integrity and transparency, based on harmonization between legal responsibility and social responsibility. Within this framework, the idea emerged about using a code of ethics to supervise judges, which is a demand at both the national and international levels.²²

The standard concepts set out in a code of ethics can be used as a tool to determine whether there is improper professional practice. Malpractice is considered to occur if a professional in carrying out his duties and obligations commits an action that is not in accordance with professional standards, which causes harm to other people. The consequence of judicial accountability is that

²⁰ David Held, *Demokrasi & Tatanan Global; Dari Negara Modern Hingga Pemerintahan Kosmopolitan*. (Yogyakarta: Pustaka Pelajar, 2004). See also David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*. (California: Stanford University Press, 1995); David Held, "Restructuring Global Governance: Cosmopolitanism, Democracy and the Global Order." *Millennium* 37, No. 3 (2009): 535-547.

²¹ Sjachran Basah. *Eksistensi dan Tolak Ukur Badan Peradilan Administrasi Negara di Indonesia*. (Bandung: Alumni, 1994)

²² Slamet, 2007. See also 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; Eza Aulia. "Sistem Pengawasan Terhadap Hakim Konstitusi dalam Mewujudkan Independensi Hakim." *Jurnal Public Policy* 2, No. 1 (2018): 105-113; Iwan Satriawan, Farid Sufian Shuaib, Tanto Lailam, Rofi Aulia Rahman, Devi Seviyana. "A Comparison of Appointment of Supreme Court Justices in Indonesia and Malaysia." *Journal of Indonesian Legal Studies* 7, No. 2 (2022): 633-676.

there is oversight of the judiciary, including the behavior of judges. In the context of the duties of a judge, the freedom of judges must be accompanied by impartiality and professionalism in their field. Thus, aspects of accountability, moral and ethical integrity, transparency, impartiality, professionalism and supervision are recognized guidelines in maintaining the freedom and independence of judges.²³

If the judicial system is not independent, neutral and competent, then human rights and constitutional rights will not be realized. This can lead to a growing reduction in human rights and other constitutional rights. Therefore, the constitution gives independent power to the judiciary to carry out justice to uphold law and justice. This is in accordance with Article 1 of Law Number 4 of 2004 concerning Judicial Power.

There are universal guidelines for the behavior of judges that can be used as a guide, namely the basic principles issued by the United Nations regarding the Independence of the Courts. The principles of "*The Bangalore Principles of Judicial Conduct*" are the result of a meeting of Supreme Court Justices from various countries attended by the United Nations Special Pioneer at The Peace Palace, The Hague, Netherlands. In "*The Bangalore Principles of Judicial Conduct*," it is stated that the existence of competent, independent and neutral judicial institutions to protect human rights is important because the implementation of these rights depends on the proper administration of justice. Competent, independent judiciary and neutrals are also important in carrying out their role in upholding the constitution and other legal rules. Public trust in the justice system and the moral authority and integrity of the judiciary is essential in a modern democratic society. Therefore, judges, both individually and collectively, need to respect the judicial power as an institution that is trusted by society and strive to increase and maintain confidence in the justice system. The primary responsibility for promoting and maintaining high standards in the exercise of judicial power rests with the judiciary in each country. both individually and collectively, it is necessary to respect the judiciary as an institution trusted by the public and strive to increase and maintain confidence in the judicial system. The primary responsibility for improving and maintaining high standards in the exercise of judicial power lies with the judiciary in each country. both individually and collectively, it is necessary to respect the judiciary as an institution trusted by the public and strive to increase and maintain confidence in the judicial system. The primary responsibility for improving and maintaining high

²³ Kusnu Goesniadhie Slamet. "Harmonisasi Hukum dalam Perspektif Perundang-Undangan". *Jurnal Hukum IUS QUIA IUSTUM* 11, No. 27 (2004): 82–96.

standards in the exercise of judicial power lies with the judiciary in each country.²⁴

Bagir Manan has alluded to the relationship between the concept of periodization and the independence of the term of office of judges. She quoted Justice O'Connor, the first woman Supreme Court Justice in the United States, as saying that if judges are elected regularly for a certain period, there is a possibility that they may feel they have a vested interest in any decisions they make that are then made public. A similar statement was also made by Justice Beverley McLachlin, Chief Justice of Canada, who is also the first woman to serve as Chief Justice of the Supreme Court. He stated that while judges may try to suppress these feelings or distance themselves from such personal influence.²⁵

The views expressed by Bagir Manan have similarities with Ali Safa'at's view of the term of office of constitutional judges in Indonesia. Ali Safa'at begins his argument by describing the recruitment approach used today regarding the tenure of judges. He illustrated that the judge's position in the decisions they make can be used as an assessment for the proposing institution, whether it is detrimental or beneficial to the proposing institution.²⁶(Safa'at, 2016) Apart from that, Ali Safa'at also mentioned that some judges (especially the Chief Justice) could face problems in terms of ethics and decency if they take part in the selection again for a second term. Moreover, if these judges are not elected, this will raise questions about the quality of the decisions they have made. These problems have previously arisen in the selection of constitutional judges, such as the case of Jimly Asshiddiqie who was not selected by the DPR

²⁴ International Commission of Jurists. *The Bangalore Principles on Judicial Conduct*. The Bangalore Principles are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to offer the judiciary a framework for regulating judicial conduct. Six core values are recognized: Independence, impartiality, integrity, propriety, equality and finally competence and diligence. The *Principles* define their meaning and elaborate in detail on what kind of conduct is to be expected in concrete terms of the persons concerned in order to put the respective value into practice. A number of specific instructions are given under each of the values. Not only have some States adopted the Bangalore Principles but others have modelled their own Principles of Judicial Conduct on them. *Online* at https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

²⁵ Constitutional Court of Republic of Indonesia. *Putusan Mahkamah Konstitusi No. 6/PUU-XIV/2016*. *Online* at https://www.mkri.id/public/content/persidangan/putusan/6_PUU-XIV_2016.pdf.

²⁶ Safa'at, Muhammad Ali. "Pengisian dan Masa Jabatan Hakim Konstitusi". *Paper*, presenter in *Seminar dan Lokakarya Nasional Perubahan Undang-Undang Mahkamah Konstitusi*, Jember, May 22-26 (2016). *Online* at <http://www.safaat.lecture.ub.ac.id/files/2016/06/PENGISIAN-DAN-MASA-JABATAN-HAKIM-KONSTITUSI.pdf>

for a second term, and constitutional judge Hamdan Zoelva who chose not to participate in the selection made by the President.²⁷

Lawrence Baum's assertion regarding the intricate relationship between judicial tenure and the judge selection process warrants attention. Baum contends that the independence of the judiciary faces potential threats because the process of nominating judges often involves recruitment by political institutions. Furthermore, he argues that extended terms of office, facilitated through the same political channels, can give rise to pragmatic political transactions.²⁸

While Baum's statement is not entirely absolute, it is not devoid of validity. Instances of ethics code violations, allegedly connected to office-related transactions, lend credence to Baum's concerns. Additionally, Article 87(b) of the Constitutional Court Law emphasizes the importance of a rigorous candidate selection process for Constitutional Court Judges, aimed at preventing abuses of power. However, from a legal perspective, there is merit in considering an amendment to the current law, as a 15-year term may be deemed excessively lengthy.

Conclusion

²⁷ Safa'at, 2016.

²⁸ Lawrence Baum, *Judges and Their Audience a Perspective on Judicial Behavior*. (New Jersey: Princeton University Press, 2006). See also Lawrence Baum, *The Puzzle of Judicial Behavior*. (Michigan: University of Michigan Press, 2009). In the further context it is also highlighted that the presence of the judicial mafia in Indonesia is a growing concern that has significantly tarnished the public perception of the legal system. This phenomenon is indicative of the misuse of judicial authority, underscoring that the enforcement of the law is susceptible to external influences, compromising its impartiality and integrity. Numerous stakeholders assert that the eradication of the judicial mafia in Indonesia demands a holistic approach rather than a partial one. This approach necessitates the enhancement and establishment of a transparent justice system, underpinned by a comprehensive framework of laws and regulations that augment existing legal provisions. Moreover, these regulations should include stringent penalties to serve as a strong deterrent against potential wrongdoers. Failing to take such measures may exacerbate the judicial mafia issue, casting a shadow on Indonesia's status as a functioning state. See also Simon Butt, and Tim Lindsey. "Judicial Mafia: The Courts and State Illegality in Indonesia." In *The State and Illegality in Indonesia*. (Leiden: Brill, 2010), pp. 189-213; Björn Dressel, and Tomoo Inoue. "Megapolitical Cases before the Constitutional Court of Indonesia since 2004: An Empirical Study." *Constitutional Review* 4, No. 2 (2018): 157-187; Melissa Crouch, ed. *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*. (Cambridge: Cambridge University Press, 2019).

This study concluded that in the amendment to the Constitutional Court Law, Article 87(b) stipulates an extended 15-year term of office, a significant departure from Law Number 24 of 2003, which limited the term to just 5 years, with the possibility of only one reappointment. This extended tenure not only disrupts the constitutional rights of other citizens seeking nomination as constitutional judges but also raises concerns about the potential for prolonged tenure leading to the abuse of power by these judges.

To prevent such abuses, it is imperative to equip the constitutional court with appropriate instruments and functions to bolster its capacity to wield judicial power judiciously. Furthermore, rigorous candidate selection procedures should be implemented to minimize the risk of power abuse. However, it is evident that the 15-year term of office needs revision, as it is excessively lengthy for its intended purpose.

References

- Adlhiyati, Zakki, and Achmad Achmad. "Melacak Keadilan dalam Regulasi Poligami: Kajian Filsafat Keadilan Aristoteles, Thomas Aquinas, dan John Rawls". *Undang: Jurnal Hukum* 2, No. 2 (2019): 409–431. <https://doi.org/10.22437/ujh.2.2.409-431>
- Asshiddiqie, Jimly. *Konstitusi dan Konstitusionalisme Indonesia*. (Jakarta: Sekretaris Jenderal dan Kepaniteraan MKRI, 2006).
- Aulia, Eza. "Sistem Pengawasan Terhadap Hakim Konstitusi dalam Mewujudkan Independensi Hakim." *Jurnal Public Policy* 2, No. 1 (2018): 105-113. <https://doi.org/10.35308/jpp.v2i1.691>
- Azzahra, Tiara Aliya. "Koalisi Masyarakat Gugat UU MK soal Sistem Rekrutmen-Masa Jabatan Hakim". *Online Detik News*, November 3 (2020). Retrieved from <https://news.detik.com/berita/d-5240050/koalisi-masyarakat-gugat-uu-mk-soal-sistem-rekrutmen-masa-jabatan-hakim>
- Baihaki, Muhammad Reza. "Problematika Open Legal Policy dalam Periodisasi Masa Jabatan Hakim Konstitusi". *Thesis* (Jakarta: Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2019).
- Basah, Sjachran. *Eksistensi dan Tolak Ukur Badan Peradilan Administrasi Negara di Indonesia*. (Bandung: Alumni, 1994)
- Baum, Lawrence. *Judges and Their Audience a Perspective on Judicial Behavior*. (New Jersey: Princeton University Press, 2006).
- Baum, Lawrence. *The Puzzle of Judicial Behavior*. (Michigan: University

- of Michigan Press, 2009).
- Budiardjo, Miriam. *Dasar-Dasar Ilmu Politik*. (Jakarta: Gramedia, 2022).
- Budisetyowati, Dwi Andayani. "Kewenangan Mahkamah Konstitusi RI sebagai Dasar Perlindungan Hak–Hak Warga Negara". In Dri Utari Christina Rachmawati, and Ismail Hasani (Eds). *Masa Depan Mahkamah Konstitusi RI: Naskah Konferensi Mahkamah Konstitusi dan Pemajuan Hak Konstitusional Warga*. (Jakarta: Pustaka Masyarakat Setara, 2013), pp. 279-298.
- Butt, Simon, and Tim Lindsey. "Judicial Mafia: The Courts and State Illegality in Indonesia." In *The State and Illegality in Indonesia*. (Leiden: Brill, 2010), pp. 189-213. https://doi.org/10.1163/9789004253681_011
- Constitutional Court of Republic of Indonesia. "Siaran Pers Mahkamah Konstitusi: MK Putuskan Uji Materi Ketentuan Masa Jabatan Hakim MK [Constitutional Court Press Release: Court Decides on Material Review of Terms of Service for Court Judges]". *Online*, June 20 (2022). Available online at https://www.mkri.id/public/content/infoumum/press/pdf/press_2344_20.6.22%20RIlis%2090.96.100.PUU-XVIII.2020%20UU%20MK%20IX%20-%20Putusan%20FY.pdf
- Constitutional Court of Republic of Indonesia. *Putusan Mahkamah Konstitusi No. 6/PUU-XIV/2016*. Online at https://www.mkri.id/public/content/persidangan/putusan/6_PUU-XIV_2016.pdf.
- Crouch, Melissa, ed. *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*. (Cambridge: Cambridge University Press, 2019).
- Dressel, Björn, and Tomoo Inoue. "Megapolitical Cases before the Constitutional Court of Indonesia since 2004: An Empirical Study." *Constitutional Review* 4, No. 2 (2018): 157-187. <https://doi.org/10.31078/consrev421>
- Faiz. Pan Mohamad. "Teori Keadilan Jhon Rawls". *Jurnal Konstitusi* 6, No. 1 (2009): 135–149.
- Hasibuan, Rezky Panji Perdana Martua. "Penerapan Asas Independensi dalam Rekrutmen Hakim Konstitusi di Indonesia". *Thesis* (Jakarta: Universitas Islam Negeri Syarif Hidayatullah Jakarta,

- 2020).
- Held, David. "Restructuring Global Governance: Cosmopolitanism, Democracy and the Global Order." *Millennium* 37, No. 3 (2009): 535-547. <https://doi.org/10.1177/0305829809103231>
- Held, David. *Demokrasi & Tatahan Global; Dari Negara Modern Hingga Pemerintahan Kosmopolitan*. (Yogyakarta: Pustaka Pelajar, 2004).
- Held, David. *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*. (California: Stanford University Press, 1995).
- Hidayat, Arif. "Dialektika Fungsional Antara Hukum dan Otoritas Kekuasaan Negara". *Masalah-Masalah Hukum* 42, No. 4 (2013): 565-575
- International Commission of Jurists. *The Bangalore Principles on Judicial Conducts*. Online at https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf
- Kurniawan, Faizal, Erni Agustin, and Rizki Amalia. "Unsur Kerugian dalam Unjustified Enrichment Untuk Mewujudkan Keadilan Korektif (Corrective Justice)". *Yuridika* 33, No. 1 (2018): 19-40. <https://doi.org/10.20473/ydk.v33i1.7201>
- Manan, Bagir. *Lembaga Kepresidenan*. (Yogyakarta: UII Press, 2008).
- Marzuki, Peter Mahmud. *Penelitian Hukum*. (Jakarta: Kencana Prenadamedia, 2005).
- Muhaimin, Muhaimin. *Metode Penelitian Hukum*. (Mataram: Unram Press, 2020)
- Pratiwi, Endang, Theo Negoro, and Hassanain Haykal. "Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?." *Jurnal Konstitusi* 19, No. 2 (2022): 268-293. <https://doi.org/10.31078/jk1922>
- Rimdan, Rimdan. *Kekuasaan Kehakiman Pasca-Amendemen Konstitusi*. (Jakarta: Kencana, 2013).
- Safa'at, Muhammad Ali. "Pengisian dan Masa Jabatan Hakim Konstitusi". Paper, presenter in *Seminar dan Lokakarya Nasional Perubahan Undang-Undang Mahkamah Konstitusi*, Jember, May 22-26 (2016). Online at <http://www.safaat.lecture.ub.ac.id/files/2016/06/PENGISIAN-DAN-MASA-JABATAN-HAKIM-KONSTITUSI.pdf>

- Satriawan, Iwan, Farid Sufian Shuaib, Tanto Lailam, Rofi Aulia Rahman, Devi Seviyana. "A Comparison of Appointment of Supreme Court Justices in Indonesia and Malaysia." *Journal of Indonesian Legal Studies* 7, No. 2 (2022): 633-676. <https://doi.org/10.15294/jils.v7i2.60862>
- Septiansyah, Zainal B., and Muhammad Ghalib. "Konsep Utilitarianisme dalam Filsafat Hukum dan Implementasinya di Indonesia". *Ijtihad* 34, No. 1 (2019): 27–34. <https://doi.org/10.15548/ijt.v34i1.3>
- Sherry, Suzanna. "Independent Judges and Independent Justice". *Law and Contemporary Problems* 61, No. 3 (1998): 15-19 . <https://doi.org/10.2307/1192413>
- Slamet, Kusnu Goesnadhie. "Prinsip Pengawasan Independensi Hakim". *Jurnal Hukum IUS QUIA IUSTUM* 14, No. 3 (2007): 434–447. <https://doi.org/10.20885/iustum.vol14.iss3.art4>
- Slamet, Kusnu Goesniadhie. "Harmonisasi Hukum dalam Perspektif Perundang-Undangan". *Jurnal Hukum IUS QUIA IUSTUM* 11, No. 27 (2004): 82–96. <https://doi.org/10.20885/iustum.vol11.iss27.art8>
- Tutik, Titik Triwulan. "Pengawasan Hakim Konstitusi dalam Sistem Pengawasan Hakim Menurut Undang-undang Dasar Negara RI 1945." *Jurnal Dinamika Hukum* 12, No. 2 (2012): 295-311.
- Wijayanti, Winda, and Nuzul Quraini. "Transparansi dan Partisipasi Publik dalam Rekrutmen Calon Hakim Konstitusi." *Jurnal Konstitusi* 12, No. 4 (2015): 663-690. <https://doi.org/10.31078/jk1241>
- Yani, Ahmad. "Sistem Pemerintahan Indonesia: Pendekatan Teori dan Praktek Konstitusi Undang-Undang Dasar 1945". *Jurnal Ilmiah Kebijakan Hukum* 12, No. 2 (2018): 55-68. <https://doi.org/10.30641/kebijakan.2018.v12.119-135>

Independence of Judiciary means independence from Executive and Legislature, but not independence from accountability.

Prashant Bhushan

Indian Lawyer

Acknowledgment

None

Funding Information

None

Conflicting Interest Statement

There is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.