

Narrating Constitutional Judges Election: Evidence From Indonesia

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Abstrak

Penelitian ini membahas tentang model pemilihan hakim konstitusi secara langsung oleh rakyat karena melihat banyak permasalahan integritas pada diri seorang hakim konstitusi yang dipilih berdasarkan amanah undang-undang. Presiden memilih Hakim Konstitusi, Mahkamah Agung, dan Dewan Perwakilan Rakyat. Ketiga lembaga tersebut sangat rentan mempunyai kepentingan yang berdampak pada integritas hakim dalam mengambil keputusan. Tulisan ini merupakan hasil penelitian hukum dengan menggunakan pendekatan hukum, historis, komparatif, dan konseptual. Hasil penelitian ini memberikan bukti adanya model pemilihan Hakim Konstitusi secara langsung oleh rakyat melalui mekanisme pemilihan yang dilakukan oleh Komisi Pemilihan Umum/KPU.

Kata Kunci: Pemilu; Hakim Konstitusi; Rakyat.

Abstract

This study discusses the model of direct election for constitutional judges by the people because it sees many integrity problems in a constitutional judge elected based on the law's mandate. The President elects the Constitutional Judges, the Supreme Court, and the House of Representatives. These three institutions are very prone to have interests that result in the integrity of judges in making decisions. This paper results from legal research using a legal, historical, comparative, and conceptual approach. The results of this study provide evidence of the model of direct election for Constitutional Judges by the people through the election mechanism carried out by the General Election Commission/KPU.

Keywords: Election; Constitutional Judge; People.

Introduction

Judges are one element of law enforcement in a rule-of-law country. Appointing a judge is finding someone with integrity and personality beyond reproach, fair, professional, and experienced in law. It is not surprising that the place of the judge, the court, is seen as *nec curia defī ceret in justitia exhibenda*, or the court is the palace where the goddess of justice resides to breathe the scent of justice endlessly.¹ This cameo reflects the existence of a judicial world that is very noble and authoritative and the place where the principles of justice reside. Moreover, when trying and deciding cases, judges must incarnate themselves and act as 'representatives of god' on earth.² This moral weight is heavy since it is accountable not only horizontally to fellow humans but also vertically to God, so there must be another side to consider as a judge. Judicial power is the last chance for those seeking justice.

However, the expectation of the judiciary as a noble and authoritative institution is on display when witnessing a corrupt judicial drama hurt by immoral practices.³ Although recruitment and supervision have been carried out very tightly both by state institutions given special authority to oversee the judicial process and independent institutions, the reality is that there are still many open and loose loopholes in the judicial institution that cunning, dirty, and fraudulent practices can infiltrate. This condition is inversely proportional to the form of institutional principle slogans that prioritize morality, which are always shouted by law

¹ Michael J. DeValve, 'A Theory of Suffering and Healing: Toward a Loving Justice', *Critical Criminology*, 31.1 (2023), 35–60 <<https://doi.org/10.1007/s10612-022-09667-4>>.

² Zaka Firma Aditya, 'Penerapan Modal Sosial Dalam Praktek Peradilan Yang Berbasis Kepekaan Sosial', *Jurnal Ilmiah Hukum LEGALITY*, 25.2 (2018), 200 <<https://doi.org/10.22219/jihl.v25i2.6002>>.

³ Tanto Lailam, 'MEMBANGUN CONSTITUTIONAL MORALITY HAKIM KONSTITUSI DI INDONESIA (Developing the Constitutional Morality of the Constitutional Justice in Indonesia)', *Jurnal Penelitian Hukum De Jure*, 20.4 (2020), 339–48 <<https://doi.org/10.30641/dejure.2020.V20.511-530>>.

enforcers and are seen as quite noble instead of turning into empty songs. Morality is only used as a mask and cloak for infiltration and as justification for its verdicts.⁴

Furthermore, judicial power appears as a fractured mirror because it has been unable to glue the values of justice in society, which are still scattered. The problem of poor mafia practices in the judiciary has been going on for a long time. Even criminologists have researched irregularities in the judicial cycle. William J. Chambliss and Robert B. Seidman, in their book entitled *Law, Order, and Power*, write that the crookedness has begun in terms of law, namely because the law is a reflection of the interests of the ruling elite (the higher a group's political and economic position).⁵ Both emphasized that irregularities in the judicial world occur because judges must rely on their values when deciding in trouble cases. The other side has the most potential to gain crime (*judicial crime*), namely the tendency and efforts of judges to reap wealth and power from their work.

In the context of the Constitutional Court, Currently, the model of selecting constitutional judges is left to three branches of power, namely the executive (president), legislative (House of Representatives/*Dewan Perwakilan Rakyat-DPR*), and judiciary (Supreme Court/*Mahkamah Agung-MA*) which each appoint 3 judges. This model according to Andrew Harding and Penelope Leyland in their paper "*Constitutional Court: A Comparative Study*" is called the *Korean Representative model*.⁶ This model is the basic idea to accommodate the principle of *checks and balances* of the three branches of power. Although this Korean Representative model seems ideal with the appendage of strengthening the principle of *checks and balances*, it actually has a crucial weakness, namely the lack of competent, professional, and independent candidates. Because, each judge chosen is considered an "extension" of each of these powers, and will certainly have a

⁴ Muhamad Auza Syam and Kayus Kayowuan Lowoleba, 'Etika Dan Profesi Hakim Terhadap Regulasi Penegakan Hukum Di Negara Republik Indonesia', *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial*, 1.5 (2023) <<https://doi.org/10.5281/ZENODO.10252038>>.

⁵ Baruna Poking Bagus Saputro, 'Public Information Dispute Resolution (Perspective of the State Administrative Court Act and the Public Information Disclosure Act)', *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang*, 7.1 (2021), 61-88 <<https://doi.org/10.15294/ulj.v7i1.38803>>.

⁶ Ahmad Siboy and others, 'Legal Social Justice in Appointment Non-Definitive Regional Heads toward Welfare State', *BESTUUR*, 11.1 (2023), 144-70 <<https://doi.org/10.20961/BESTUUR.V11I1.71055>>.

strong relationship with the proposing institution. Problems will inevitably arise when the judge tries to remove the shackles of his relationship, break out, and be independent, then it is certain that the proposing body will perceive that the judge who has been elected does not have a "commitment" to the interests of the proposing body. In fact, wherever and under any circumstances, judges must be independent and free from the influence of any party.

The author's statement above was proven when in September 2022, the DPR suddenly tried to remove one of the Constitutional Judges on the grounds that it had annulled many DPR product laws in the Constitutional Court (*Mahkamah Konstitusi*-MK).⁷ In fact, the chairman of Commission III of the House of Representatives said that the removal was because the Constitutional Judge concerned did not have a commitment to the DPR. It is not impossible, the action of this House in the future will be followed by other proposing institutions such as the President and the Supreme Court. In other words, in the future, the constitutional system will be damaged where the courts (*in casu* the Constitutional Court) will become institutions that are not independent and full of political interests. In fact, the selection and proposal of MK judges from each proposing institution does not mean that the MK judge is an extension of his representative in the Constitutional Court. As a state institution, the guardian of the constitution should be free from interference by any party and in any form. This principle requires the guarantee of impartiality of judicial power, except for law and justice. In fact, the independence of the Constitutional Court judiciary should not be interfered with by political affairs.

The drama of the DPR's intervention in the replacement of Constitutional Court Judges also occurred when Constitutional Court Judge Wahiduddin Adams entered retirement, which culminated in the election of Arsul Sani, who is a PPP politician, where when he registered and took part in the selection process, Arsul Sani was still active as a member of the DPR and being an advocates. Arsul Sani

⁷ Muhammad Fawwaz Farhan Farabi and Tanaya, 'Polemik Legalitas Pemecatan Hakim Konstitusi Oleh Lembaga Pengusul: Tinjauan Kasus Pemecatan Hakim Aswanto Dan Implikasinya Terhadap Kemandirian Kekuasaan Kehakiman', *Jurnal Hukum Dan HAM Wara Sains*, 2.04 (2023), 294–303 <<https://doi.org/10.58812/JHHWS.V2I04.291>>.

argued that he had submitted his resignation from being a member of the DPR while taking part in the MK judge selection process, but in fact, his status as a member of the DPR was still active until he was elected as an MK judge.⁸ However, many sources argue that Arsul Sani only really resigned from his membership in the DPR (as a legislator) and PERADI (as an active advocate) after being elected as an MK judge. This ethical problem often occurs in law enforcement in Indonesia.

Reflecting on the above phenomenon, the *Korean Representative* model can also be used as a tool by the proposing institution to weaken the institution of the Constitutional Court by placing incompetent people as Constitutional Judges. As a result, the verdicts handed down will increasingly come out of the side of substantive justice with very little judicial activism. This can also be seen when many judges decide with the proposition of "*open legal policy*",⁹ which according to the author, this kind of model decision is a decision that only pursues a sense of "security" so as not to be seen as straddling the commitment of policymakers/laws. Based on the background above, the author proposes a model of directly electing Constitutional Judges by the people. This model is similar to the model of selecting judges in several states in the United States, with the aim that the Constitutional Judges will have a *sense of belongings* with the people, and be free from interference from any political institution.

Method

This study is the product of legal research¹⁰ that employed a legal approach (statute approach), a historical approach (historical method), a comparative approach, and a conceptual approach. The legal approach (statute approach) involves analyzing all laws and regulations relevant to the legal issues under consideration, especially regulations related to the Constitutional Court and its

⁸ CNN Indonesia, 'Arsul Sani Mundur Dari PPP Dan DPR Usai Dilantik Jadi Hakim MK', *CNN Indonesia*, 2024 <<https://www.cnnindonesia.com/nasional/20240118123017-32-1051170/arsul-sani-mundur-dari-ppp-dan-dpr-usai-dilantik-jadi-hakim-mk>> [accessed 10 March 2024].

⁹ Sholahuddin Al-Fatih, 'Electoral Regulation in Indonesia: Is It Modern Law?', *Unnes Law Journal*, 6.2 (2020), 205–16 <<https://doi.org/10.15294/ulj.v6i2.41627>>.

¹⁰ Sholahuddin Al-Fatih, *Perkembangan Metode Penelitian Hukum Di Indonesia*, 1st edn (Malang: UMM Press, 2023).

Judges. Departing from views and doctrines that arise in legal science, researchers will identify ideas to legal understandings, legal concepts, and legal principles pertinent to the subject. The comparative technique involves comparing one legal system to another. This paper uses primary and secondary legal materials.¹¹ Primary legal material comprises laws and regulations, official records or minutes in making legislation, and judges' decisions. At the same time, secondary legal materials consist of textbooks on law, legal journals, legal dictionaries, and commentaries on court decisions. Legal materials in the form of primary and secondary legal materials are inventoried and clarified according to the problem formulation, then examined using a statutory approach, a conceptual approach, and a comparative approach.¹²

Findings and Discussion

Constitutional Judge Selection Problems in Indonesia

The mechanism of the appointment of constitutional judges under Indonesia's constitutional framework does not yet ensure its realization—the Constitutional Court's independence in exercising its jurisdiction, particularly in cases involving state institutions recommending judges. The independence of the Constitutional Court depends on the integrity of each judge. The Constitutional Court and its judges form a unit that cannot be divided.¹³ Currently, the Constitutional Judge recruitment system has various models due to the broad interpretation of the provisions of Article 24C paragraph (3) of the 1945 Constitution, that the Constitutional Court has nine members of constitutional judges appointed by the President, which are proposed three each by the Supreme Court, three by the House of Representatives, and three by the President of the Republic of Indonesia.

¹¹ Sholahuddin Al-Fatih and Ahmad Siboy, *Menulis Artikel Karya Ilmiah Hukum Di Jurnal Nasional Dan Internasional Bereputasi* (Malang: Inteligensia Media, 2021).

¹² Tunggul Ansari and Setia Negara, 'Normative Legal Research in Indonesia: Its Originis and Approaches', *Audito Comparative Law Journal (ACLJ)*, 4.1 (2023), 1–9 <<https://doi.org/10.22219/ACLJ.V4i1.24855>>.

¹³ Dedy Syahputra and Zulman Subaidi, 'Kedudukan Dan Mekanisme Pengisian Hakim Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Indonesia', *REUSAM: Jurnal Ilmu Hukum*, 9.1 (2021), 106–25 <<https://doi.org/10.29103/reusam.v9i1.4979>>.

Likewise, regulations such as the Judicial Power Law and the Constitutional Court Law do not expressly regulate the recruitment model for Constitutional Judges. For example, the Law on Judicial Power states that the elements of submitting Constitutional Judges consist of the concept of nomination that is carried out in a transparent and participatory manner and the concept of elections that are carried out objectively and accountably. Furthermore, the Law on Judicial Power confirms that further provisions regarding the terms and procedures for appointing constitutional judges are regulated in law. The Constitutional Court Law should also reinforce the norms governing the selection of constitutional judges.¹⁴ However, Article 20 of the Constitutional Court Law only stipulates the same norm: that the procedures for selection, selection, and submission of constitutional judges are regulated by each institution authorized to submit them and are carried out objectively and accountably. The question is, of course, what is objective and what is accountable? What are the indicators?

If examined further, it turns out that there are several juridical problems in it. *First*, the mandate of the Judicial Power Law on the elements of the submission of constitutional judges consisting of the nomination process and the election process is not regulated in the Constitutional Court Law. *Second*, the Constitutional Court Law directly delegates regulations in the procedures for selection, selection and submission of constitutional judges to the Supreme Court, DPR and President. In fact, the 1945 Constitution mandates that appointments, terms and other provisions regarding the Constitutional Court be regulated by law. This in turn gives rise to a mixed dualism of arrangements as a shared concept in which one wants a standard standard, while the other wants flexibility of implementation.

The existence of differences in norms clearly creates legal uncertainty which leads to incompatibility of constitutional judge selection arrangements. Precisely with the mandate of the Law on Judicial Power, it opens a gap for the President, the House of Representatives and the Supreme Court to formulate standards that are used as joint guidelines in selecting constitutional judges. These provisions or

¹⁴ Cenlia Brigita Engkolan, 'Mekanisme Pemilihan Hakim Konstitusi', *COMSERVA : Jurnal Penelitian Dan Pengabdian Masyarakat*, 2.8 (2022) <<https://doi.org/10.59141/COMSERVA.V2I8.883>>.

standards are normed in the Constitutional Court Law which specifically regulates institutionally. So, currently there are actually several models applied by each proposing institution as follows:

1. Closed selection by the Supreme Court

The Supreme Court conducts internal and closed selection of Constitutional Judges, whose selection mechanism is carried out internally by the institution, no publication is carried out, there is no public participation as one of the mechanisms of social control over the selection process carried out. The Supreme Court requires selection participants to come from career judges within the Supreme Court and the courts below, so as not to open space for registration of candidates for constitutional judges for the general public.

This model recruitment process can only be known by the Internal Supreme Court without an open process until there is no public participation. This then gives a strong impression that the selection process for Constitutional Judges in the Supreme Court does not apply the principles of Transparent, Participative, Objective and Accountable.

2. Selection mechanism for constitutional judges through extension of term of office

This mechanism has been carried out by the President and the DPR. The submission from the President, for example, was made against constitutional judge Maria Farida Indrati for a second term. This condition does not open up space for other people to register as candidates for constitutional judges through the Presidential institution. Even in the presidential institution there has also been an election of constitutional judges through the mechanism of 'appointment' as happened in the appointment of Patrialis Akbar as a constitutional judge by the president based on a proposal submitted by the Ministry of Law and Human Rights which is a government institution once led by Patrialis Akbar, which raises public opinion that the appointment of Patrialis Akbar is a political compensation given by the president for the move reshuffle carried out by the president. Meanwhile, in the DPR, the mechanism for submitting

constitutional judges is carried out by extending Akil Mochtar's term of office for a second term without opening registration of candidates for constitutional judges.

3. Selection mechanism for Constitutional Judges by forming a team of experts
This selection mechanism is the most common carried out by the DPR and the President. Although this kind of selection mechanism is seen as the most ideal mechanism today because it has succeeded in capturing public participation, it is not without problems. Some of the problems that arise include the view that this mechanism is used to legitimize the allotment of constitutional judges for a number of members of Commission III (those Commission is the member of the House of Representatives) or the president.¹⁵ This means that recruitment in the judiciary has been politicized by the coalition and the distribution of interests according to the political configuration in Commission III of the House of Representatives and the president. In fact, it is no longer an open secret that this legitimacy process actually requires a very large political transaction process behind it. This case perhaps happens by the elected constitutional judge, Arsul Sani, who are an active legislator from PPP Party. As is known, Arsul Sani serves in Commission III, which deals with law, human rights (HAM), and security, and he is also a member of the DPR Legislative Body (*Badan Legislasi/Baleg*).

Finally, the current model of selection of Constitutional Judges is seen and interpreted that elected Constitutional Judges are seen as an extension of the proposing body. The selection and proposal of Constitutional Court judges from each proposing institution does not mean that the Constitutional Judge is an extension of the proposing institution in the Constitutional Court. As a state institution guarding the Constitution, it is appropriate for the Constitutional Court

¹⁵ Gigih Reforman Hadi, Galang Asmara, and Chrisdianto Eko Purnomo, 'Pemberhentian Hakim Mahkamah Konstitusi Oleh Dewan Perwakilan Rakyat Menurut Undang-Undang Nomor 24 Tahun 2003', *Jurnal Ilmiah Wahana Pendidikan*, 9.13 (2023), 297–308 <<https://doi.org/10.5281/ZENODO.8151203>>.

to be free from interference from any party and in any form. This principle requires the guarantee of impartiality of judicial power, except for law and justice.¹⁶

Model of direct election of Constitutional Judges by the people

1. Understanding Judges in Anglo Saxon and in the Continental System

Basically, the character and mechanism of judge selection in Anglo Saxon countries are very different from the character and mechanism of judge selection in the continental system. According to Henry Merryman, in Anglo Saxon, judges are not career positions, but are filled by people who have experience as lawyers in various institutions, both private and government.¹⁷ In general, a person is chosen or appointed as a judge for various reasons, such as success in his career as a lawyer, prosecutor, or because of political influence. The selection mechanism is carried out through various mechanisms such as involving the Senate through the Judiciary Committee which is usually completed by a letter that serves as an endorsement from the Attorney General and a nomination from the President. Because they have had previous careers, they generally become judges at a young age, so when they are elected or appointed as judges, the appointment is seen as a recognition which in turn will cause respect.

While in the Continental, judge is a career position that is built from the lowest level, namely in the courts of first instance to the highest level to become chief justices. John Henry Merryman referred to judges in the continental system as '*a civil servant who performs important but essentially uncreative functions*'.¹⁸ This is, among other things, because the education and training of judges places more emphasis on the ability of interpretive techniques, rather than the major issues that are often found in constitutional test cases. Law graduates even fresh graduate

¹⁶ Ahmad Siboy, 'The Integration of the Authority of Judicial Institutions in Solving General Election Problems in Indonesia', *Legality: Jurnal Ilmiah Hukum*, 29.2 (2021), 237–55 <<https://doi.org/10.22219/ljih.v29i2.15608>>.

¹⁷ Arief Budiono and others, 'The Anglo-Saxon System of Common Law and the Development of the Legal System in Indonesia', *WSEAS Transactions on Systems*, 22.3 (2023), 207–13 <<https://doi.org/10.37394/23202.2023.22.21>>.

¹⁸ Stefan Arnold, 'The Chain Novel and Its Normative Fine Structure in Civil Law and Common Law: Dworkin, Brandom and Law's Normativity', *Law and Philosophy Library*, 139 (2022), 29–49 <https://doi.org/10.1007/978-3-030-87718-7_4/COVER>.

can choose judges as one of the career options through examinations, if successful, they will be appointed as junior judges placed in the first court.

Furthermore, the character and selection model of judges in Anglo Saxons is very similar to the current selection model of Constitutional Judges. This can be a justification for the author, that the election of constitutional judges has now surpassed the models of selecting judges in the continental system, so that when the author initiated the model of selecting Constitutional Judges directly as in Anglo Saxon countries (America) it no longer pays attention to the boundaries of the legal system used. So there is no need to argue about the difference in the legal system between continental (Indonesian) and Anglo Saxon.

2. Election Model for Constitutional Judges by the People

The most important thing to note in filling the post of Constitutional Judge is the importance of minimizing political influence in the appointment process and avoiding as far as possible the discretion of individual officials authorized in the process.¹⁹ In addition, the entire process is sought to be more open to ensure that there is no political bias or preference for certain candidates.²⁰ In this regard, M.P. Jain in his book *Indian Constitutional Law* argues as follows:

The main purpose underlining the law laid down by the SC in the matter of opportunity Supreme Court judges was to minimize political influence in judicial appointments as well as to minimize individual discretion of the constitutional functionaries invoked in the process of appointment of the Supreme Court. The entire process of making appointment to high judicial offices is sought to be made more transparent so as to ensure

¹⁹ Zaka Firma Aditya, Rizkisyabana Yulistyaputri, and Abdul Basid Fuadi, 'Judicial Masculinity: Examining The Role And Effect of Women's Justice in The Indonesian Constitutional Court', in *2nd Global Conference on Women's Studies* (Berlin, 2022), pp. 62–73 <<https://doi.org/10.33422/2nd.womensconf.2021.06.3119>>.

²⁰ Mardika and Cindy Dalli Puspitomanik, 'Kepastian Pengaturan Pengisian Jabatan Hakim Konstitusi Sebagai Upaya Pengawasan Preventif', *Justitia Jurnal Hukum*, 4.1 (2020) <<https://journal.um-surabaya.ac.id/Justitia/article/view/4019>> [accessed 10 March 2024].

*that neither political bias, nor personal favoritism nor animosity play any part in the appointment of judges.*²¹

In the United States elections, in several states, one of which is Washington State not only elects the president, they also elect judges directly. As for the comparison perspective, this system of directly selecting judges has advantages and disadvantages. The advantage is that because judges are directly elected by the people, judges will make decisions that are closer to the element of justice for the community. So that if the judge does not 'follow' the community, then later he will not be elected again by the people in the next election. This will make judges more responsive to what is a concern of the community when handling a case.

On the other hand, the weakness is that judges will only decide based on what is popular with the public. Not based on the law or legal facts at trial. In fact, the judge must decide based on applicable law. In addition, the elected judge is not necessarily the best judge. Because, the election is carried out by 'ordinary' people who may not know much information about the law or the background of the judge. Moreover It will be difficult for the public to judge candidates in elections because the characteristics of judges are different from politicians. If politicians are free to express their opinions or opinions on a problem, judges have limitations.

Basically, the selection mechanism for Constitutional Judges will greatly determine the figure elected as a constitutional judge so that it will greatly affect the performance of the Constitutional Court.²² Therefore, of course, in this idea, the author does not necessarily propose the full adoption of direct elections without making adjustments. In addition, it does not eliminate the role of each state institution (President, DPR, and Supreme Court) in proposing and selecting Constitutional Judges because it is a mandate of the 1945 Constitution. In this case, there were an option to use a mixed model between direct selection and the mechanism for forming an expert team or expert team as follows:

²¹ Sukardi Sukardi and E. Prajwalita Widiati, 'Pendelegasian Pengaturan Oleh Undang-Undang Kepada Peraturan Yang Lebih Rendah Dan Akibat Hukumnya', *Yuridika*, 27.2 (2012), 141-56 <<https://doi.org/10.20473/ydk.v27i2.293>>.

²² Junesvan Purba and Hendri Goklas Pasaribu, 'Mekanisme Pengangkatan Dan Pemberhentian Hakim Konstitusi Menurut Peraturan Perundang-Undangan', *Jurnal Kajian Konstitusi*, 3.1 (2023), 99 <<https://doi.org/10.19184/j.kk.v3i1.39521>>.

1. The President and/or DPR open vacancies to fill the position of Constitutional Judge Candidate openly to the public. Meanwhile, the Supreme Court can also open vacancies to fill the position of Constitutional Justice Candidate openly to career judges within the Supreme Court and the Judiciary below;
2. Each institution formed an expert team or some kind of selection panel as stated in Perppu No.1 of 2013 which was later canceled through Constitutional Court Decision Number 1-2 / PUUMK / 2014, so there is no need to include elements of the Judicial Commission;
3. Prospective Judges who pass the administrative requirements are then carried out *a fit and proper test* by a team of experts/experts consisting of elements:
 - a. The expert team from the president consists of 1 Presidential Secretary, 1 community leader, 2 legal academics, 1 Former Constitutional Court Judge.
 - b. The expert team from the DPR consists of 1 DPR member, 1 community leader, 2 legal academics, 1 Former Constitutional Court Judge.
 - c. The expert team from the Supreme Court consists of 1 Supreme Court justice, 1 community leader, 2 legal academics, 1 Former Constitutional Court Judge.
4. The expert team selects to produce a maximum of 3 (five) Candidates for Constitutional Judges;
5. The proposing institution verifies and conducts due diligence on a maximum of 3 (five) Candidates for Constitutional Judges openly;
6. The proposing body submits the names of prospective judges to the KPU to be included in the general election process;
7. The public directly elects candidates for constitutional judges;
8. Determination of winners by the KPU and provided to the President cq other proposing institutions;
9. Inauguration by the President based on the winner of the election of constitutional judges.

The technical direct election of candidates for constitutional justices is based on provisions in number 7, based on the same as other general elections (presidential and legislative elections), by including the candidate's photo and name on the ballot paper. However, disputes over results need to be regulated and studied further. So far, in elections, there has been a Gakkumdu Center consisting of Bawaslu, Police, and Prosecutors. Also, with the mechanism for disputes over results submitted to the Constitutional Court, such as general elections, technically, the Judicial Commission can handle disputes in the election of Constitutional Court judges or be studied further in subsequent research. As a note, it is important to amend the Constitutional Court Law or its delegated legislation as a legal norm.

Conclusion

Based on this discussion, a common thread can be drawn that the integrity of Constitutional Judges elected through 3 institutions, namely the President, DPR, and Supreme Court at this time, clearly causes serious problems. Therefore, the model of electing Constitutional Judges should be returned to be directly elected by the people. The author proposed the election through the KPU, such as the Presidential Election, Pileg, and Pilkada. For the model of direct election of Constitutional Judges by the people to be realized, two strategic steps are needed, namely through amendments to the Constitutional Court Law relating to the technical selection of Constitutional Judges who meet the elements of transparent, participatory, objective and accountable as well as direct education to the public about its urgency.

BIBLIOGRAPHY

Aditya, Zaka Firma, 'Penerapan Modal Sosial Dalam Praktek Peradilan Yang Berbasis Kepekaan Sosial', *Jurnal Ilmiah Hukum LEGALITY*, 25.2 (2018), 200 <<https://doi.org/10.22219/jihl.v25i2.6002>>

Al-Fatih, Sholahuddin, 'Electoral Regulation in Indonesia: Is It Modern Law?', *Unnes Law Journal*, 6.2 (2020), 205-16 <<https://doi.org/10.15294/ulj.v6i2.41627>>

———, *Perkembangan Metode Penelitian Hukum Di Indonesia*, 1st edn (Malang:

UMM Press, 2023)

Al-Fatih, Sholahuddin, and Ahmad Siboy, *Menulis Artikel Karya Ilmiah Hukum Di Jurnal Nasional Dan Internasional Bereputasi* (Malang: Inteligensia Media, 2021)

Ansari, Tunggul, and Setia Negara, 'Normative Legal Research in Indonesia: Its Originis and Approaches', *Audito Comparative Law Journal (ACLJ)*, 4.1 (2023), 1–9 <<https://doi.org/10.22219/ACLJ.V4I1.24855>>

Arnold, Stefan, 'The Chain Novel and Its Normative Fine Structure in Civil Law and Common Law: Dworkin, Brandom and Law's Normativity', *Law and Philosophy Library*, 139 (2022), 29–49 <https://doi.org/10.1007/978-3-030-87718-7_4/COVER>

Budiono, Arief, Wardah Yuspin, Siti Syahida Nurani, Fahmi Fairuzzaman, Sofyan Wimbo Agung Pradnyawan, and Siska Diana Sari, 'The Anglo-Saxon System of Common Law and the Development of the Legal System in Indonesia', *WSEAS Transactions on Systems*, 22.3 (2023), 207–13 <<https://doi.org/10.37394/23202.2023.22.21>>

DeValve, Michael J., 'A Theory of Suffering and Healing: Toward a Loving Justice', *Critical Criminology*, 31.1 (2023), 35–60 <<https://doi.org/10.1007/s10612-022-09667-4>>

Engkolan, Cenlia Brigita, 'Mekanisme Pemilihan Hakim Konstitusi', *COMSERVA: Jurnal Penelitian Dan Pengabdian Masyarakat*, 2.8 (2022) <<https://doi.org/10.59141/COMSERVA.V2I8.883>>

Farabi, Muhammad Fawwaz Farhan, and Tanaya, 'Polemik Legalitas Pemecatan Hakim Konstitusi Oleh Lembaga Pengusul: Tinjauan Kasus Pemecatan Hakim Aswanto Dan Implikasinya Terhadap Kemandirian Kekuasaan Kehakiman', *Jurnal Hukum Dan HAM Wara Sains*, 2.04 (2023), 294–303 <<https://doi.org/10.58812/JHHWS.V2I04.291>>

Firma Aditya, Zaka, Rizkisyabana Yulistyaputri, and Abdul Basid Fuadi, 'Judicial Masculinity: Examining The Role And Effect of Women's Justice in The Indonesian Constitutional Court', in *2nd Global Conference on Women's Studies* (Berlin, 2022), pp. 62–73 <<https://doi.org/10.33422/2nd.womensconf.2021.06.3119>>

Hadi, Gigih Reforman, Galang Asmara, and Chrisdianto Eko Purnomo, 'Pemberhentian Hakim Mahkamah Konstitusi Oleh Dewan Perwakilan Rakyat Menurut Undang-Undang Nomor 24 Tahun 2003', *Jurnal Ilmiah Wahana Pendidikan*, 9.13 (2023), 297–308 <<https://doi.org/10.5281/ZENODO.8151203>>

Indonesia, CNN, 'Arsul Sani Mundur Dari PPP Dan DPR Usai Dilantik Jadi Hakim MK', *CNN Indonesia*, 2024 <<https://www.cnnindonesia.com/nasional/20240118123017-32-1051170/arsul-sani-mundur-dari-ppp-dan-dpr-usai-dilantik-jadi-hakim-mk>> [accessed 10 March 2024]

Lailam, Tanto, 'MEMBANGUN CONSTITUTIONAL MORALITY HAKIM KONSTITUSI DI INDONESIA (Developing the Constitutional Morality of the Constitutional Justice in Indonesia)', *Jurnal Penelitian Hukum De Jure*, 20.4 (2020), 339–48 <<https://doi.org/10.30641/dejure.2020.V20.511-530>>

Mardika, and Cindy Dalli Puspitomanik, 'Kepastian Pengaturan Pengisian Jabatan Hakim Konstitusi Sebagai Upaya Pengawasan Preventif', *Justitia Jurnal Hukum*, 4.1 (2020) <<https://journal.um-surabaya.ac.id/Justitia/article/view/4019>> [accessed 10 March 2024]

Purba, Junesvan, and Hendri Goklas Pasaribu, 'Mekanisme Pengangkatan Dan Pemberhentian Hakim Konstitusi Menurut Peraturan Perundang-Undangan', *Jurnal Kajian Konstitusi*, 3.1 (2023), 99 <<https://doi.org/10.19184/j.kk.v3i1.39521>>

Saputro, Baruna Poking Bagus, 'Public Information Dispute Resolution (Perspective of the State Administrative Court Act and the Public Information Disclosure Act)', *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang*, 7.1 (2021), 61–88 <<https://doi.org/10.15294/ulj.v7i1.38803>>

Siboy, Ahmad, 'The Integration of the Authority of Judicial Institutions in Solving General Election Problems in Indonesia', *Legality: Jurnal Ilmiah Hukum*, 29.2 (2021), 237–55 <<https://doi.org/10.22219/ljih.v29i2.15608>>

Siboy, Ahmad, Sholahuddin Al-Fatih, Devi Triasari, and Hilaire Tegnan, 'Legal Social Justice in Appointment Non-Definitive Regional Heads toward Welfare State', *BESTUUR*, 11.1 (2023), 144–70 <<https://doi.org/10.20961/BESTUUR.V11i1.71055>>

Sukardi, Sukardi, and E. Prajwalita Widiati, 'Pendelegasian Pengaturan Oleh Undang-Undang Kepada Peraturan Yang Lebih Rendah Dan Akibat Hukumnya', *Yuridika*, 27.2 (2012), 141–56 <<https://doi.org/10.20473/ydk.v27i2.293>>

Syahputra, Dedy, and Zulman Subaidi, 'Kedudukan Dan Mekanisme Pengisian Hakim Mahkamah Konstitusi Dalam Sistem Ketatanegaraan Indonesia',

REUSAM: Jurnal Ilmu Hukum, 9.1 (2021), 106–25
<<https://doi.org/10.29103/reusam.v9i1.4979>>

Syam, Muhamad Auza, and Kayus Kayowuan Lowoleba, 'Etika Dan Profesi Hakim Terhadap Regulasi Penegakan Hukum Di Negara Republik Indonesia', *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial*, 1.5 (2023)
<<https://doi.org/10.5281/ZENODO.10252038>>