

# Political Recalling of Constitutional Judge by the House of Representatives (DPR): Interference Against the Independence of Indonesian Constitutional Court

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## Abstract

The Constitutional Court (MK) has nine constitutional judges who come from the House of Representatives (DPR), the President, and the Supreme Court (MA), with each institution entitled to nominate three judges. The nine MK judges who come from the three nominating institutions are expected to fulfill a sense of justice in society through their decisions. To be able to make fair decisions, constitutional judges must always maintain independence and impartiality. But what happened was that the DPR intervened to pull constitutional judges into political territory. On Thursday, September 22, 2022, the DPR conducted a political recalling of sitting constitutional judge Aswanto. The DPR openly stated that the reason for the dismissal was because Aswanto was a Constitutional Court judge appointed by the DPR, so he should be a representative of the DPR, instead of annulling various laws created by the DPR. Along with the sudden dismissal, the DPR immediately nominated Guntur Hamzah to replace Aswanto without going through a fit and proper test. As a follow-up, President Joko Widodo then issued a Presidential Decree to appoint a new constitutional judge. Through normative legal research, this article finds the DPR's political recalling of Aswanto is unconstitutional. Two legal remedies can be taken against the intervention of judicial power. The first is to apply for the annulment of the KTUN, in this case the Presidential Decree Number 114/P/2022 through the State Administrative Court (PTUN) which has been registered with case register Number: 2/G/2023/PTUN.JKT. The second attempt is to file a constitutional complaint to the constitutional court, the Constitutional Court. However, the second effort related to the substance test of the Constitutional Court Law submitted by Zico Leonard Djagardo Simanjutak has been rejected by the Constitutional Court in Decision Number 103/PUU-XX/2022 on the pretext that it does not include its authority.

**Keywords:** Constitutional Judge; Political Recall; Independence of The Constitutional Court

**DOI:** 10.7176/JLPG/135-11

**Publication date:** August 31<sup>st</sup> 2023

## 1. Introduction

Indonesia's demokratische rechtsstaat is a provision set out in Article 1(2) and (3) of the amended 1945 Constitution. The amendment of the 1945 Constitution restores sovereignty in the hands of the people and guarantees an independent judiciary. Article 24 of the 1945 Constitution is the legal foundation for exercising judicial independence without influence and pressure from other powers. Judicial power in Indonesia is an independent judicial power and is under the Supreme Court (MA) and the Constitutional Court (MK). The Constitutional Court declares itself as the guardian of the democracy, the guardian of the constitution, the final interpreter of the constitution, the protector of the citizen's constitutional rights, and the protector of the human rights. As stipulated in Article 24C of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court has 4 authorities: to examine laws against the constitution (1945 Constitution), to decide disputes over authority between state institutions, to decide on the dissolution of political parties, and to decide disputes over the results of general elections. The Constitutional Court is also given the obligation to assess the opinion of the House of Representatives (DPR) regarding alleged violations by the President and/or Vice President.

The formulation of changes to the 1945 Constitution shifted the highest position of the MPR state institution to be equal to other state institutions. Including the Constitutional Court, which was formed as a result of the third amendment, has an equal position with state institutions that have been formed earlier such as the DPR, President, MPR, and Supreme Court. The Constitutional Court is composed of 1 (one) chairman who is concurrently a member, 1 (one) vice chairman who is concurrently a member, and 7 (seven) constitutional judges. The selection of the 9 (nine) MK judges is submitted to the DPR, MA, and President, as institutions that hold legislative, executive, and judicial powers. In selecting constitutional judges, the DPR represents the legislature, the President represents the executive, and the Supreme Court represents the judiciary.

The nine Constitutional Court judges, who come from different government bodies, are likely to slip into the political interests of each institution. For example, in September 2022, for the first time in the history of the Indonesian Constitutional Court, there was a political recall in the middle of the term of office of constitutional

judge and Deputy Chairman of the Constitutional Court, Aswanto, by Commission III of the House of Representatives of the Republic of Indonesia. In this case, the DPR abruptly recalled Aswanto as a constitutional judge and nominated the Secretary General of the Constitutional Court, Guntur Hamzah, to be his replacement. The reason for the intervention is that Aswanto's appointment came from the DPR, so Aswanto as a DPR representative should have defended the interests of the DPR, instead of annulling various legislative products created by the DPR, such as one of them granting a review of the Job Creation Law. In this instance, the DPR feels that his performance at the Constitutional Court is not satisfactory, and has the right to conduct a "recalling". This political recall is a form of entry of the DPR's political interests in the independence of judicial power in a democratic era. This is very likely to happen, considering that 3 (three) MK judges come from the DPR as a state institution authorized to make laws and regulations, while one of the authorities of the Constitutional Court is to test these laws and regulations against the 1945 Constitution to be declared unconstitutional, constitutional, conditionally unconstitutional, or conditionally constitutional.

## 2. Problem Formulation

The formulation of the problem raised is :

- 1.How is the legitimacy of the House of Representatives' (DPR) political recalling of constitutional judge Aswanto?
- 2.What are the legal efforts against political recalling of the House of Representatives (DPR) ?

## 3. Method

This research is part of normative legal research. Through this normative approach, the author examines the recalling action taken by the DPR to answer the problem formulation above. The approach chosen is the statute approach, which examines all laws and regulations related to legal issues, and the case approach, which studies the considerations of judges in deciding cases. Normative legal research uses secondary data or literature, derived from primary materials, namely various laws and court decisions and secondary materials, namely journals and books.

## 4. Discussion

### 4.1. Political Recalling of The House of Representatives (DPR) Against Constitutional Judge Aswanto

After four amendments, the principles of constitutional democracy and democratic rule of law are firmly enshrined in Article 1 paragraph (2) and (3) of the 1945 Constitution. The constitutional democratic system in Indonesia is manifested in the division of power between state institutions to prevent the arbitrariness of state officials. Meanwhile, the characteristic of *rechtsstaat* is having an independent and impartial judicial body, which is realized in an independent judicial power.

The independence of the judiciary is an important pillar for upholding democracy and the rule of law. Judicial independence is a judiciary that is free from outside interference or pressure. Independent judicial power is free from coercion, directives, or recommendations coming from extra-judicial sources. So that the Constitutional Court, which is the holder of judicial power, is free from other powers outside the judiciary, both executive and legislative.

Judicial independence is reflected in the process of examination and decision-making by MK judges. Judicial independence is not absolute, because judges are required to make decisions that are in accordance with the law and provide a sense of justice for the community. In carrying out their duties, MK judges have the right to be free from all persuasion, pressure, influence and threats that seek to influence the objectivity of their decisions. However, the independence guaranteed in the constitution and laws and regulations is in fact still getting interventions to erode its independence, as happened in the removal of Aswanto from the position of MK judge by the DPR.

The legislature put on a show of power politics that undermines the independence of judges in a plenary session meeting on Thursday, September 29, 2022. Commission III of the House of Representatives suddenly removed constitutional judge Aswanto in the middle of his ongoing term of office without a clear basis of authority and instead the name of Guntur Hamzah was immediately mentioned to fill the position of MK judge in order to issue a Presidential Decree. President Joko Widodo then legally appointed Guntur Hamzah to replace Aswanto to fill the position of Constitutional Court judge on Wednesday, November 23, 2022 held at the State Palace based on Presidential Decree (Keppres) Number 114/P/2022 concerning the Dismissal and Appointment of Constitutional Judges proposed by the DPR. To assess the constitutionality of the DPR's decision, it is important to first look at the legal guidelines governing the appointment and dismissal of constitutional judges. The Constitution states that the appointment and dismissal of Constitutional Court judges is done according to law.

Recruitment to the position of Constitutional Court judge must be due to a vacuum in the judicial office. This means that there must first be a judge who dies, expires, resigns, or is impeached and then a position arises

that can be filled by a new recruitment process. The 1945 Constitution mandates that the DPR, the President, and the Supreme Court select MK judges. The 1945 Constitution mandates the legislature, executive and judiciary to participate in the nomination of constitutional judges. With regard to the recruitment of constitutional judges, according to Article 24C paragraph (3) of the 1945 Constitution, the Constitutional Court consists of nine members from the Supreme Court (MA), the House of Representatives (DPR), and the President who each nominate three names and are then appointed by the President. If there is a vacancy in the position of constitutional judge, the Constitutional Court must notify the relevant institution where the previous judge was elected to propose the name of the next judge so that they can carry out new recruitment in accordance with the law. If there is a vacancy, the vacancy will be filled by the candidate for constitutional judge proposed by the institution from which the previous judge was selected. For example, if Judge A dies or is dismissed, if the judge was nominated by the DPR, then the DPR has the right and obligation to nominate a replacement after going through the appropriate fit and proper test election process.

Article 24C paragraph (6) of the 1945 Constitution requires a unified arrangement for the appointment of constitutional judges between the proposing institutions to be regulated by law, but Article 20 paragraph (1) of the Constitutional Court Law provides flexibility for each proposing institution to select and submit candidates for constitutional judges. Article 20 paragraph (1) of the Constitutional Court Law, the three governing bodies have the right to formulate their own provisions regarding the systematic filling of the position of constitutional court judge. As a result, the three institutions use different procedures in conducting selection, selection, and submission. There is no uniform benchmark for selecting the names of candidates who are then proposed to the President. The Constitutional Court Law in Article 20 paragraph (2) only emphasizes that the selection process of constitutional judges from the three state institutions should be objective, accountable, transparent and open. Candidates for Constitutional Court judges must also be published in the mass media, both print and electronic, so that the public has space to express their opinions about the candidates.

The element of subjectivity of the President, DPR voting, and the closed system of the Supreme Court are the 3 (three) models used in the recruitment of constitutional judges to date. The Supreme Court organizes a closed selection of constitutional judge candidates, which can only be followed by internal constitutional judge candidates. The DPR organizes an open selection of judge candidates so that everyone who has the qualifications as stipulated by the 1945 Constitution and the Constitutional Court Law can register and then be voted on by the DPR, but there are also incumbents or previous constitutional judge office holders who run again without a fit and proper test and can automatically go through a vote. Meanwhile, the President submits the names of constitutional judge candidates directly. The DPR and the President have also selected candidates by forming a selection committee.

The House of Representatives has the authority to nominate candidates for Constitutional Court judges. The House of Representatives has several times held fit and proper tests in selecting candidates for Constitutional Court judges. Historically, the DPR has used different mechanisms to fill the positions of constitutional judges. In the first period (2003-2008), through an open fit and proper test and involving public participation, 3 (three) DPR proposals that passed the selection sat as constitutional judges, namely Jimly Asshiddiqie, I Dewa Gede Palguna, and Achmad Roestandi. In the second period (2008-2013), constitutional judges from the DPR were Mahfud MD who replaced Achmad Roestandi, Jimly Asshiddiqie who was nominated for the second time, and Akil Mochtar. The recruitment of constitutional judge candidates in this period did not reflect the principles of transparency, participation, objectivity and accountability. There were incumbents who returned to the position of constitutional judge without going through the fit and proper test again and were only asked for their willingness. During this period, Jimly Asshiddiqie resigned on November 1, 2008 and was replaced by Harjono who took office on March 3, 2009. Harjono's selection was conducted through a fit and proper test that involved the public. In the third period (2013- 2018), the DPR nominated Akil Mochtar for the second time without a fit and proper test, only asking his willingness as an incumbent. His tenure as a constitutional judge this time did not last long as Akil Mochtar was dishonorably discharged on October 2, 2013 in the aftermath of a bribery case. In 2013, Arief Hidayat replaced Mahfud MD as a constitutional judge through a fit and proper test and mass participation. In 2014, the House of Representatives (DPR), through Commission III on Law, formed a selection committee for constitutional judges consisting of people with varied backgrounds, including former MK judges, academics, and community leaders. Commission III granted discretion to the selection committee of constitutional judges (Team of Experts) to select and assess candidates for Constitutional Court judges in accordance with the criteria for constitutional judge candidates determined by the 1945 Constitution and the Constitutional Court Law. In 2014, Aswanto was elected to replace Harjono and Wahiduddin Adams replaced Akil Mochtar. Both were selected based on a fit and proper test for the 2014-2019 period. In 2018, the DPR agreed to nominate Arief Hidayat for the second time as a constitutional judge for the 2018-2023 term. In 2019, Aswanto and Wahiduddin Adams, whose positions were about to expire, ran again and through a fit and proper test were elected again for the 2019-2024 period, but their recruitment was considered to be only a formality. In 2022, while Aswanto's term was still ongoing, the House of Representatives in accordance with its political

tastes and interests dismissed Aswanto and appointed Guntur Hamzah as a constitutional judge who then took his oath on November 23, 2022. Since then, the constitutional judges who have served from the DPR are Arief Hidayat, Wahiduddin Adams, and Guntur Hamzah.

The authority to dismiss Constitutional Court judges is regulated and is the right of the Constitutional Court alone, not by other bodies. In the case of constitutional judges approaching the expiration of their term of office or 70 years of age, the Constitutional Court notifies the competent authority (DPR, MK, or the President) about the constitutional judge who will be dismissed from office as far as 6 (six) months in advance. Then, at the request of the Chief Justice of the Constitutional Court, the President issues a Presidential Decree (Keppres) on the dismissal of constitutional judges. After the President issues the Presidential Decree, within 14 (fourteen) working days the Constitutional Court notifies the dismissed judge to the institution that proposed the removed judge to propose a replacement within 30 (thirty) days after receiving news from the Constitutional Court. The new constitutional judge will be inaugurated no later than 7 (seven) working days after the submission is received.

The dismissal of MK judges is determined by Presidential Decree at the request of the Chief Justice of the Constitutional Court. MK judges can be dismissed with honor or dishonor. Honorably dismissed due to death, voluntary resignation from office to the Chief Justice of the Constitutional Court, has reached the age of 70 (seventy) years, or has a physical or mental illness that causes him to be unable to work consecutively for 3 (three) months, so that he cannot do his job supported by a doctor's certificate.

Constitutional Court judges can be dishonorably dismissed, among others, because they are sentenced to imprisonment based on an inkracht court decision for committing a crime punishable by imprisonment, committing a disgraceful act, failing to attend a hearing which is their duty and obligation 5 (five) times in a row without a valid reason, violating their oath of office, or deliberately obstructing the Constitutional Court's decision within the period specified in Article 7B paragraph (4) of the 1945 Constitution of the Republic of Indonesia, violating the prohibition on holding concurrent positions, no longer qualifying as a Constitutional Court judge, or for violating the Code of Ethics and Code of Conduct for Constitutional Court Judges.

Before a judge is dishonorably discharged, the judge is temporarily discharged by Presidential Decree at the request of the Chief Justice of the Constitutional Court. Judges are temporarily dismissed, among others, to be given time to defend themselves before the Honorary Panel, there is a detention order, charged for being involved in a criminal case referred to in Article 21 paragraph (4) of the Criminal Procedure Code even though no detention has been carried out. Temporary suspension does not apply to judges who have been imprisoned based on an inkracht court decision as a result of a criminal offense committed. If the Honorary Council decides that the judge concerned has committed a criminal offense, the judge will then be dishonorably dismissed.

The provision for the length of the term of office of Constitutional Court judges, which was previously 5 (five) years with the possibility of extension 1 (one) time, has been changed by Article 87 letter a of Law Number 7 of 2020 concerning the Constitutional Court (MK Law). No longer using a period of 5 (five) years, constitutional judges can now end their duties after reaching the age of 70 (seventy) years or the total length of service of 15 (fifteen) years. Aswanto was first appointed as a constitutional judge on March 21, 2014. The House of Representatives then extended Aswanto's term of office for a second period, from 2019 to 2024. However, with the amendment to the Constitutional Court Law which also brought changes to the length of time to serve as a Constitutional Court judge, Aswanto's term of office will only end on March 21, 2029.

The problem arose when the DPR suddenly took the initiative to remove Aswanto, who was a constitutional judge whose term of office was still ongoing, even though the Constitutional Court had never sent a notification letter regarding the dismissal of Judge Aswanto to the DPR. The DPR is indeed one of three institutions that have the right to propose candidates for constitutional judges, but the authority to propose the dismissal of constitutional judges is with the Constitutional Court. So if the Constitutional Court does not dismiss Judge Aswanto, then the DPR is the one without the authority to propose his dismissal.

Prior to the dismissal of judge Aswanto, the Constitutional Court did send a letter to the DPR, the President, and the Supreme Court. The letter sent on July 21, 2020 was not a letter of dismissal of constitutional judges, but a letter of confirmation of the Constitutional Court's decision Number 96/PUU-XVIII/2020 regarding the judicial review of Article 87 letters a and b of the Constitutional Court Law. At that time, the Constitutional Court only granted the substance test of Article 87 letter a which regulates the position of chairman and deputy chairman of the Constitutional Court while Article 87 letter b regarding the periodization of the term of office of constitutional judges was not granted by the Constitutional Court. The article provides legal status to Constitutional Court judges who occupy the position of constitutional judge to remain a constitutional judge until they reach the retirement age of 70 (seventy) years or until their position as a Constitutional Court judge has been 15 (fifteen) years.

To emphasize that the change was not to give privilege to the sitting MK judge, the Court considered it necessary to take legal action to emphasize its intentions. Therefore, the letter is the Court's confirmation to the institution proposing the Constitutional Court judge. This confirmation is in the form of confirmation that the

Constitutional Court judges continue to carry out their positions because they are no longer based on periodization, to each proposing institution.

“[3.22] Menimbang bahwa setelah jelas bagi Mahkamah akan niat sesungguhnya (original intent) dari Pembentuk Undang-Undang dalam pembentukan UU 7/2020, maka Mahkamah berpendapat ketentuan Pasal 87 huruf b UU 7/2020 tidak bertentangan dengan Pasal 28D ayat (1) UUD 1945. Pembacaan atas rumusan Pasal 87 huruf b UU 7/2020 menurut Mahkamah harus dipahami semata-mata sebagai aturan peralihan yang menghubungkan agar aturan baru dapat berlaku selaras dengan aturan lama. Bahwa untuk menegaskan ketentuan peralihan tersebut tidak dibuat untuk memberikan keistimewaan terselubung kepada orang tertentu yang saat ini sedang menjabat sebagai hakim konstitusi, maka Mahkamah berpendapat diperlukan tindakan hukum untuk menegaskan pemaknaan tersebut. Tindakan hukum demikian berupa konfirmasi oleh Mahkamah kepada lembaga yang mengajukan hakim konstitusi yang saat ini sedang menjabat. Konfirmasi yang dimaksud mengandung arti bahwa hakim konstitusi melalui Mahkamah Konstitusi menyampaikan pemberitahuan ihwal melanjutkan masa jabatannya yang tidak lagi mengenal adanya periodisasi kepada masing-masing lembaga pengusul (DPR, Presiden, dan Mahkamah Agung) [Considering that after it is clear to the Court the true intention (original intent) of the Framers of the Law in the formation of Law 7/2020, the Court is of the opinion that the provisions of Article 87 letter b of Law 7/2020 are not contrary to Article 28D paragraph (1) of the 1945 Constitution. According to the Court, the reading of the formulation of Article 87 letter b of Law 7/2020 must be understood solely as a transitional rule that connects so that new rules can apply in harmony with old rules. To emphasize that the transitional provisions are not made to give hidden privileges to certain people who are currently serving as constitutional judges, the Court is of the opinion that legal action is needed to emphasize this meaning. Such legal action is in the form of confirmation by the Court to the institution that proposes constitutional judges who are currently in office. The confirmation in question implies that the constitutional judge through the Constitutional Court submits a notification regarding the continuation of his term of office which no longer recognizes the existence of periodization to each proposing institution (DPR, President, and Supreme Court);”

However, the DPR used the letter from the Constitutional Court as a loophole to take steps to remove Judge Aswanto from his position as if it was done at the request of the Constitutional Court. In other words, the DPR misused the letter from the Constitutional Court to obtain approval through a Presidential Decree proposing the removal of Judge Aswanto and replacing him with Guntur Hamzah as a constitutional judge. Thus, the DPR's action is an action taken without authority, without a vacancy in office, and without being preceded by a notification letter of the dismissal of a constitutional judge from the Constitutional Court is clearly wrong according to the law.

The nomination of Guntur Hamzah by the DPR and his inauguration by President Jokowi as a constitutional judge to replace Aswanto with Presidential Decree (Keppres) Number 114/P/2022 was carried out without the vacancy and notification by the Constitutional Court. In addition, it was also without public knowledge or the application of a fit and proper test, unlike the selection process for constitutional judge candidates held by the DPR previously. The Constitutional Court Law does give discretion to each authorized institution to select and appoint candidates for constitutional judges, but with a note that the recruitment is carried out objectively, accountably, transparently and participatively. The absence of unity or fixed arrangements regarding the process of recruitment of judges by the DPR, the President, and the Supreme Court opens the opportunity for arbitrary replacement of constitutional judges as happened in the Aswanto case on the grounds that many laws have been annulled in their decisions. The decision of the DPR and the President to take such action is clearly unconstitutional because it contradicts the 1945

During his tenure as one of the 9 (nine) Constitutional Court judges, Aswanto had granted 131 (one hundred and thirty-one) law review cases from 2014 to 2022, consisting of 35 (thirty-five) granted in full and 96 (ninety-six) granted in part. Among them, Aswanto gave 2 (two) dissenting opinions. One of the law reviews that Aswanto adjudicated and was most widely highlighted was the review of the Job Creation Law 11/2020 which was declared conditionally unconstitutional as long as no improvements were made within a period of 2 (two) years.

**Table 1. Decision on Testing Laws and Regulations Granted by Aswanto During His Term as a Panel of Constitutional Court Judges**

No.	Decision Number and Date	Case	Verdict
1.	83/PUU-XI/2013 Mar 26, 2014	Law Number 15 of 2013 concerning Amendments to Law Number 19 of 2012 concerning the State Budget for Fiscal Year 2013	Granted
2.	100/PUU-XI/2013 03 Apr 2014	Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties	Partially granted
3.	32/PUU-XI/2013 03 Apr 2014	Law Number 2 of 1992 concerning Insurance Business	Partially granted
4.	31/PUU-XI/2013 03 Apr 2014	Law Number 15 of 2011 concerning General Election Organizer	Partially granted
5.	24/PUU-XII/2014 03 Apr 2014	Law Number 8 of 2012 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council	Granted
6.	26/PUU-XI/2013 14 May 2014	Law Number 18 of 2003 concerning Advocates	Granted
7.	97/PUU-XI/2013 19 May 2014	Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government and Law Number 48 of 2009 concerning Judicial Power	Granted
8.	35/PUU-XI/2013 22 May 2014	Law Number 27 of 2009 concerning the People's Consultative Assembly, House of Representatives, Regional Representative Council, and Regional People's Representative Council, and Law Number 17 of 2003 concerning State Finance	Partially granted
9.	38/PUU-XI/2013 22 May 2014	Law Number 44 of 2009 concerning Hospitals	Partially granted
10.	28/PUU-XI/2013 28 May 2014	Law Number 17 of 2012 concerning Cooperatives	Partially granted
11.	22/PUU-XII/2014 28 May 2014	Law Number 42 of 2008 concerning Presidential and Vice Presidential Elections	Granted
12.	50/PUU-XII/2014 03 Jul 2014	Law Number 42 of 2008 concerning Presidential and Vice Presidential Elections	Granted
13.	67/PUU-XI/2013 Sep 11, 2014	Law Number 13 of 2003 concerning Manpower	Partially granted
14.	82/PUU-XII/2014 Sep 29, 2014	Law Number 17 of 2014 concerning the People's Consultative Assembly, People's Representative Council, Regional Representative Council, and Regional People's Representative Council	Partially granted
15.	84/PUU-XI/2013 09 Oct 2014	Law Number 40 of 2007 concerning Limited Liability Companies	Granted
16.	50/PUU-XI/2013 16 Oct 2014	Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad	Partially granted
17.	87/PUU-XI/2013 05 Nov 2014	Law Number 19 of 2013 concerning the Protection and Empowerment of Farmers	Partially granted
18.	15/PUU-XII/2014 Nov 11, 2014	Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution	Granted
19.	82/PUU-XI/2013 23 Dec 2014	Law Number 17 of 2013 concerning Community Organizations	Partially granted

20.	3/PUU-XII/2014 23 Dec 20145	Law Number 17 of 2013 concerning Community Organizations	Partially granted
21.	16/PUU-XII/2014 23 Dec 2014	Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission and Law Number 30 of 2002 concerning the Corruption Eradication Commission	Partially granted
22.	85/PUU-XI/2013 18 Feb 2015	Law Number 7 of 2004 concerning Water Resources	Partially granted
23.	19/PUU-XII/2014 Mar 11, 2015	Law Number 3 of 2005 concerning the National Sports System	Partially granted
24.	21/PUU-XII/2014 Apr 28, 2015	Law Number 8 of 1981 concerning Criminal Procedure Law	Partially granted  (Aswanto dissenting opinion)
25.	46/PUU-XII/2014 26 May 2015	Law Number 28 of 2009 concerning Regional Taxes and Regional Levies	Granted
26.	109/PUU-XII/2014 Jun 18, 2015	Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking	Granted
27.	41/PUU-XII/2014 08 Jul 2015	Law Number 5 of 2014 concerning State Civil Apparatus	Partially granted
28.	33/PUU-XIII/2015 08 Jul 2015	Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law	Partially granted
29.	42/PUU-XIII/2015 09 Jul 2015	Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors	Partially granted
30.	46/PUU-XIII/2015 09 Jul 2015	Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors	Partially granted
31.	51/PUU-XIII/2015 09 Jul 2015	Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law	Partially granted
32.	25/PUU-XII/2014 04 Aug 2015	Law Number 21 of 2011 concerning the Financial Services Authority	Partially granted
33.	58/PUU-XII/2014	Law Number 30 of 2009 concerning Electricity	Partially

	Sep 22, 2015		granted
34.	36/PUU-XIII/2015 Sep 29, 2015	Law Number 18 of 2003 concerning Advocates	Partially granted
35.	100/PUU-XIII/2015 Sep 29, 2015	Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law	Partially granted
36.	68/PUU-XIII/2015 Sep 29, 2015	Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes	Granted
37.	112/PUU-XII/2014 Sep 29, 2015	Law Number 18 of 2003 concerning Advocates	Partially granted
38.	60/PUU-XIII/2015 Sep 29, 2015	Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law	Partially granted
39.	43/PUU-XIII/2015 07 Oct 2015	Law Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts, Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts, Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts	Granted
40.	7/PUU-XII/2014 04 Nov 2015	Law Number 13 of 2003 concerning Manpower	Granted
41.	105/PUU-XIII/2015 Nov 11, 2015	Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law	Partially granted
42.	31/PUU-XIII/2015 10 Dec 2015	Criminal Code	Granted
43.	95/PUU-XII/2014 10 Dec 2015	Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction and Law Number 41 of 1999 concerning Forestry	Partially granted
44.	3/PUU-XIII/2015 31 Mar 2016	Law Number 22 of 2009 concerning Road Traffic and Transport	Granted
45.	21/PUU-XIII/2015 10 May 2016	Law Number 20 of 2011 concerning Flats	Partially granted
46.	33/PUU-XIV/2016 12 May 2016	Law Number 8 of 1981 concerning Criminal Procedure Law	Granted
47.	107/PUU-XIII/2015	Law Number 5 of 2010 concerning Amendments to Law	Granted



	Jun 15, 2016	Number 22 of 2002 concerning Clemency	
48.	8/PUU-XIII/2015 Jun 15, 2016	Law Number 5 of 2014 concerning State Civil Apparatus	Partially granted
49.	7/PUU-XIII/2015 Jun 21, 2016	Law Number 23 of 2014 concerning Regional Government	Partially granted
50.	6/PUU-XIV/2016 04 Aug 2016	Law Number 14 of 2002 concerning the Tax Court	Partially granted
51.	128/PUU-XIII/2015 23 Aug 2016	Law Number 6 of 2014 concerning Villages	Partially granted
52.	51/PUU-XIV/2016 23 Aug 2016	Law Number 11 of 2006 concerning the Government of Aceh	Granted
53.	21/PUU-XIV/2016 Sep 07, 2016	Law Number 1 of 1946 concerning the Regulation of Criminal Law and Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption	Granted
54.	20/PUU-XIV/2016 Sep 07, 2016	Law Number 11 of 2008 concerning Information and Electronic Transactions and Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption	Partially granted
55.	72/PUU-XIII/2015 Sep 29, 2016	Law Number 13 of 2003 concerning Manpower	Partially granted
56.	114/PUU-XIII/2015 Sep 29, 2016	Law Number 13 of 2003 concerning Manpower and Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes	Partially granted
57.	135/PUU-XIII/2015 13 Oct 2016	Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law	Partially granted
58.	138/PUU-XIII/2015 27 Oct 2016	Law Number 39 of 2014 concerning Plantations	Partially granted
59.	69/PUU-XIII/2015 27 Oct 2016	Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles and Law Number 1 of 1974 concerning Marriage	Partially granted
60.	102/PUU-XIII/2015 Nov 09, 2016	Law Number 8 of 1981 concerning the Code of Criminal Procedure and Law Number 30 of 2002 concerning the Corruption Eradication Commission	Partially granted
61.	82/PUU-XIII/2015 14 Dec 2016	Law Number 36 of 2014 concerning Health Workers	Partially granted
62.	111/PUU-XIII/2015 14 Dec 2016	Law Number 30 of 2009 concerning Electricity	Partially granted

63.	29/PUU-XIV/2016 11 Jan 2017	Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia	Partially granted
64.	130/PUU-XIII/2015 11 Jan 2017	Law Number 8 of 1981 concerning Criminal Procedure Law	Partially granted
65.	25/PUU-XIV/2016 25 Jan 2017	Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption	Partially granted  (Aswanto dissenting opinion)
66.	129/PUU-XIII/2015 07 Feb 2017	Law Number 41 of 2014 concerning Amendments to Law Number 18 of 2009 concerning Livestock and Animal Health	Partially granted
67.	77/PUU-XIV/2016 07 Feb 2017	Law Number 14 of 2008 concerning Public Information Openness	Granted
68.	49/PUU-XIV/2016 21 Feb 2017	Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes	Partially granted
69.	39/PUU-XIV/2016 28 Feb 2017	Law Number 42 of 2009 concerning the Third Amendment to Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods	Partially granted
70.	137/PUU-XIII/2015 05 Apr 2017	Law Number 23 of 2014 concerning Regional Government	Partially granted
71.	95/PUU-XIV/2016 23 May 2017	Law Number 18 of 2003 concerning Advocates	Partially granted
72.	56/PUU-XIV/2016 Jun 14, 2017	Law Number 23 of 2014 concerning Regional Government	Partially granted
73.	54/PUU-XIV/2016 Jun 14, 2017	Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law	Partially granted
74.	92/PUU-XIV/2016 Jul 10, 2017	Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law	Partially granted
75.	53/PUU-XIV/2016 Jul 19, 2017	Law Number 3 of 2009 concerning the Supreme Court and Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court	Partially granted
76.	71/PUU-XIV/2016 Jul 19, 2017	Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors,	Partially granted

Regents, and Mayors into Law			
77.	88/PUU-XIV/2016 31 Aug 2017	Law Number 13 of 2012 concerning the Privileges of the Special Region of Yogyakarta	Granted
78.	85/PUU-XIV/2016 Sep 20, 2017	Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition	Partially granted
79.	15/PUU-XIV/2016 Sep 28, 2017	Law Number 1 of 2004 concerning State Treasury	Partially granted
80.	18/PUU-XV/2017 Sep 28, 2017	Law Number 1 of 2004 concerning State Treasury	Partially granted
81.	15/PUU-XV/2017 10 Oct 2017	Law Number 28 of 2009 concerning Regional Taxes and Regional Levies	Granted
82.	103/PUU-XIV/2016 10 Oct 2017	Law Number 8 of 1981 concerning Criminal Procedure Law	Granted
83.	97/PUU-XIV/2016 Nov 07, 2017	Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration	Granted
84.	13/PUU-XV/2017 14 Dec 2017	Law Number 13 of 2003 concerning Manpower	Granted
85.	66/PUU-XV/2017 11 Jan 2018	Law Number 7 of 2017 concerning General Elections	Partially granted
86.	61/PUU-XV/2017 11 Jan 2018	Law Number 7 of 2017 concerning General Elections	Partially granted
87.	53/PUU-XV/2017 11 Jan 2018	Law Number 7 of 2017 concerning General Elections	Partially granted
88.	93/PUU-XV/2017 Mar 20, 2018	Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court	Granted
89.	10/PUU-XV/2017 Apr 26, 2018	Law Number 29 of 2004 concerning Medical Practice and Law Number 20 of 2013 concerning Medical Education	Partially granted
90.	63/PUU-XV/2017 Apr 26, 2018	Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Taxation Procedures as last amended by Law Number 16 of 2009 concerning the Stipulation of Government Regulations in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Taxation Procedures into Law	Partially granted
91.	68/PUU-XV/2017 23 May 2018	Law Number 11 of 2012 concerning the Juvenile Criminal Justice System	Granted

92.	16/PUU-XVI/2018 Jun 28, 2018	Law Number 2 of 2018 concerning the Second Amendment to Law Number 17 of 2014 concerning the People's Consultative Assembly, House of Representatives, Regional Representative Council, and Regional People's Representative Council	Partially granted
93.	31/PUU-XVI/2018 Jul 23, 2018	Law Number 7 of 2017 concerning General Elections	Partially granted
94.	38/PUU-XVI/2018 Jul 23, 2018	Law Number 7 of 2017 concerning General Elections	Granted
95.	30/PUU-XVI/2018 Jul 23, 2018	Law Number 7 of 2017 concerning General Elections	Granted
96.	1/PUU-XVI/2018 Jul 23, 2018	Law Number 24 of 2004 concerning the Deposit Insurance Corporation as amended by Law Number 7 of 2009 concerning the Stipulation of Government Regulations in Lieu of Law Number 3 of 2008 concerning Amendments to Law Number 24 of 2004 concerning the Deposit Insurance Corporation into Law	Partially granted
97.	13/PUU-XVI/2018 Nov 22, 2018	Law Number 24 of 2000 concerning International Treaties	Partially granted
98.	80/PUU-XV/2017 13 Dec 2018	Law Number 28 of 2009 concerning Regional Taxes and Regional Levies	Partially granted Partially granted
99.	22/PUU-XV/2017 13 Dec 2018	Law Number 1 of 1974 concerning Marriage	Partially granted
100.	20/PUU-XVII/2019 Mar 28, 2019	Law Number 7 of 2017 concerning General Elections	Partially granted
101.	87/PUU-XVI/2018 Apr 25, 2019	Law Number 5 of 2014 concerning State Civil Apparatus	Partially granted
102.	39/PUU-XVII/2019 Sep 30, 2019	Law Number 7 of 2017 concerning General Elections	Granted
103.	56/PUU-XVII/2019 11 Dec 2019	Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law	Partially granted
104.	18/PUU-XVII/2019 Jan 06, 2020	Law Number 42 of 1999 concerning Fiduciary Guarantee	Partially granted
105.	48/PUU-XVII/2019 Jan 29, 2020	Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law as amended by Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law	Granted

		Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law as last amended by Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law	
106.	10/PUU-XVIII/2020 Sep 28, 2020	Law Number 14 of 2002 concerning the Tax Court	Partially granted
107.	32/PUU-XVIII/2020 Jan 14, 2021	Law Number 40 of 2014 concerning Insurance	Granted
108.	70/PUU-XVII/2019 04 May 2021	Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission	Partially granted
109.	55/PUU-XVIII/2020 04 May 2021	Law Number 7 of 2017 concerning General Elections	Partially granted
110.	15/PUU-XIX/2021 Jun 29, 2021	Law Number 7 of 2017 concerning General Elections	Partially granted
111.	102/PUU-XVIII/2020 Sep 29, 2021	Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking	Granted
112.	72/PUU-XVII/2019 Sep 30, 2021	Law Number 24 of 2011 concerning the Social Security Administration Agency	Granted
113.	42/PUU-XIX/2021 Sep 30, 2021	Law Number 6 of 2014 concerning Villages	Partially granted
114.	6/PUU-XVIII/2020 Sep 30, 2021	Law Number 24 of 2011 concerning Social Security Organizing Agency	Granted
115.	85/PUU-XVIII/2020 Oct 27, 2021	Law Number 46 of 2009 concerning Corruption Courts	Partially granted
116.	64/PUU-XVIII/2020 Oct 27, 2021	Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining	Partially granted
117.	37/PUU-XVIII/2020 Oct 28, 2021	Law Number 2 of 2020 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or in Dealing with Threats that Endanger the National Economy and/or Financial System Stability becomes law	Partially granted
118.	91/PUU-XVIII/2020 Nov 25, 2021	Law Number 11 of 2020 concerning Job Creation	Partially granted
119.	23/PUU-XIX/2021 15 Dec 2021	Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations	Partially granted
120.	21/PUU-XIX/2021	Criminal Code	Partially

	15 Dec 2021		granted
121.	71/PUU-XIX/2021 Feb 24, 2022	Criminal Code and Law Number 42 of 1999 concerning Fiduciary Guarantee	Partially granted
122.	32/PUU-XIX/2021 Mar 29, 2022	Law Number 7 of 2017 concerning General Elections	Partially granted
123.	31/PUU-XX/2022 31 May 2022	Law Number 23 of 2014 concerning Regional Government	Partially granted
124.	96/PUU-XVIII/2020 Jun 20, 2022	Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court	Partially granted
125.	30/PUU-XX/2022 Jun 20, 2022	Law Number 39 of 1999 concerning Human Rights	Partially granted
126.	56/PUU-XX/2022 Jun 20, 2022	Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court	Partially granted
127.	37/PUU-XIX/2021 Sep 29, 2022	Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining as partially amended by Law Number 11 of 2020 concerning Job Creation	Partially granted
128.	85/PUU-XX/2022 Sep 29, 2022	Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law	
129.	91/PUU-XX/2022 Oct 31, 2022	Law Number 18 of 2003 concerning Advocates	Partially granted
130.	28/PUU-XX/2022 Oct 31, 2022	Law Number 8 of 1981 concerning Criminal Procedure Law	Partially granted
131.	68/PUU-XX/2022 Oct 31, 2022	Law Number 7 of 2017 concerning General Elections	Partially granted

#### Source: Processed by Author

Chairman of Commission III of the House of Representatives, Bambang Wuryanto, explained that the reason for Aswanto's removal was because he had invalidated many laws created by the House of Representatives, which according to his beliefs, Aswanto was supposed to act as a representative of the House. If so, Aswanto's removal was not based on law, but entirely on the political interests of the DPR. If all institutions proposing candidates for constitutional judges consider their candidates as "representatives" to carry out the political interests of each institution, then the independence of the Constitutional Court as an independent judicial power to administer justice to uphold law and justice will be completely lost. Constitutional Court judges who are supposed to be independent and impartial will be easily intervened by the institutions that propose them because they are worried that if their decisions are not in accordance with the wishes of the proposing institution, they will be threatened with recalling or being recalled before their term ends. This will certainly jeopardize the independence, impartiality, and existence of the Constitutional Court as the guardian of democracy and the constitution.

".... Kemerdekaan dimaksud juga diartikan bahwa hakim bebas memutus sesuai dengan nilai yang diyakininya melalui penafsiran hukum, walaupun putusan yang didasarkan pada penafsiran dan keyakinan demikian mungkin berlawanan dengan mereka yang mempunyai kekuasaan politik dan administrasi. Jika putusannya tidak sesuai dengan keinginan pihak yang berkuasa, hal itu tidak dapat dijadikan alasan untuk melakukan tindakan pembalasan terhadap hakim baik secara pribadi maupun terhadap kewenangan lembaga peradilan [This independence also means that judges are free to make decisions in accordance with the values they believe in through legal interpretation, even though decisions based on such interpretation and beliefs may be contrary to those who have political and administrative power. If the decision is adverse to the beliefs or desires of those with political power, it cannot be used as an excuse for retaliation against the judge personally or on the authority of the judiciary ["...when a decision is adverse to the beliefs or desires of those with political power, it can not affect retribution on the judges personally or on the power of the court" (Theodore L. Becker in Herman Schwartz, *Struggle for Constitutional Justice*, 2003 p. 261)]]:"

Jimly Asshiddiqie explained that the DPR, the President, and the Supreme Court are only the entry points in

the recruitment of constitutional judges, each of which uses different methods and mechanisms because the Constitutional Court Law does not regulate the provisions. The Judicial Power Act emphasizes that judges in carrying out their duties and responsibilities must uphold independence. The Constitutional Court is very much expected to be an institution whose constitutional judges are close to the people and can quench the thirst of justice seekers. To be able to examine and make objective decisions and make fair decisions, judges must be independent without intervention or interference from other bodies for any interest, and impartial to any party (impartial).

The independence of Constitutional Court judges is manifested in the independence and freedom of Constitutional Court judges, both independence as individuals and institutions from various influences, which come from the judges themselves as interventions that affect directly or not in the form of persuasion, pressure, coercion, threats, or retaliation due to certain political or economic interests of the ruling political forces, certain groups or groups. Impartiality involves the need to be objective, accompanied by an understanding of balancing interests in cases. This principle must be realized at every stage of examination until the decision stage, so that the Constitutional Court's decision can be truly accepted as justice for all parties involved and by the wider community.

Judicial power requires freedom from all other state organs, because it is so important and urgent for the institution of judicial power to uphold the law based on justice. Do not let decisions made by constitutional judges who should act as the guardian of the constitution be tainted by slipping into political territory for the benefit of the proposing institution. Do not disappoint hundreds of millions of Indonesians who still do not know much about the Constitutional Court, even though their livelihoods are actually saved by the decision of the Constitutional Court, namely the decision to review the law. Because when the Constitutional Court decides on a case of judicial review, the decision affects not only the petitioners whose constitutional rights are violated by the provisions of the law, but also all citizens who may never realize that their rights have been violated.

#### **4.2. Legal Efforts Against Political Recalling of The House of Representatives (DPR)**

Against the arbitrary and politically motivated actions of the DPR and the Presidential Decree, there are two legal remedies available. The first is to apply for the annulment of the State Administrative Decree (KTUN) through the State Administrative Court (PTUN). PTUN is a judicial body tasked with examining and adjudicating disputes in the field of State Administration (TUN) PTUN has absolute competence to examine, hear and resolve TUN disputes. What is meant by state administrative disputes are all public administration disputes, both individuals and civil legal entities with state administrative officials or state administrative bodies, as a result of the issuance of KTUN, known as *beschikking*. KTUN is a black and white letter issued by a state administrative body or state administrative official that contains government administrative legal actions that have a concrete, individual and final nature. The KTUN in the case of Judge Aswanto is Presidential Decree (Keppres) Number 114/P/2022 on the Dismissal and Appointment of Constitutional Judges Proposed by the House of Representatives (DPR).

The lawsuit to annul Presidential Decree No. 114/P/2022 was registered in case register No. 2/G/2023/PTUN.JKT at the Jakarta State Administrative Court on January 3, 2023 by Dr. Ir. Priyanto Hadisaputro. As of this writing, the trial to annul the Presidential Decree on Guntur Hamzah's appointment is still ongoing. In their petition, the plaintiffs requested that the Presidential Decree be declared void or invalid as far as the appointment of Guntur Hamzah as a constitutional judge is concerned. The plaintiffs also requested that the Jakarta Administrative Court oblige the President to revoke the Presidential Decree on the appointment of Guntur Hamzah.

Another problem will arise after taking a long process to obtain an *inkracht* decision canceling Presidential Decree No. 114/P/2022. Another problem is that if the Presidential Decree is canceled, the damage that occurs in the future will be too great to repair, namely:

".... Ketika Guntur Hamzah sudah duduk sebagai hakim konstitusi, lalu Keppres tersebut di perkarakan di PTUN yang mana bisa memakan waktu berbulan-bulan bahkan bertahun-tahun untuk *inkracht*. Tiba-tiba putusan *inkracht* nya adalah membatalkan Keppres tersebut. Maka permasalahannya kemudian, apakah masa jabatan Guntur Hamzah tersebut dianggap sah? Bagaimana dengan putusan-putusan yang diadili oleh Guntur Hamzah, apakah batal demi hukum? Bagaimana kemudian pengembalian kursi hakim MK dari Guntur Hamzah kepada Aswanto? Juga, bagaimana memulihkan hak konstitusional Aswanto yang sudah dilanggar karena diganti dengan proses yang cacat? Dan, bagaimana menjaga nama baik Guntur Hamzah yang telah di-violate karena tindakan DPR yang tidak berdasar hukum tersebut? [When Guntur Hamzah was already sitting as a constitutional judge, then the Presidential Decree was litigated at the PTUN, which could take months or even years to *inkracht*. Suddenly the *inkracht* verdict canceled the Presidential Decree. So the problem is, is Guntur Hamzah's term of office considered valid? What about the decisions adjudicated by Guntur Hamzah, are they null and void? How then to restore the seat of the Constitutional Court judge from Guntur Hamzah to Aswanto? Also, how to restore Aswanto's constitutional rights that

have been violated because he was replaced by a flawed process? And, how to maintain the good name of Guntur Hamzah who has been violated because of the DPR's actions that are not based on the law?];"

The next effort is to file a constitutional complaint to the constitutional court, the Constitutional Court. A constitutional complaint here is different from filing a lawsuit through the PTUN, as the PTUN adjudicates for people who are harmed by government actions in the form of KTUN (beschikking). A constitutional complaint is a legal remedy for the basic rights of the people where they can file a complaint with the Constitutional Court because of a concrete action of a public official, or inaction of a public official, which violates the rights promised by the constitution to the citizen concerned. Constitutional complaints are also a complementary form of checks and balances that ensure state organs operate under the constitution (1945 Constitution) as a basis for the protection of constitutional rights. In other words, a constitutional complaint is a mechanism for enforcing constitutional rights to the Constitutional Court as a supervision and protection of citizens against the government to protect or reverse their constitutional rights.

At present, however, Indonesian law does not have a system for constitutional complaints, but only judicial review. At the time of writing, 1.651 petitions for judicial review of laws and regulations have been registered, accounting for 47% of the total number of petitions submitted to the Constitutional Court and showing that the Constitutional Court is the most sought-after forum for the fulfillment of constitutional rights of citizens who feel they have been violated. Among these applications, many constitutional complaints were inserted in the judicial review and ended up being rejected. This was also done in the Application for Provision to Examine Law Number 24 of 2003 concerning the Constitutional Court as amended three times with the latest amendment to Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court submitted by Zico Leonard Djagardo Simanjutak as the applicant, with Decision Number 103/PUU-XX/2022. The judicial review was filed on 10 October 2022, shortly after the DPR's political recall of Aswanto was realized.

The Applicant filed a provisional petition on grounds of urgency relating to the independence of judges, as the timing of political pressure from the DPR could lead to instability in Indonesian law. As the Constitutional Court has the authority to adjudicate or suspend the implementation of a legal action, the Applicant argued that it was necessary for the Constitutional Court to suspend the DPR's action to avoid the precedent of assuming that the Constitutional Court judges nominated by the proposing institution were its "representatives". The request for provision was rejected on the grounds that the urgency in a provisional ruling is to delay the enactment of a norm so that it does not have further impact, not based on a concrete case.

In the end, this goes back to the absence of constitutional complaints in the limited jurisdiction of the Constitutional Court in Article 24C paragraphs (1) and (2) of the 1945 Constitution. The limitative provisions in the Indonesian constitution only authorize complaints about the constitutional rights of the people that are disturbed by the provisions of the law. In fact, often a norm of law is constitutional, but in its application it is then misinterpreted so as to hit the rights of citizens. So that the problem is the unconstitutional actions of state officials.

Indeed, constitutional complaints are part of constitutional review because they adjudicate constitutional rights which are the substance of the constitutional content. These constitutional rights are not just written formulations, but need facilities that can practically protect these basic rights. The Constitutional Court, which bills itself as the guardian of the constitution and the protector of the citizen's constitutional rights, which states that one of its powers is constitutional review, should be the only state institution authorized to conduct constitutional complaints.

The Constitutional Court is prohibited from refusing to examine, hear and decide cases filed on the grounds that there is no or unclear law. Rejecting constitutional complaints on the grounds that it is not its authority is contrary to the principle of *ius curia novit* which is a characteristic of the Constitutional Court. The people should not be forced to surrender because of the legal vacuum regarding the authority of the Constitutional Court to conduct constitutional complaints. As the law is for humans and not humans for the law, so once problems arise regarding the law, it is the law that must be reviewed and improved, not humans who are forced to enter into a legal framework that is still imperfect. Law is not something static, but always in the process of becoming to continue to build and pursue better perfection for the sake of justice, welfare, and care for the people.

In order for the authority of constitutional complaints to become the jurisdiction of the Constitutional Court, it can be done with three efforts, first by amending the 1945 Constitution related to the article of authority of the Constitutional Court, legal interpretation by the legislature (legislative interpretation), and legal interpretation by the judiciary (judicial interpretation). Amendment of the 1945 Constitution is very difficult to do, while legal interpretation by the legislature through revision of the Constitutional Court Law will cause incompatibility with the constitution, so the most appropriate way is by legal interpretation by the judiciary, namely the Constitutional Court itself to carry out constitutional interpretation of its authority granted by the 1945 Constitution and the Constitutional Court Law. The Constitutional Court can state unequivocally that it is authorized to handle constitutional complaints.



The reason why the Constitutional Court rejects constitutional complaints is no longer relevant. The issue of constitutional complaints must have a forum because it has become a necessity for the development of law that is increasingly heading towards justice to the community, even though it is forced to ignore legal certainty because there is no explicit regulation. The principle of legal certainty can be set aside if in practice it will eliminate two other legal objectives, namely expediency and justice. Judges in realizing justice do not have to be shackled as prisoners of mere text. The ideal of justice is not merely procedural justice achieved through reading the text of the law, but real justice, namely substantive justice that does not prioritize the formulation of the constitutional text, but pays attention to the contextualization of an article with current conditions. The success of the Constitutional Court depends on its knowledge of the concepts, principles and values contained in Pancasila and its ability to interpret the constitution so that the constitution itself becomes a living constitution. The demands of a constitutional complaint petition can ask the Constitutional Court to declare the actions of state officials unconstitutional and order the relevant officials to stop their actions or perform certain actions if they are negligent. Thus, the authority of the Constitutional Court is not only limited to the limitative provisions in Article 24C of the 1945 Constitution and the Constitutional Court Law, but also implies the authority of the Constitutional Court to decide cases of violations of people's basic rights by the actions of state institutions. With a constitutional complaint, arbitrary actions of state institutions such as the DPR's political recalling of Aswanto can be declared unconstitutional and stopped.

## 5. Conclusion

The DPR only has the authority to select, nominate and nominate three constitutional judges, not related to their dismissal. This is because constitutional judges can only be dismissed by presidential decree, upon the submission of the Chief Justice of the Constitutional Court based on applicable regulations. So it can be said with certainty that the nomination of Guntur Hamzah as a constitutional judge to replace Aswanto is not based on the law, because there is no notification letter regarding the dismissal of constitutional judges by the Constitutional Court beforehand. So that the stages of dismissal, nomination, and appointment of constitutional judges should begin with notification of the dismissal of constitutional judges by the chairman of the Constitutional Court to the proposing institution, the issuance of a Presidential Decree, then by the Chairman of the Constitutional Court submitted to the institution which proposes the judge to be dismissed, and then begins the selection of fit and proper tests to fill the vacant position of the constitutional judge who quit, and the inauguration of new constitutional judges. So it can be interpreted that it is the DPR that determines the removal of Judge Aswanto. The reason given by the DPR is that judge Aswanto, who according to him as a "representative" of the DPR, often annuls the DPR's legislation products so as not to defend its interests. Thus, the DPR's arbitrary action to remove Aswanto from the position of constitutional judge is not in accordance with the law or unconstitutional. The same applies to Presidential Decree (Keppres) Number 114/P/2022 on the dismissal and appointment of new constitutional judges.

There are two legal remedies that can be taken against the actions of the DPR and the Presidential Decree that arbitrarily dismissed Aswanto from his position and appointed Guntur Hamzah, the new MK judge. The first is to apply for the annulment of the KTUN, namely Presidential Decree (Keppres) Number 114/P/2022 through the State Administrative Court (PTUN) which has been registered with case register Number: 2/G/2023/PTUN.JKT and the trial is still ongoing as of this writing. The second attempt is to file a constitutional complaint with the constitutional court, the Constitutional Court. However, this second effort related to the judicial review of the Constitutional Court Law filed by Zico Leonard Djagardo Simanjutak has been rejected by the Constitutional Court in Decision Number 103/PUU-XX/2022 because until now there is no legal instrument for constitutional complaints in Indonesia. The presence of constitutional complaints, if adopted as the authority of the Constitutional Court in Indonesia, then the arbitrary actions of the DPR can be tested to be declared unconstitutional and request that the political recalling of Aswanto be stopped.

## 6. Recommendation

The Jakarta Administrative Court judges are expected to hand down the fairest possible decision Number: 2/G/2023/PTUN.JKT regarding the lawsuit to annul Presidential Decree (Keppres) Number 114/P/2022 on the Dismissal and Appointment of Constitutional Justices Proposed by the House of Representatives (DPR).

The Constitutional Court must explicitly state that it is authorized to handle constitutional complaints.

It is also necessary to revise the Constitutional Court Law to create a standardized procedure for selecting candidates for constitutional judges as mandated by Article 24C paragraph (6) of the 1945 Constitution. With the certainty of the selection procedures for constitutional judge candidates, it can prevent the sudden appointment of constitutional judges, different mechanisms each period, and without going through a fit and proper test.

## References

Abdullah, H. Rozali. *Hukum Acara Peradilan Tata Usaha Negara [Procedural Law of State Administrative*

- Court*. (Jakarta: Rajawali Pers, 2016).
- Ashidiqqie, Jimly. "Percobaan Political Recalling untuk Menundukkan Cabang Kekuasaan Kehakiman yang Merdeka [Political Recalling Attempts to Subjugate the Independent Branch of Judicial Power]." <https://indonesiaatmelbourne.unimelb.edu.au/>. Accessed June 1, 2023.
- Asshiddiqie, Jimly. *Konstitusi dan Konstitusionalisme Indonesia [Indonesian Constitution and Constitutionalism]*. (Jakarta: Sinar Grafika, 2010).
- \_\_\_\_\_, et.al. *Menjaga Denyut Konstitusi Refleksi Satu Tahun Mahkamah Konstitusi [Keeping the Pulse of the Constitution One Year Reflection of the Constitutional Court]*. (Jakarta: Konstitusi Press, 2004).
- \_\_\_\_\_. dkk. *Living and Evolving Constitution of Indonesia*, (Jakarta: Konpress, 2018).
- Azis, Asmaeny and Izlindawati. *Constitutional Complaint and Constitutional Question in the Rule of Law*. (Jakarta: Kencana, 2018).
- Constitutional Court of the Republic of Indonesia. [https://www.mkri.id/rekapitulasi\\_putusan](https://www.mkri.id/rekapitulasi_putusan). Accessed on June 11, 2023.
- \_\_\_\_\_. Sejarah dan Perkembangan [History and Development], [https://www.mkri.id/sejarah dan perkembangan](https://www.mkri.id/sejarah_dan_perkembangan). Accessed on June 18, 2023.
- \_\_\_\_\_. Regulation of the Constitutional Court Number 09/PMK/2006 on the Enforcement of the Declaration of the Code of Ethical Conduct of Judges.
- \_\_\_\_\_. Constitutional Court Regulation No. 4/2012 on Procedures for Dismissal of Constitutional Judges.
- Constitutional Court Procedural Law Compilation Team. *Procedural Law of the Constitutional Court*, (Central Jakarta: Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, 2010).
- Eddyono, Luthfi Widagdo. "Independence in Indonesia Constitutional Court in Norms and Practices". *Journal Constitutional Review*. Vol. 3 No.1, (2017).
- Fahmi, Khairul. "Matinya Negara Hukum [The Death of the Rule of Law]." <https://mediaindonesia.com/opini/528747/matinya-negara-hukum>. Accessed June 2, 2023.
- Faiz, Pan Mohamad, "A Prospect and Challenges for Adopting Constitutional Complaint and Constitutional Question in the Indonesian Constitutional Court," *Journal Constitutional Review*, Vol. 2 No.1, (2016).
- Guyani, Gugun El. " Urgensi Pengujian Constitutional Complaint oleh Mahkamah Konstitusi Republik Indonesia [Urgency of Constitutional Complaint Testing by the Constitutional Court of the Republic of Indonesia]". *Jurnal Agama dan Hak Azazi Manusia*, Vol. 3 No.1 (2013).
- Indonesia. Constitutional Court Decision Number 013-022/PUU-IV/2006.
- \_\_\_\_\_. Constitutional Court Decision Number 103/PUU-XX/2022.
- \_\_\_\_\_. Constitutional Court Decision Number 96/PUU-XVIII/2020.
- \_\_\_\_\_. Constitution of the Republic of Indonesia Year 1945.
- \_\_\_\_\_. Law No. 48/2009 on Judicial Power.
- \_\_\_\_\_. Law Number 24 of 2003 on the Constitutional Court.
- \_\_\_\_\_. Law Number 4 of 2014 concerning the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court.
- \_\_\_\_\_. Law Number 5 of 1986 concerning State Administrative Courts.
- \_\_\_\_\_. Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts.
- \_\_\_\_\_. Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court.
- \_\_\_\_\_. Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court.
- \_\_\_\_\_. Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts.
- Lailam, Tanto, et.al. "The Proposal of Constitutional Complaint for the Indonesian Constitutional Court", *Jurnal Konstitusi*, Vol. 19, No. 13, (September 2022).
- Luhukay, Roni Sulistyanto. "Independensi Kekuasaan Kehakiman Pasca Amandemen Undang-Undang Dasar Tahun 1945 dan Relevansinya bagi Penegakan Hukum yang Berkeadilan di Indonesia [Independence of Judicial Power after the Amendment of the 1945 Constitution and its Relevance for the Enforcement of Justice in Indonesia]". *Journal Jurisprudentie*. Vol. 6. No.1, (2019).
- Marzuqoh, Ana Aini. "Prinsip Akuntabilitas Dalam Pemilihan Hakim Konstitusi The [Principle of Accountability in the Selection of Constitutional Judges]." *Jurnal Hukum Jurist Diction*, Vol. 3, No. 4, (2020).
- Nugraheny, Dian Erika. "Jokowi Resmi Lantik Guntur Hamzah Jadi Hakim MK Pengganti Aswanto [Jokowi Officially Inaugurates Guntur Hamzah as Constitutional Court Judge to Replace Aswanto]", <https://nasional.kompas.com/read/2022/11/23/09455801/jokowi-resmi-lantik-guntur-hamzah-jadi-hakim>

- mk-pengganti-aswanto. Accessed on June 4, 2023.
- Paat, Yustinus. "Begini Isi Surat MK ke DPR Sebelum Hakim Aswanto Dicotot [This is the content of the Constitutional Court's letter to the DPR before Judge Aswanto was removed]." <https://www.beritasatu.com/news/983813/begini-isi-surat-mk-ke-dpr-sebelum-hakim-aswanto-dicotot>. Accessed June 4, 2023.
- Palguna, I Dewa Gede. *Pengaduan Konstitusional (Constitutional Complaint) Upaya Hukum terhadap Pelanggaran Hak-Hak Konstitusional Warga Negara [Constitutional Complaint (Constitutional Complaint) Legal Efforts against Violations of Citizens' Constitutional Rights]*. (Jakarta: Sinar Grafika, 2013).
- President of the Republic of Indonesia. Presidential Decree 114/P/2022 on the Dismissal and Appointment of Constitutional Judges Nominated by the House of Representatives.
- Purnamasari, Galuh Candra. "Upaya Hukum Terhadap Pelanggaran Hak-Hak Konstitusional Warga Negara melalui Pengaduan Konstitusional (Constitutional Complaint) [Legal Remedies Against Violations of Citizens' Constitutional Rights through Constitutional Complaints]." *Veritas et Justitia*, Vol. 3, No. 2, (2017).
- Subiyanto, Achmad Edi. *Hakim Konstitusi : Kekuasaan Kehakiman dan Pengisian Jabatan [Constitutional Judges: Judicial Power and Position Filling]*. (Depok: PT Raja Grafindo Persada, 2019).
- Vinx, Lars. *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law*. (English: Cambridge University Press, 2015).
- Wantu, Fence M., et.al. "Proses Seleksi Hakim Konstitusi: Problematika dan Model Ke Depan [The Constitutional Judge Selection Process: Problems and Future Models]." *Jurnal Konstitusi*, Vol. 8, No. 2, (2021).
- Wicaksono, Adhi. "Alasan DPR Copot Aswanto dari Jabatan Hakim Konstitusi [DPR's Reason for Removing Aswanto from Constitutional Judge Position]." <https://www.cnnindonesia.com/nasional/20221002092202-32-855230/alasan-dpr-copot-aswanto-dari-jabatan-hakim-konstitusi/amp>. Accessed June 1, 2023.
- Wico, Standy, et.al. "The Future of Constitutional Complaint in Indonesia: An Examination of Its Legal Certainty." *Indonesian Journal of Law and Society*, Vol. 2, No. 1, (2021).
- Yusdiansyah, Efik. "Implikasi Keberadaan Mahkamah Konstitusi Terhadap Pembentukan Hukum Nasional [The Implications of the Existence of the Constitutional Court on the Formation of National Law]", *Jurnal Hukum Pro Justitia*, Vol. 26 No. 4, (October 2008).
- Zoelva, Hamdan. "Pengaduan Konstitusional dalam Sistem Peradilan di Indonesia [Constitutional Complaints in the Indonesian Justice System]." *Jurnal Sekretaris Negara RI*, No. 16, (2010).