

OPTIMIZING THE RECRUITMENT PROCESS OF CONSTITUTIONAL JUDGES TO ENFORCE INDEPENDENCE AND LEGAL JUSTICE IN INDONESIA

Achmad Taufan Soedirjo^{1*}, Faisal Santiago²

^{1,2}*Universitas Borobudur*

* achmadtaufansoedirjo1981@gmail.com

ABSTRACT

This research aims to analyze and propose optimizing the recruitment process for Constitutional Judges in Indonesia to uphold independence and legal justice. The research method used is the normative juridical method, which emphasizes the analysis of legal norms related to the recruitment process for Constitutional Judges. The discussion involves an in-depth review of relevant statutory articles, such as the 1945 Constitution of the Republic of Indonesia, the Constitutional Court Law, and other implementing regulations. In the discussion process, it was discovered that there was a need for increased transparency, public participation, and stricter selection criteria to ensure the integrity of Constitutional Judges. Certain articles, such as Article 24B of the 1945 Constitution, underline the importance of maintaining the independence of Constitutional Judges as guardians of the Constitution. The results of this discussion state that reforms in the recruitment process need to be carried out to ensure that the selected judges have high capacity and integrity. This research concludes that by optimizing the recruitment process for Constitutional Judges, the independence of the institution can be strengthened, as well as increasing public confidence in legal justice. It is hoped that increasing transparency and public participation can produce Constitutional Judges who can maintain justice and the sustainability of the Indonesian legal system.

Keywords: *process optimization, recruitment, constitutional judge, independence, justice*

This article is licensed under [CC BY-SA 4.0](https://creativecommons.org/licenses/by-sa/4.0/) 

INTRODUCTION

Indonesia as a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD 1945) has placed the Constitutional Court (MK) as a state institution that has a strategic role in protecting the constitution. The Constitutional Court has broad authority in examining and adjudicating cases related to the Constitution and has the responsibility to ensure justice and balance of power in this country. In carrying out their duties, the independence and integrity of Constitutional Judges is the main foundation that must be maintained and strengthened (Fitri Darmawan, 2022).

The role of Constitutional Justices which is so central in the Indonesian legal system requires success in the recruitment process. Recruitment of Constitutional Judges is a crucial initial stage in upholding legal independence and justice. Therefore, optimizing the recruitment process for Constitutional Judges is an urgent need so that this institution can function by the democratic spirit of the constitution (Darnela, 2009).

The recruitment process for Constitutional Judges in Indonesia cannot be separated from the historical context and development of the national legal system. In the post-reform democratization process, the Constitutional Court received special attention as an independent guardian of the Constitution (Kanatha & Edwar, 2022). However, a big challenge arises when discussing how the recruitment process for Constitutional Judges can be optimized to guarantee their independence without falling into the trap of politicization (IRIANI et al., 2021).

Seeing these conditions, this research aims to analyze and propose optimizing the recruitment process for Constitutional Judges so that they can uphold independence and legal justice. (Diantha, 2017) The initial step in this research is to detail the legal framework that regulates the Constitutional Court and the recruitment process for Constitutional Judges. Article 24B of the 1945 Constitution provides the constitutional basis regarding the existence and function of the Constitutional Court. Meanwhile, Law Number 24 of 2003 concerning the Constitutional Court provides the details. However, understanding of these articles needs to be deepened to formulate concrete optimization steps (Bhakti, 2017).

The importance of Constitutional Justices as upholders of the Constitution requires increased transparency, public participation, and stricter selection criteria in the recruitment process. Certain articles, such as Article 24B of the 1945 Constitution, explicitly emphasize that Constitutional Judges must uphold their independence. Therefore, it is necessary to understand how to ensure that the recruitment process not only meets formal criteria but also takes into account the integrity and capacity of the selected Constitutional Justices (Heryansyah, 2022).

In the context of discussing related articles and laws, concrete problems faced in the recruitment process for Constitutional Justices will be identified. This analysis is expected to provide a clear picture of the obstacles and weaknesses in the existing system. With a deep understanding of these obstacles, this research will look for effective and sustainable solutions.

Furthermore, this research will highlight several crucial aspects of optimizing the recruitment process for Constitutional Judges. Among them is increasing transparency through clearer arrangements regarding recruitment stages and more open selection criteria. Community participation is also a focus, where mechanisms that can ensure active community involvement in the recruitment process need to be clarified and strengthened (, &, 2013).

It is hoped that this will provide a significant contribution to formulating concrete steps to optimize the recruitment process for Constitutional Judges in Indonesia. It is hoped that increasing transparency and public participation can create a more accountable recruitment process and make Constitutional Judges independent and qualified law enforcers.

METHOD

The research method used is normative juridical research. Carried out through literature study with a focus on book literature and related laws. The Constitutional Court is in the process of recruiting Constitutional Judges (Sugiyono, 2015). A normative approach is used to analyze the legal framework that regulates these institutions, including the 1945 Constitution of the Republic of Indonesia and the Constitutional Court Law. UU no. 4 of 2014 concerning the Determination of Government Regulations instead of Law Number 1 of 2013 concerning the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court into Law. UU no. 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court. This study aims to identify obstacles and solutions in optimizing recruitment and ensuring the independence and quality of Constitutional Judges.

RESULTS AND DISCUSSION

The recruitment process for Constitutional Justices in Indonesia

The recruitment process for Constitutional Judges in Indonesia faces serious challenges in maintaining their independence and quality. Analysis of the 1945 Constitution of the Republic of Indonesia and the Constitutional Court Law reveals the need for optimization. Article 24B of the 1945 Constitution provides the constitutional basis, but deficiencies in recruitment procedures must be addressed (Dahlan, 2017). Increased transparency and more open selection criteria are crucial solutions. Clear arrangements regarding recruitment stages and community participation can strengthen accountability. These steps are essential to ensure that elected Constitutional Justices meet the required standards of integrity and capacity. Overall, optimizing the recruitment process is a vital basis for ensuring the Constitutional Court functions effectively and by the democratic spirit of the Constitution (Faiz & Chakim, 2020).

Along with the development of the legal system in Indonesia, the Constitutional Court (MK) plays an important role in protecting the constitution and upholding justice. However, an optimal recruitment process for Constitutional Justices is a critical point in ensuring the independence and quality of this institution. The regulations and laws governing the recruitment of Constitutional Judges, such as Law Number 24 of 2003, are the main basis. However, in-depth analysis shows that regulatory improvements are needed to overcome several challenges (Peraturan Pemerintah RI, 2017).

For example, research reveals that certain articles in the Constitutional Court Law are still open to interpretation that could affect the independence of Constitutional Judges. There needs to be clarification in determining more specific selection criteria and prioritizing professional qualifications without political interference. Apart from that, transparency in the selection stage is crucial to ensure accountability and public trust.

Unclearness in community participation mechanisms is also an important issue. So far, community involvement in the recruitment process has been minimal. Discussions need to focus on increasing the role of the community, such as involving advocacy institutions and allowing direct supervision of the selection process. Active community involvement can be an instrument for maintaining independence and reducing the potential for politicization.

When exploring previous cases related to the recruitment of Constitutional Justices, it was found that the process was sometimes colored by political considerations that were detrimental to the independence of the institution. For example, several cases show political pressure on candidates for Constitutional Justices, raising doubts about the objectivity and neutrality of the selection process. Therefore, there needs to be concrete steps to minimize political interference in the recruitment process.

Furthermore, the expansion of the authority of Commission III of the DPR in determining candidates for Constitutional Justices needs to be evaluated. This evaluation must consider the continued independence of the Constitutional Court and can be monitored through changes to regulations or amendments to the Constitutional Court Law. The direct involvement of parliamentarians in the selection process must be reduced to reduce the potential for politicization of recruitment.

Apart from that, it is necessary to pay attention to the issue of diversity in Constitutional Justices. Research shows that diversity in gender aspects and professional backgrounds remains a challenge. Discussions need to be held to formulate policies that are more inclusive and

encourage participation from various levels of society. Selection criteria must ensure representativeness and fairness in the diversity of Constitutional Judges.

Although existing laws and regulations provide a strong legal basis, their implementation still requires improvement. Concrete steps, such as the preparation of technical instructions and implementing regulations, need to be enforced. The discussion must also include regular monitoring and evaluation of the recruitment process so that it can adapt to the changing dynamics of society and institutional needs.

In addressing the issue of optimizing the recruitment of Constitutional Judges, cooperation between the executive, legislative, and judiciary is important. This collaboration must produce regulations that reflect the spirit of independence and maintain a balance of power. Openness to input from various parties and constructive dialogue will improve the quality of the resulting regulations.

Upholding Legal Independence and Justice

The recruitment process for Constitutional Judges in Indonesia is a major highlight in efforts to uphold legal independence and justice. Law Number 24 of 2003 concerning the Constitutional Court and Article 24B of the 1945 Constitution are the basis for regulations governing the existence and duties of Constitutional Judges. However, in-depth analysis reveals several challenges that need to be overcome to ensure the independence and quality of Constitutional Judges (Pertiwi, 2020).

The fundamental problem arises in the lack of clarity in the selection criteria for Constitutional Justices. Although the law provides guidance, its interpretation and implementation can sometimes result in mixed assessments. Therefore, there is a need for revisions or more detailed technical instructions to minimize the room for interpretation that could harm the independence of Constitutional Judges.

Community involvement in the recruitment process is key to maintaining accountability and reducing the potential for politicization. However, the implementation of participation mechanisms still needs to be strengthened. Several previous cases show minimal public involvement, so there is a need for improvements in mechanisms that can ensure effective participation from various elements of society (Nugraha, 2021).

In certain cases, the recruitment process for Constitutional Justices is colored by politicization and pressure from certain parties. This creates doubts about the independence of Constitutional Justices. As a solution, there needs to be concrete steps in regulations to prevent political interference, such as limiting the involvement of parliamentarians in the selection process.

Diversity of Constitutional Justices, both in terms of gender and professional background, remains a challenge. Regulations need to ensure that selection criteria reflect the principle of inclusivity and provide space for participation from various levels of society. A lack of diversity can be detrimental to the perspectives needed to address a wide range of constitutional issues.

Evaluation of the authority of Commission III of the DPR in determining candidates for Constitutional Justices is essential. Arrangements that give great authority to legislative institutions in determining candidates for Constitutional Justices need to be balanced with

mechanisms that ensure the independence of the Constitutional Court. Limiting authority or increasing oversight of the process can minimize the risk of politicization.

Although the relevant regulations and laws already provide a fairly strong legal basis, expansion and clarification of several provisions can strengthen the regulatory basis. There is a need to involve stakeholders and legal experts in drafting or revising regulations to create regulations that are comprehensive and responsive to societal dynamics.

Concrete steps need to be taken to ensure transparency in the recruitment process. Openness of information regarding the stages, criteria, and selection results is the key to building public trust. The involvement of the media and legal monitoring institutions can also ensure that the process is fair and transparent (Rusdi, 2019).

The importance of cooperation between the executive, legislative, and judicial institutions is important in creating regulations that are balanced and accommodate various interests. Constructive dialogue between related parties can produce regulations that are more targeted and create a recruitment process that is in line with the spirit of independence and legal justice.

In evaluating the recruitment process for Constitutional Justices, it needs to be emphasized that changes or improvements to regulations are a progressive step. These improvements must involve stakeholders and be implemented by taking into account the principles of justice, transparency, and independence of Constitutional Judges as upholders of the Constitution with integrity.

CONCLUSION

First, the selection criteria for Constitutional Judges need to be detailed and clarified in regulations to reduce the room for interpretation that could harm the independence of Constitutional Judges. Refining these regulations can ensure that selection is carried out based on capacity and integrity, without any political interference that is detrimental to the independence of the institution.

Second, it is necessary to strengthen the community participation mechanism in the recruitment process. Even though there have been efforts to involve the community, less than-optimal implementation has resulted in minimal public involvement. Expanding and improving participation mechanisms can be a solution to increase accountability and minimize the potential for politicization.

Third, previous cases show that there is political pressure and politicization in the recruitment process, detrimental to the independence of Constitutional Judges. Therefore, regulations need to provide clear boundaries regarding the involvement of parliamentarians in the selection process to reduce the risk of politicization.

Fourth, the diversity of Constitutional Justices needs to be a main concern in optimizing recruitment. Regulations must ensure that selection criteria reflect the principle of inclusivity and provide space for participation from various levels of society. This is important to ensure diverse perspectives in addressing constitutional issues.

Fifth, evaluating the authority of Commission III of the DPR in determining candidates for Constitutional Justices is essential. Arrangements that give broad authority to legislative institutions need to be balanced with mechanisms that ensure the independence of the Constitutional Court.

REFERENCES

, A., &, M. (2013). Problematika Pengujian Peraturan Perundang-Undangan (Judicial Review) Pada Mahkamah Agung Dan Mahkamah Konstitusi. *Yustisia Jurnal Hukum*, 2(1). <https://doi.org/10.20961/yustisia.v2i1.11070>

Bhakti, T. S. (2017). Politik Hukum Dalam Putusan Hakim (The Politic of Law in a Verdict). *Jurnal Hukum Dan Peradilan, Sinta* 2, 5(1).

Dahlan, Moh. (2017). Nilai-Nilai Kemanusiaan dalam Legislasi Hukum Islam di Indonesia. *Al-Manahij: Jurnal Kajian Hukum Islam*, 10(2). <https://doi.org/10.24090/mnh.v10i2.935>

Darnell, L. (2009). Pembangunan Hukum dan Hak Asasi Manusia di Indonesia. *Al-Manahij: Jurnal Kajian Hukum Islam*, 3(1). <https://doi.org/10.24090/mnh.v3i1.3682>

Diantha, I. M. P. (2017). Hukum Normatif Dalam Justifikasi Teori Hukum. In *Hukum Normatif Dalam Justifikasi Teori Hukum*.

Faiz, P. M., & Chakim, M. L. (2020). *Peradilan konstitusi: perbandingan kelembagaan dan kewenangan konstitusional di Asia*. Rajawali Pers.

Fitri Darmawan, K. (2022). Hak Asasi Lingkungan Versus Hak Atas Pembangunan Sebagai Ham: Antara Konflik Dan Keseimbangan. *Jurnal Poros Hukum Padjadjaran*, 3(2). <https://doi.org/10.23920/jphp.v3i2.685>

Heryansyah, D. (2022). Urgensi Perluasan Kewenangan Komisi Yudisial dalam Pengawasan Terhadap Hakim Mahkamah Konstitusi. *Staatsrecht: Jurnal Hukum Kenegaraan Dan Politik Islam*, 1(2). <https://doi.org/10.14421/staatsrecht.v1i2.2472>

IRIANI, D., Lusiana Al Vionita, Uswatul Khasanah, & Indah Wiranti. (2021). Critical Legal Studies Politik Etis Terhadap Mahar Politik Dalam Pembaharuan Hukum Pidana. *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam*, 3(1). <https://doi.org/10.47435/al-ahkam.v3i1.464>

Kanantha, A. M., & Edwar, F. (2022). Independensi Pengadilan Pajak Ditinjau Dari Pasal 24 Ayat (1) UUD NRI 1945. *Reformasi Hukum Trisakti*, 4(3). <https://doi.org/10.25105/refor.v4i3.13828>

Nugraha, W. (2021). Pelaksanaan Putusan Tata Usaha Negara Dalam Pelanggaran Administrasi Pemilu Berdasarkan Putusan No. 56/G/SPPU/2018/PTUN-JKT. *UNES Law Review*, 3(2). <https://doi.org/10.31933/unesrev.v3i2.167>

Peraturan Pemerintah RI. (2017). Undang-undang (UU) Nomor 20 Tahun 2003 tentang Sistem Pendidikan Nasional. In *Ekombis Sains: Jurnal Ekonomi, Keuangan dan Bisnis* (Vol. 2, Issue 1).

Pertiwi, H. F. (2020). Analisis Corporate Citizenship Dan Hak Asasi Manusia Terhadap Isu Eksplorasi Lingkungan Pada Film “Sexy Killers.” *Masalah-Masalah Hukum*, 49(1). <https://doi.org/10.14710/mmh.49.1.2020.71-79>

Rusdi, M. (2019). Implikasi Dissenting Opinion Hakim Mahkamah Konstitusi Terhadap Kesadaran Hukum Masyarakat. *Widya Pranata Hukum : Jurnal Kajian Dan Penelitian Hukum*, 1(1). <https://doi.org/10.37631/widyapranata.v1i1.257>

Sugiyono. (2015). Sugiyono, Metode Penelitian dan Pengembangan Pendekatan Kualitatif, Kuantitatif, dan R&D , (Bandung: Alfabeta, 2015), 407 1. *Metode Penelitian Dan Pengembangan Pendekatan Kualitatif, Kuantitatif, Dan R&D*, 2015.