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The Politicizing of Judicial Independence: Cases and Controversy in Indonesian Constitutional Court's

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Abstract: The Constitutional Court has been the target of several political attacks over the past four years, each with its own tactics and objectives. The politicization of the court by the government poses the greatest threat to its independence. This study combines qualitative analysis with socio-legal study methodology. According to this study, the court is politicized in two ways. The first type is extrajudicial, which shows that political actors intensively reduce the independence of the judicial term through abusive policies and lawmaking. The second type is intra-judicial, which involves key actors from within the judges in constitutional court itself. With the authority judicial review, judges in constitutional court are actually trapped by their conflict of interest when examining cases. As a result, the decisions of the constitutional court are not present as an effort to strengthen the independence of judges but rather the opposite. This study also explains how certain legal components intertwined with socio-political components affect the politication of the independence of the constitutional court.

Keywords: Judicial Independence, Constitutional Court

1. Introduction

This study aims to examine three issues, first, to identify forms of undermining the independence of the constitutional court; second to analyze the factors that encourage the destruction of the independence of the constitutional court; and third to offer efforts to restore the independence of the constitutional court. This study is important to conduct considering the intensive political attacks carried out on constitutional judges in the last five years to weaken their independence. This effort was carried out by the Joko Widodo regime by rearranging the provisions for the appointment and term of office of constitutional judges.

It all started from the third amendment to the Law on the Constitutional Court.[1] The *a-quo* legislative product has sparked controversy in the public sphere, both in terms of the formation process and the content offered. The changes exposed the Constitutional Court's independence due to the impact of its regulations on the position of constitutional judges. In the Law on the Constitutional Court before the amendment, the term of office of constitutional judges was set at five years and they could be elected only for 1 (one) subsequent term of office.[2] After the amendment to the Law on the Constitutional Court, it was determined that constitutional judges were honorably dismissed because they were 70 (seventy) years old.[3] The issue that subsequently emerges is that the Constitutional Court's third amendment is applied retroactively under the transitional measures.[4]This means that the implementation of changes to the term of office of constitutional judges also has an impact on active constitutional judges currently serving at the Constitutional Court. Several constitutional judges under 70 years of age will benefit greatly from changes to the Law on the Constitutional Court. In the landscape of the principle of judicial independence that applies universally, there is no single condition that can justify changing the term of office of a constitutional judge who is currently serving can be done for certain political reasons or motives.

Two years after the enactment of the third amendment to the Law on the Constitutional Court, the damage to the court's independence continued. Constitutional judge Aswanto was dismissed by the House of Representatives to be replaced by Guntur Hamzah, the Secretary General of the Constitutional Court. The House of Representatives as the proposing body feels that it had the full right to withdraw constitutional judges who had been appointed since 2014. The action of the House of Representatives can be read as an attempt to subvert the independence of judicial power. Considering that the dismissal of constitutional judges during their term of office has a definitive mechanism as justified by the law of constitutional court.

Based on this controversy, the House of Representatives 's actions against

1 Law Number 7 of 2020 on the Third Amendment to Law Number 24 of 2003 on the Constitutional Court.

2 Simon Butt, *The Constitutional Court and Democracy in Indonesia* (Brill | Nijhoff, 2015), 35, https://doi.org/10.1163/9789004250598.

3 See Article 23 point (c) Law No. 7 of 2020 on the Third Amendment to Law Number 24 of 2003 on the Constitutional Court.

4 Constitutional judges who are in office at the time this Law is enacted are deemed to fulfill the requirements according to this Law and end their term of office until the age of 70 (seventy) years as long as their total term of office does not exceed 15 (fifteen) years. See Article 87 letter (b)Law No. 7 of 2020 on the Third Amendment to Law Number 24 of 2003 on the Constitutional Court.

Judge Aswanto will then be regulated by the government through the fourth draft amendment to the Law on the Constitutional Court. The government is trying to institute a model for evaluating the position of constitutional judges every five years by each proposing institution . The aforementioned circumstances have contributed to the Constitutional Court's regressive aims over the past three years. The court is facing political attempts to influence its composition of constitutional judges who sit and serve on the court.

2. Methodology

This study is socio-legal study with primary and secondary databases. This study also uses a historical approach, a statutory approach, and a conceptual approach. Data presentation and analysis were carried out qualitatively.

3. Results and Discussion

3.1 Patterns of Politicization of the Independence of the Constitutional Court

The study's findings revealed two trends in the erosion of the constitutional court's independence. The first is by extrajudicial action, which is intervention by non-judicial actors using state resources, such as parliamentary politics or non-legislative action. Second, by diminishing judicial authority players, such as judges in judicial institutions, through intra-judicial acts.

a. Extra-Judicial Actions

Third Amendment to the Law on the Constitutional Court, Maintaining Pro-Majority Groups

Based on historical approach, Constitution changes during the political transition period have reached a consensus that the independence of the judiciary is a measure of the upholding of the principle of the rule of law. The guarantee of the independence of the judiciary regulated in the Indonesian Constitution is an effort to limit the intervention of government power in the judiciary. Article 24 shows that *The judicial power shall be an independent power in order to perform the judiciary in order to enforce law and justice*". There are three consequences arising from the formulation of the norm of the independence of the judiciary. First, institutional independence, Second, independence of tenure, and third access to financial administration.[5]Institutional independence means the judicial institution is separate from other branches of power or is not part of the executive or legislative power. Independent of tenure means the mechanism for appointment and dismissal that limits the space of the executive and legislative to interference the process to the results. This includes protection against a definitive term of office or tenure. Financial administration independence means the judiciary is given autonomy in managing resources and financial administration.[6]

5 Idul Rishan, "Pelaksanaan Kebijakan Reformasi Peradilan Terhadap Pengelolaan Jabatan Hakim Setelah Perubahan Undang Undang Dasar 1945," *Jurnal Hukum Ius Quia Iustum* 26, no. 2 (August 22, 2019), https://doi.org/10.20885/iustum.vol26.iss2.art3.

6 Shimon Shetreet and Sophie Turenne, *Judges on Trial: The Independence and Accountability of the English*

Indonesian constitution defines that a constitutional court justice shall have integrity and impeccable personality, be just, be a statesman mastering the constitution and constitutionalism, and does not concurrently hold a public office. The appointment and discharge of a constitutional court justice, the procedural law as well as the other provisions regarding the Constitutional Court shall be regulated by laws. Based of constitution, the arrangement of appoint and discharge of constitutional court judges is open legal policy. It means, the policy regard it decided further in the law.

The third amendment to the Law on the Constitutional Court is in fact far from an effort to strengthen judicial independence. Since the Constitutional Court's Third Amendment Bill was initiated by the government, the main issue for improving the Constitutional Court's institutions has been improving the selection mechanism for judges. This issue strengthened between 2016 and early 2020 and support some previous study. One of the example, Faiz's study in 2016 showed that the form of selection of constitutional judges was never carried out in a definitive form.[7]

In early 2020, the government then developed a new blueprint by reorganizing the terms and terms of office of constitutional judges. The political demand of government legislation has indeed shifted from efforts to strengthen the institutional independence of the court, then to a sectoral issue, namely efforts to maintain and legitimize the position of constitutional judges for a maximum of 70 years and maintain the leadership of Judge Anwar Usman as Chief Justice of the Constitutional Court. The following is the crucial points resulting from the third amendment to the Law on the Constitutional Court and its consequences for the term of office of constitutional judges.

Table 1: Results of the Third Amendment to the Law on the Constitutional Court

Issue	**Before the Amendment to the Law on the Constitutional Court**		**After the Amendment to the Law on the Constitutional Court**	
Minimum Age Requirements for Candidates for Constitutional Justices	Article 16 letter c	Be at least 40 years old at the time of appointment	Article 15 paragraph (2) letter d	Minimum 55 years old

Judiciary, 2nd ed. (Cambridge University Press, 2013), https://doi.org/10.1017/CBO9781139005111.

7 Pan Mohamad Faiz, "A Critical Analysis of Judicial Appointment Process and Tenure of Constitutional Justice in Indonesia," *Hasanuddin Law Review* 1, no. 2 (August 30, 2016): 152–169, https://doi.org/10.20956/halrev.v1i2.301. which is a five-year term and can be renewed for one term only, that may lead to another problem concerning the reselection process of incumbent constitutional justices for their second term. The article concludes that the judicial appointment process and tenure of constitutional justice in Indonesia have to be improved. It suggests that if the proposing state institutions could not meet the principles of transparency, participation, objective and accountable required by the Constitutional Court Law, the judicial appointment process should be conducted by creating an independent Selection Committee or establishing a cooperation with the Judicial Commission. Additionally, the tenure of constitutional justices should also be revised for a unrenewable term with a longer period of nine or twelve years.","container-title":"Hasanuddin Law Review","DOI":"10.20956/halrev.v1i2.301","ISSN":"2442-9899, 2442-9880","issue":"2","journalAbbreviation":"Hasanuddin Law Rev.","license":"http://creativecommons.org/licenses/by-nc/4.0","page":"152","source":"DOI.org (Crossref

Term of Office of Constitutional Justices	Article 22	5 years and can be re-elected only for one further term	Article 23 paragraph (1) letter c	Already 70 Years Old
Term of Office of the Chairperson of the Constitutional Court	Article 4 paragraphs (3) and (3) a	2 years 6 months and can be re-elected for the same position for one term	Article 4 paragraphs (3) and (3) a	Five years from the date of appointment of the Chairperson and Deputy Chairperson
Pre-Transition Provisions	-	-	Article 87 letter (a)	The term of office of the chairperson and deputy chairperson remains 5 years in accordance with the provisions of this law
			Article 87 letter (b)	judges who are currently serving are to terminate their duties at the age of 70 years as long as their total term of service does not exceed 15 years

Source: processed by the author:2022

The data shows that the transitional provisions in Article 87 (a) and (b) violate the principle of judicial independence. In theoretical framework and Indonesian constitution, the judicial office must receive definitive term protection. Based on the principle of judicial independence, changes related to the requirements for the appointment or dismissal of judges and the Chief Justice of the Constitutional Court can only be made prospectively or apply to the appointment of judges in the following period. However, through the third amendment to the Constitutional Court Law, the changes were made retroactively to legitimize the extension of the term of office of the current constitutional judges. The following is the impact of the third amendment to the Constitutional Court Law on the term of office of constitutional judges.

Table 2: Term of Office of Constitutional Justices

Constitutional Justice	**Term of Office of Constitutional Justices**	
	Before the Amendment to the Law on the Constitutional Court	**After the Amendment to the Law on the Constitutional Court**
Anwar Usman (Chairman)	2021	2026
Aswanto (Deputy Chairman)	2024	2029
Arief Hidayat	2023	2026

Suhartoyo	2025	2029
Wahiduddin Adams	2024	2024
Manahan Sitompul	2025	2023
Saldi Isra	2022	2032
Enny Nurbaningsih	2023	2032
Daniel Yusmic Foekh	2025	2034

Source: processed by the author:2022

The question is what motive is put forward by the government behind the revision of the Law on the Constitutional Court? Spitzer and Genovese's theory is very relevant in this context. Their study provided The relationship between government and justice is generally divided into two patterns. The first is a confrontational relationship. In this mode, the judges who in hold office in the judiciary are counter majoritarian. Counter majoritarian largely formed because of selection from the previous regime. As a result, judges' interpretations in deciding cases often conflict with the government because the judiciary often plays a role as the antithesis of the majority group. Meanwhile, the second pattern is just the opposite. The relationship between the government and the judiciary is cooperative. In this mode, judges who hold office in judicial institutions are selected to be a pro-majoritarian group or at least to be part of a presidential coalition. The pattern is to appoint and extend the term of office of judges in judicial bodies who have the same political preferences as the government. The implication is that judges' interpretations tend to exercise restraint (judicial restraint) on important cases involving government interests.

In short, the government tries to speculate to get as much support as possible from judicial institutions when determining strategic government policies through the formation of laws. Ginsburg and Mustofa reveal that authoritarian rulers often use the judiciary to combat the many dysfunctions that plague their regimes. Courts help regimes maintain social control, attract financiers, maintain bureaucratic discipline, adopt unpopular policies, and enhance regime legitimacy.

Removal of Judge Aswanto, Death of Judicial Independence

In the theoretical framework, the House of Representatives carries out rude intervention against the independence of the judiciary. The author is reminded of what was conveyed by Thomas Power & Eve Warburton that it is true that the quality of our democracy will ultimately experience regression due to the problem of lawfare, namely the abuse of law and law enforcement institutions by political actors for certain political purposes. Legal politicization tactics are designed to weaken the independence of the court to disrupt the workings of constitutional judges in constitutional court.

Fohr examines the pattern of guaranteeing the independence of judicial power that was instituted during a period of political transition. The study

results are even in line with the studies of Redish, Feld, and Shetreet. That the turning point for judicial reform always has an impact on three things, namely institutional independence, position and financial administration. Institutions in the sense of the constitution guarantee the separation of powers from other branches of power. Position in the sense of protection for the appointment, dismissal, and term of office of judges. Financial administration has autonomy over the governance of the judicial organization.

The aim is simple to ensure the upholding of legal supremacy and protection of human rights. Likewise in Indonesia, around 20 years ago, during the political transition period, the guarantee of independence of judicial power in Article 24 paragraph (1) of the Constitution had an impact on institutions, and positions and had a slight impact on financial administration. The independence of a judge's office clearly has consequences for the protection and guarantee of legal certainty regarding a definitive term of office. The attempt to remove Judge Aswanto has distorted the independence of the judiciary and disrupted the process of strengthening and reforming the judiciary which has been ongoing since the reform era.

In this context, constitutional judges have protection with definitive terms of office as determined by law. The consequence is simple, namely that the institutions proposing constitutional judges, in this case the President-the House and the Supreme Court, cannot withdraw their representatives at the Constitutional Court for political reasons. In the Law on the Constitutional Court, a constitutional judge can only be dismissed during his term of office for reasons of violating the law. Even then, the dismissal process has a definitive mechanism through the Ethics Council and is decided through the Honorary Council of the Constitutional Court. Apart from these provisions, there is no convention or positive law that legitimizes that the proposing institution may simply replace and dismiss active constitutional judges for political reasons.

Evaluation of the Position of Constitutional Judges, an Integral Part of Cartel Power

Reading how the government (President and The House of Representatives) works regarding repeated changes to the Law on the Constitutional Court, of course, cannot only be part of how legislation works in general. The repeated changes to the Law on the Constitutional Court in a relatively short period further demonstrate the strengthening role of cartels in subordinating the independence of judicial institutions, in this case, the Constitutional Court. This phenomenon is referred to by Katz & Mair that political parties doesn't implementing their role as well as social movement.

In this mode, political parties are no longer present to represent the interests of society, but rather the interests of certain groups or at least the interests of fellow party elite groups in the House of Representatives. One of them is providing ample space for political parties to evaluate the position of constitutional judges. Expanding the role of political parties in the

Constitutional Court institution through evaluation of judges' positions every five years, placing constitutional judges as public positions under the influence of political parties.

Without realizing it, this pattern is designed in a structured manner from both upstream and downstream processes. In the upstream process, political parties were involved in the candidacy process for nine constitutional judge candidates. Three of the President's elements, for example, the presidential coalition party, play a big role in considering the figure of the constitutional judge candidate who will be appointed as a constitutional judge. Three members of the House of Representatives also did the same. Political parties have a very dominant contribution in determining elected constitutional judges. Likewise, three of the Supreme Court elements, political parties are involved in the candidacy stage even though their role is not direct. The three names proposed by the Supreme Court to become candidates for constitutional justices still require the approval of the Chief Justice of the Supreme Court as Supreme Court Justices who are in fact selected through a political process or approval in the House of Representatives. In the downstream aspect, the draft of the Fourth Amendment to the Law on the Constitutional Court tries to put the process of evaluating the position of constitutional judges back to political parties. At this point, the political cartel worked to determine the figures who could appoint and dismiss the Constitutional Court.

The regulation of evaluating the position of constitutional judges by the proposing institution is no more than an effort to establish the Constitutional Court as an independent judicial institution. The logic of checks and balances has absolutely no relevance in this context. Rather, it is more about striking the balances or the imbalance in the relationship between political intervention and the independence of judicial power. The evaluation process, which will be initiated every five years, will undermine the independence and impartiality of constitutional judges, especially in examining and deciding cases. The risk in the evaluation process is that constitutional judges could be dismissed from their positions not for ethical reasons, but rather because of differences in a judge's scientific preferences which then clash with the political preferences of the party or government. Consequently, this evaluation process will result in the birth of progressive constitutional judge figures in developing interpretations of strategic cases and having a broad impact on the court.

This is in line with Wiratraman, who believes that under Joko Widodo's government, the state is no longer capable of producing an impartial judicial process. As a result, judicial institutions are then used only to legitimize government policies. Hence, evaluation judges every five year make the judges subject to the influence and will of political parties. As a result, the judges cannot act independently because of the high dependence of the position on the government.

b. Intra-Judicial Actions, "Court of Interests"

This section explains that the undermine of the independence of the court is also influenced by the ambivalent attitude of the Constitutional Court.

In several cases of subordination of independence carried out through extra-judicial actions, the court tends to justify the government's steps. Even in the context of the removal of judge Aswanto, the court was far more indifferent. Trying to remain silent, but not showing a firm attitude and position regarding the behavior of political actors towards the Constitutional Court institution. Another example in testing the Third Amendment to the Law on the Constitutional Court.This study is of the position to view the decision to review the Third Amendment to the Law on the Constitutional Court has explicitly shown two things. First, there is a conflict of interests of the judges with their term of office, second, there is an internal battle between fellow constitutional judges themselves over the configuration of leadership within the Constitutional Court.

Due to the third revision of the law of the constitutional court, civil society is examining the law before the constitutional court. The case proposed by the society argues the law violates the Indonesian constitution. Based on the court's decision, the position of Chief Justice of the Constitutional Court is no longer interpreted as being able to continue in accordance with the transitional provisions resulting from the third amendment to the Law on the Constitutional Court. Meanwhile, the minimum age requirement for constitutional judges remains at least 55 years. Furthermore, the term of office of constitutional justices is considered to have ended when they reach the age of 70 years or a maximum of 15 years.

Judge Wahidudin Adams' dissenting opinion has brought the public closer to the reality of what occurred in the Judges' Discussion Session (*Rapat Permusyawaratan Hakim*) in the it cases. Judge Adams assessed that the atmosphere in taking a stance on the terms of office of constitutional justices was very calculative. Between fellow Constitutional Judges, whether explicitly acknowledged or not, judges tend to take a wait-and-see attitude towards each other and are full of hope and full of stake towards the choice of attitude of other constitutional judges. The main issue that is being discussed by constitutional judges is of course inseparable from the transitional provisions regulated in the third amendment to the Law on the Constitutional Court. First, Article 87 letter (a) which legitimizes the term of office of the chairperson and deputy chairperson to remain in office for 5 years in accordance with this law. Second, Article 87 letter (b) which legitimizes judges who are currently serving to terminate their duties until the age of 70 years if their entire term of office does not exceed 15 years. Based on the decision, only Judge Wahidudin Adams can resolve this issue impartially. This means that if it is to be implemented, the provisions of the third amendment to the Law on the Constitutional Court are only relevant for application to future constitutional judges. Judge Adams' dissenting opinion clearly states that the transitional provisions of letters (a) and (b) are contrary to the principles of the rule of law and the independence of judicial power. Meanwhile, dissenting judge Arief Hidayat and judge Anwar Usman tended to be partial.

Dissenting judge Hidayat stated that the transitional provisions were contradictory as far as constitutional judges wishing to extend their terms

of office needed to confirm with each proposing institution, in this case the President and the House or the Supreme Court. This reason certainly cannot be justified because it triggers a distortion of the Constitutional Court's independence. Confirmation by the proposing institution can become a means of exchanging interests to "defeat/get rid of" certain judges whose existence is a "threat" to the work of the government and within the Constitutional Court itself. Meanwhile, dissenting Judge Usman also did the same. Transitional provisions are interpreted as constitutional if judges who receive incentives because of changes to the Law on the Constitutional Court meet the minimum requirement of 55 years. This means that according to Judge Usman, only Judge Saldi Isra cannot sit and continue his duties for up to 70 years. Considering that Judge Isra has just turned 53 years old since the third amendment to the Law on the Constitutional Court was promulgated. According to other judges, there tends to be no constitutional debate over the transitional provisions. In fact, if you want to open a fairer debate, conditional unconstitutionality could be used as an option to bridge the old rules to the new rules. This means that transitional provisions can be declared contrary to the Constitution if they apply to judges who are currently serving.

This is different from the transitional provisions of Article 87 letter (a) regarding the term of office of the Chairperson and Deputy Chairperson of the Constitutional Court. Apart from Judge Adams, the attitude of constitutional judges is not very impartial. This has sparked speculation that there is an internal struggle within the Constitutional Court itself, regarding who is the most qualified to lead the Constitutional Court. The provisions in this clause reduce the rights of judges to elect the Chairperson and Deputy Chairperson because it is contrary to the Constitution. The question that then arises is, why is the transition provision in letter (b) not the same? It could be said that this case is a case where debate between constitutional judges largely does not arise because of differences in scientific preferences over interpretive theories that have been accepted in the theoretical-practical landscape. In fact, the attitude of constitutional judges arises from differences in interests which may be personal in nature. It is not surprising that in layman's logic, statesmen are actually trapped in conflicts of interest and political power struggles within the Constitutional Court's.

The constitutional perception built by the court ultimately justifies that extending the term of office of constitutional judges is a practice that can be legally justified. In this section, leads us to the perception that the court's decision in this case also indirectly weakens the institutional credibility of the Constitutional Court and the independence of constitutional judges. Without realizing it, the court opened its institutional institutions to be exposed to politicization or weakened independence by the government. There are important lessons to be learned from the politicization of the judiciary in Hungary and Poland. In Hungary, Orban changed the rules by increasing the number of constitutional judges from eight to fifteen. Then it gives the ruling party a role to directly appoint new judges. In Poland, the party that won the election rejected a candidate for judge proposed by a party supporting the previous government. Then the party that

won the election appointed five new constitutional judges to delegitimize the old candidates. The politicization of the judiciary is carried out to damage the impartiality of judges in adjudicating cases involving government interests.

3.2 Factors Driving Politicization of Constitutional Court

The results of this study explain that two issues. The trigger attacks of politicization within the Constitutional Court caused by two factors. First, it is influenced by legal factor and other with a non-legal factor. Legal factor are caused by the lack interpretation toward protection of judicial tenure. and factors with a socio-political area are influenced by the rise of political cartel groups to control all sectors of state resources, including the judiciary.

a. Legal Factors: Sheltering Behind Open Legal Policy

The term open legal policy can be interpreted as freedom for legislators to form legal policies (laws). As an open legal policy or norm that is in the constitutional area, or in accordance with the Constitution, it frees legislators to interpret and express it in a particular law. The freedom given by the Indonesian Constitution to legislators has two opposing sides. On the one hand, it provides broad or flexible opportunities to regulate the state, but on the other hand, it can be dangerous if legislators act arbitrarily in determining what and how certain material will be regulated. Based on the interpretation pattern established by the court, the implementation of open legal policy can be limited through four indicators, namely: (1) violating morality, rationality and intolerable injustice (2) Cannot be implemented, causing a legal deadlock (3) exceeding the authority of the former Law (4) is in clear conflict with the Constitution.

Historically, the formulation of Article 24C of the 1945 Constitution did not include the term of office of constitutional judges as part of intensive and extensive discussions during the political transition period. At the beginning of the discussion of the first amendment, the term of office provisions was only mentioned once by the PDI-P faction represented by I Dewa Gede Palguna who stated that the term of office of members of the Constitutional Court is five years and they can be reappointed. This clause appeared as an alternative to the changes outlined in the first amendment to Article 24 paragraph (7) of the Constitution. Entering the third amendment period, the issue of the term of office of constitutional judges is no longer part of the legal political construction of changes to the Constitution.

Still from the PDI-P faction, Hardjono assessed that there was a desire at that time to regulate the term of office of constitutional judges longer than the term of office of the President, but once again, this was not an option as an issue which was then intensively dissected by the change actors. Therefore, the choice of legal politics at that time stipulated that matters relating to the procedures for appointment, dismissal, and term of office of constitutional judges would be regulated later by lawmakers. This means that regulating the term of office of constitutional judges is an open legal policy option for

lawmakers. Such an arrangement creates considerable risks. In the end, the area of open legal policy can be opened at any time by legislators to politicize the independence of the judiciary through legislative politics. This means that the weakness of the constitutional design makes the position of constitutional judge an object that is easily exposed to government interests.

b. Factors with a Socio-Political Dimension: The Rise of Political Cartels

Another factor that is no less important is the strengthening role of political cartels in controlling state resources, including judicial institutions. As explained above, the last 20 years have shown that political parties, which are the main engine of democracy, have decayed and have only become parasites within the state. As a result, judicial institutions often become objects exposed to the power of political cartels. As a result, the formation of state law ultimately does not support efforts to maintain and strengthen the independence of the judiciary, in this case, the constitutional court. What Ambardi had interpreted in 2008 was slowly becoming stronger and confirmed. Political parties that were previously part of the civil society movement then transformed into parasites within the country. This stage emerged and strengthened in 2009-2024. This pattern can be identified through the figure below.

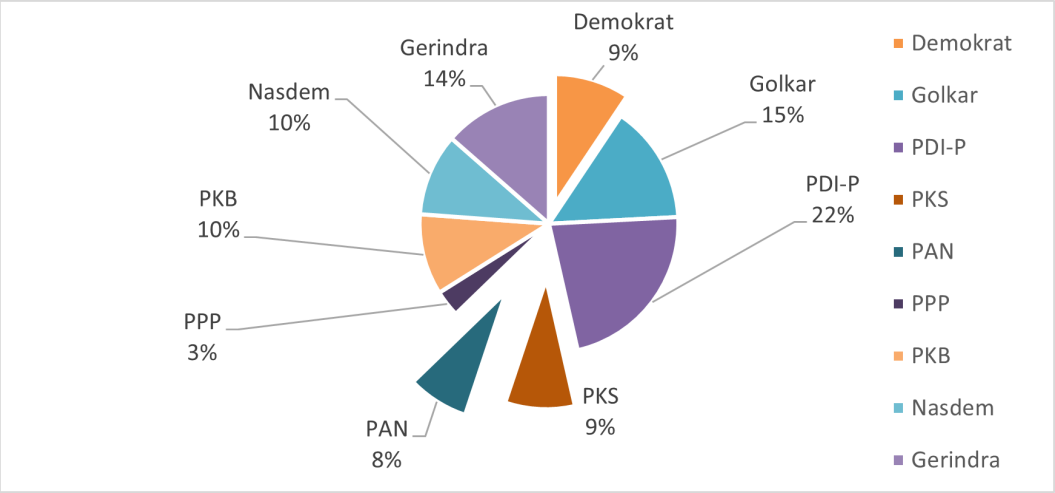

Figure 1: Elimination of the Opposition Role

Source processed by the study

By taking a sample from Joko Widodo's government, Hargens' study also strengthens this thesis but with a slightly different name, namely the emergence of cartel oligarchism. This oligarchic cartel controls the implementation of representative democracy by regulating policy-making at all levels and limiting party competition in elections to maintain the status quo. Post-election facts strongly support the above conclusion for the first three reasons (a) there are no new entrants in the House of Representatives

because parliamentary seats are monopolized by the old parties (b) the formation of a large coalition supporting Jokowi's government after the mainstream opposition party, Gerindra, finally jumping to the ruling coalition under Jokowi's second term government (2019-2024) and (c) a cabinet of ministers supported by a majority based on political party representation.

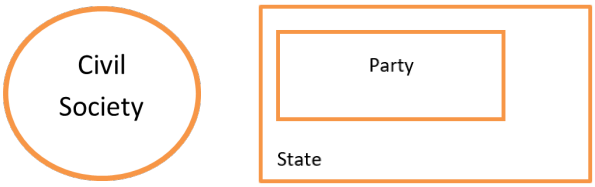

Figure 2: Parties Become "Parasites" in the State

With this new approach, winning or losing elections is no longer the main goal. This condition will kill competition in party ideological platforms just for the existence of political parties in government. Parties do not need to compete but only aim to survive together to control state resources. This cartel then became a new trend in Joko Widodo's government. Maintaining electoral stability is a matter of life and death for cartel parties. Therefore, cooperation or coalition between parties is very important to ensure that the main tools for general elections are engineered through legal formation. As an example in Indonesia, the regulation of presidential thresholds and parliamentary thresholds is part of maintaining the continuity of cartels.[8] In the end, weakening constitutional democracy will always lead to the independence of judges and the judiciary.[9] In this case, it is Constitutional Court. The court is considered to have a big role in maintaining the way the government works.

3.3 Strengthening the Judicial Independence Principle

a. Return to the Universal Principle of Judicial Power

The European Convention for the Protection of Human Rights and Fundamental Freedoms has emphasized the importance of administering independent and impartial justice.[10] Even standard conventions in judicial power have also given the importance of independence in examining and adjudicating cases. Starting from the Universal Declaration of Human Rights, the 1981 Syracuse Principles, *IBA Minimum Standards of Judicial Independence*1982, Montreal Universal Declaration on the Independence of Justice 1983, UN Basic Principles of the Independence of Judiciary 1985, Beijing Principles 1995, up to The Bungalore Principles of Judicial Conduct 2002.[11]

8 Ni'matul Huda, Idul Rishan, and Dian Kus Pratiwi, "Fast-Track Legislation: The Transformation of Law-Making Under Joko Widodo's Administration," *Yustisia Jurnal Hukum* 13, no. 1 (April 30, 2024): 117–33, https://doi.org/10.20961/yustisia.v13i1.71061.

9 Steven Levitsky and Daniel Ziblatt, *How Democracies Die*, First edition (New York: Crown, 2018), 139.

10 Ian Langford, "*Fair Trial* : The History of an Idea," *Journal of Human Rights* 8, no. 1 (March 31, 2009): 37–52, https://doi.org/10.1080/14754830902765857.

11 Idul Rishan, "Redesain Sistem Pengangkatan Dan Pemberhentian Hakim Di Indonesia," *Jurnal Hukum IUS QUIA IUSTUM* 23, no. 2 (April 2016): 165–85, https://doi.org/10.20885/iustum.vol23.iss2.art1.

The above convention provides recognition that the independence of the judge's office is a universal principle that applies within the scope of judicial power. The 2010 Magna Charta of Judges Fundamental Principles also emphasizes that fundamental principles in judicial power guarantee the protection of judges' positions from interference during their term of office. After the political transition, it could be said that almost all legislative products in the field of judicial power have not had their blueprints adapted to universally applicable principles. Law on the Constitutional Court is no exception. The results of the identification through the blueprint or academic text of the third amendment to the Law on the Constitutional Court mean that the legislators still interpret the meaning of open legal policy in a narrow sense. Therefore, the universal principles above are not taken into consideration at all in limiting the legislative framework for the Law on the Constitutional Court. Likewise, in the law-adjudication stage, judges consider decisions in reviewing laws in the field of judicial power. These general principles can at least help to mitigate the risk of regulating the position of judges, including constitutional judges, so that it does not become an area that is easily exposed to party or power intervention.

b. Arranging the Constitutional Design of the Position of Constitutional Judges

Based on comparative view in Europe, Sadurski stated several countries that have adopted the institution of a constitutional court in their country regulate the term of office of the constitution over a relatively long period of time. This reason is influenced by two things, first, to revitalize the principle of separation of powers where the terms of office of judges do not follow the pattern in government positions.[12] Second, it saves state funding because proposals are not charged in each government period. Our research two previous years also shows that the arrangement of tenure regulate at the constitutional level, but some country regulate at the statutory level. The provisions in the constitution will provide protection for the position of judge so that it cannot be changed at any time by the legislators. Limiting the space for political parties in the position of judge is very important for a judge so that he does not become a tool for realizing certain goals. Meanwhile, regulation through law is a little more dynamic. Provisions can be changed at any time according to needs, but are quite vulnerable to the resistance of the independence of judicial power. [13]

This is influenced by the fact that the measure of independence of judicial power in various countries has different levels of exposure, adjusted to social, political and historical judicial factors in a country. However, it actually has the same goal, so that the judiciary is not under the influence of power when deciding a case. Based on the secondary data above, structuring the constitutional design of the position of constitutional judge in the Constitution is something that can be considered to minimize the risk of politicization of the

12 Wojciech Sadurski, *Rights before Courts: Study of Constitutional Court in Post-Comunism State of Central and Eastern Europe* (New York: Springer, 2014), 17.

13 Idul Rishan, Sri Hastuti Puspitasari, and Siti Ruhama Mardhatillah, "Amendment to Term of Office of Constitutional Court Judges in Indonesia: Reasons, Implications, and Improvement," *Varia Justicia* 18, no. 2 (November 29, 2022): 141–55, https://doi.org/10.31603/variajusticia.v18i2.7236.

position of constitutional judge.

4. Conclusion

Based on the data presentation and analysis above, this study concludes that in the last three years, the Constitutional Court has often become the object of politicization of its independence. Using the inductive reasoning method, several examples of politicization were carried out with various motives and patterns. The results of this study show that the common motive is extra-judicial action. In this context, the court is politicized through the actions of political actors outside the judicial institution. Political actors use state resource instruments through the practice of legislating the third amendment to the Law on the Constitutional Court. In addition, the same motives are also carried out by political actors with different patterns. For example, the dismissal of Judge Aswanto outside the provisions of the Law on the Constitutional Court is a form of weakening the independence of the court.

This study also explains that the weakening of the independence of the judiciary also comes from intra-judicial actions. In this case, the court's attitude recorded through the decision to review the third amendment to the Law on the Constitutional Court also shows the strong conflict of interest between the judges in deciding a-quo cases. The Court in the two acts of politicization above tends to show a political or ambivalent attitude, even making minimal efforts to maintain its independence. There are two major factors identified as influencing the emergence of efforts to politicize the court. First, it is influenced by the weak design of the legal substance governing the appointment and dismissal of constitutional judges. Second, it is more influenced by socio-political factors, namely the emergence of the rise of cartel parties in the last 3 years. Cartel politics serve the same purpose. Parties in parliament are trying to weaken the role of judicial institutions to justify the government's populist policies. The Constitutional Court has become an object of politicization because it has a strategic role in reviewing laws against the Constitution.

To restore the conditions above can be carried out by using several approaches. First of all, revitalizing conventions in the field of judicial power relating to the universal principle of judicial independence. This strengthening is carried out in upstream and downstream aspects. The upstream aspect, for example, at the rule-making stage of the formation of laws in the field of judicial power, including the Law on the Constitutional Court, must be based on the universal principle of independence of judicial power. Then the downstream aspect is also the same. In the law-adjudication stage of consideration of decisions, judges reviewing laws in the field of judicial power are obliged to pay attention to the conventions that apply in the field of judicial power. Secondly, considering to improve the constitutional design. Regulation of the term of office of constitutional judges starting from the term of office and the selection mechanism needs to be regulated definitively through the Constitution.

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