CHAPTER 3

The Indonesian Constitutional Court: An Overview

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Abstract

This chapter presents a general description of the Indonesian Constitutional Court, exploring its emergence, development, powers, responsibilities, and the process for appointing its Justices. Although Indonesia declared independence in 1945, its Constitutional Court was not born until 2003. This chapter explains the Court’s long gestation period, its sudden birth and how it has exercised its powers. The Court has been instrumental in safeguarding the supremacy of the Constitution, protecting Indonesian citizens’ fundamental human rights, and ensuring that the government adheres to the rule of law. Its decisions have also had a significant impact on a wide range of issues, ranging from election disputes to recognition of minority religions. Furthermore, this chapter looks the role of Pancasila as the foundation of the Indonesian Constitution and its importance in guiding the Constitutional Court. The methodology used in this chapter is a qualitative analysis of the Court’s functions and secondary sources, including scholarly literature. This chapter concludes with a brief assessment of the Court’s performance and future challenges, such as the need to enhance the quality of its decisions while ensuring its independence from political influences. This independence is critical to preserving the Court’s integrity and legitimacy as an impartial arbiter of constitutional issues. By examining the Court’s history and functions, this chapter explains the Court’s vital functions in maintaining Indonesia’s diversity and its democratic system.

Keywords

constitutional court – diversity – Indonesia – judicial review – Pancasila

1 Introduction

The Indonesian Constitutional Court has played a critical role in upholding the rule of law, protecting citizens’ rights, and ensuring that the government’s actions are in line with the country’s Constitution. This chapter will provide
an overview of the Constitutional Court’s origins and evolution, powers, functions and its Justice selection mechanism.

The chapter aims to shed light on the role of the Court in strengthening Indonesia’s democratic institutions, promoting the rule of law, and safeguarding citizens’ rights. With this objective in mind, it will begin by discussing the historical context that led to the establishment of the court and the factors that influenced its design and operations. It will then examine the court’s powers and functions, including a look at the number and types of cases it has handled. It also provides an overview of the development of the Court’s powers during the first twenty years of its establishment.

This is followed by an explanation of the processes for the appointment and dismissal of the Constitutional Court’s nine Justices. This is an important matter as it is one of the factors that can influence the Court’s independence. Finally, the chapter concludes by briefly assessing the Court’s performance and its future challenges.

By providing an in-depth analysis of the Indonesian Constitutional Court, this chapter seeks to contribute to the broader understanding of the role of the Court in consolidating democracy, upholding the rule of law, and promoting human rights, which will be elaborated in the further chapters.

2 Background

One of the goals of the amendments to Indonesia’s inaugural 1945 Constitution, conducted over 1999 to 2002, was to improve the basis of democratic and modern governance of the state. These improvements included a more explicit distribution of power, a system of checks and balances, and the establishment of new institutions to accommodate the nation’s evolving needs after decades of authoritarian rule. At the same time, there was also a restructuring of the authority of existing state institutions and the creation of new ones, as part of efforts to strengthen Indonesia as a constitutional democracy.

One of the new state institutions introduced by the amended Constitution is the Indonesian Constitutional Court, which is one of the holders of judicial power. Article 24(2) of the Constitution states: “The judicial power is exercised by a Supreme Court with its subordinated judicial bodies within the form of general courts, religious courts, military courts, administrative courts, and by a Constitutional Court.” Although both the Supreme Court and the Constitutional Court hold judicial power and have the status of “independent”
state institutions, they possess different authorities, and there is no hierarchical relationship between them.

In the development of Indonesia’s constitutional history, the idea of establishing a Constitutional Court or an institution with the authority to examine laws against the constitution was proposed by one of Indonesia’s founders during the preparation of the first constitution of independent Indonesia in the meetings of the Investigating Committee for Preparatory Work for Independence (BPUPK). At that time, Muhammad Yamin proposed that a mechanism be provided for comparing laws. Referring to it as the Balai Agung (Supreme Hall), he suggested the institution be given the authority to evaluate the work of political institutions that produce legal products in the form of laws. Although he did not refer to it as a Constitutional Court, Yamin wanted the Balai Agung’s mandate to be like that of a constitutional court with the authority to review laws against the constitution.

Yamin’s idea was not discussed deeply in the BPUPK because it was rejected by Soepomo, a fellow member of BPUPK and one of the architects of Indonesia’s first constitution. Soepomo had at least two objections to Yamin’s proposal. First, the Indonesian Constitution was not based on Montesquieu’s theory of the separation of powers (trias politica). Second, there were not enough legal experts in the early days of independence to compare (men-bandung) or review laws as intended by Yamin. Additionally, Soepomo argued that a comprehensive comparative study of experiences from countries such as Austria and Czechoslovakia, the first two countries that established constitutional courts, both in 1920, was necessary to grant a Balai Agung the authority to compare laws. Another reason for Soepomo’s objection was that giving judges the authority to compare laws would have contradicted the concept of supremacy of the People’s Consultative Assembly (MPR) adopted by the 1945 Constitution.

Although Yamin’s proposal was not included in the final version of the 1945 Constitution, the concept of judicial review was still recognized as a part of the judiciary’s power in Indonesia. This recognition is based on the philosophical

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2 Bahar et al., Risalah Sidang, 341–342.
principle of an independent and free judiciary, which is stated in Article 24 of the 1945 Constitution and its Elucidation. In principle, the authority to conduct judicial review cannot be separated from an independent judiciary because it is a fundamental aspect of its implementation. Such arguments can be justified, for example, by referring to the experience of the United States (US) Supreme Court in the case of Marbury vs Madison, where the authority of judges to perform judicial review was not explicitly stated in the Constitution, but was an interpretation of the power of an independent judiciary. This case was a milestone in the history of the judiciary in the practice of judicial review because for the first time, the US Supreme Court invalidated a law made by the US Congress. The influence and concept of reviewing laws, known as judicial review, quickly spread to many other parts of the world.

The idea of establishing a judicial review mechanism in Indonesia gained momentum during the sessions of the Constituent Assembly over 20 May to 13 June 1957. In a plenary session focused on collecting essential materials for a new constitution, several members of the Constituent Assembly revived Yamin’s proposal for judicial review. These included Soeripto of the Indonesian National Party (PNI), Oei Tjoe Tat, Siauw Giok Tjohan and Yap Thiam Hien of the Indonesian Council of Deliberation (Baperki), Hermanu Kartodiredjo of the Indonesian Communist Party (PKI), Penda Saroengalo of the Indonesian Christian Party (Parkindo), and members of the Indonesian Judges Association (IKAH). The members proposed that an article be included in the Constitution stipulating that a law would not apply if it contradicts the Constitution. The Constituent Assembly’s efforts to create a new constitution were ultimately unsuccessful, as founding president Soekarno dissolved the assembly in 1959 and introduced his concept of Guided Democracy, centralizing authority under the president’s guidance.

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7 For further discussion on the dissolution of the Constituent Assembly, see Adnan Buyung, *Aspirasi Pemerintahan Konstitusional Indonesia. Study Sosio-Legal atas Konstituante*.
Despite setbacks, the development of Indonesia’s constitutional law reflects that, over time, Yamin’s ideas were gradually incorporated into various legal products, even though the authority for judicial review of laws against the constitution was not yet established. This process began with the enactment of Law No. 14 of 1970 on the Basic Provisions of Judicial Power, which granted the Supreme Court the power to declare regulations below the level of law invalid on the grounds of inconsistency with higher regulations. Subsequently, the Third People’s Consultative Assembly Decree of 1978, commonly referred to as Tap MPR No III/MPR/1978, further expanded the Supreme Court’s authority to include the material review of the substance of regulations below the law. This was followed by the passage of Law No. 14 of 1985 on the Supreme Court, which granted the Supreme Court the power to conduct substantive review of regulations below the law, but only on the grounds of inconsistency with the law, not the with the Constitution.

In 1998, a massive wave of demonstrations culminated in the resignation of President Soeharto, who had held power for 32 years. Following his fall, the 1945 Constitution underwent a four-stage amendment process that resulted in a profound recalibration of Indonesian politics toward liberal democracy and significantly enhanced the effectiveness of power distribution among various state institutions. This constitutional reform was based on four fundamental principles: constitutional supremacy, separation of powers with checks and balances, constitutional democracy, and protection of citizens’ fundamental rights. The changes to these fundamental principles were so significant that, according to Richard Albert, the event could be described more accurately as a constitutional dismemberment rather than a mere constitutional amendment.

Soeharto’s resignation marked a significant turning point in reviving Yamin’s idea of reviewing laws against the constitution. During the 1998 MPR Special Session, the legal basis for reform was discussed, including changes to the judiciary’s power as outlined in the 1945 Constitution. The push for judicial reform was motivated by a desire to uphold the independence of the judiciary and enable the authority to review laws, not just regulations under the law, but
also the laws themselves.\textsuperscript{11} As changes to the 1945 Constitution were made, the prospect of achieving judicial reform moved closer to reality.

Upon examination of the minutes of the amendments to the 1945 Constitution, it is clear that the discussion about granting the judiciary the authority to review laws first emerged in relation to the Supreme Court’s power. For instance, during the sixth meeting of the Ad-Hoc Committee \textsuperscript{III} of the Working Body \textsuperscript{(PAH BP)} of the MPR on 12 October 1999, the proposed text of Article 24 (3) of “Chapter IX on the Supreme Court” stated the Supreme Court is authorized to conduct substantive reviews on laws and regulations under the law.\textsuperscript{12} However, a key part of this power would subsequently be transferred to a new institution called the “Constitutional Court,” which was raised during the discussion at the \textsuperscript{PAH BP MPR} meeting on 1 March 2000.

After the Second Amendment of the 1945 Constitution in 2000, the discussions regarding the reform of the judicial power were concluded in the Third Amendment of 2001. The Third Amendment finalized the institutional design, powers, and appointment process of the judiciary. It introduced the design of the judicial power as outlined in the Constitution’s Chapter IX on Judicial Power, which is elaborated in Articles 24, 24A, 24B and 24C, including the establishment of the Constitutional Court.\textsuperscript{13} The construction of Article 24C underscores that the establishment of the Constitutional Court was a response to the idea and desire of creating a system of judicial review of laws. Furthermore, the Constitutional Court was established to empower the judiciary to conduct judicial review of laws against the constitution, which was not possible earlier.\textsuperscript{14}

Although the design and arrangements for the Constitutional Court had been completed when the MPR established the Third Amendment on 9 November 2001, the Constitutional Court itself had not yet been formally established. It was not until the MPR made the Fourth Amendment on 10 August 2002, that the Constitutional Court began to take shape. However, progress was slow, prompting the MPR to agree on a transitional arrangement at the constitutional level. Article \textsuperscript{III} of the Transitional Provisions of the Indonesian Constitution stipulated the Constitutional Court must be established no later than 17 August 2003. Until then, all of its authorities would be

\textsuperscript{11} Ibid., 27.
\textsuperscript{12} Ibid., 62–63.
held by the Supreme Court. This provision provided a clear deadline for the establishment of the Constitutional Court, and exceeding it was not allowed. Despite the Constitutional Court not yet being established, its authority was exercised by the Supreme Court, underscoring its importance.

To meet the 17 August 2003 deadline for establishing the Constitutional Court, the government and the House of Representatives (DPR) agreed to approve the Bill on the Constitutional Court at an Extraordinary Plenary Session of the DPR on the sidelines of the MPR 2003 session, on 13 August 2003, just over a year after the Fourth Amendment of the 1945 Constitution. President Megawati Soekarnoputri on that day signed it into law as Law No. 24 of 2003. This event is considered special, not only because of the approval between the government and the DPR, but also due to its enactment and promulgation in the State Gazette on the same day. Indonesia was the 78th country to establish a Constitutional Court and the first to do so in the 21st century. The approval and enactment of Law No. 24 of 2003 on 13 August 2003, is widely regarded as the birth of the Indonesian Constitutional Court. Consequently, 13 August 2023 marks the 20th anniversary of the Constitutional Court’s birth.

The process did not stop at the enactment of Law No. 24 of 2003. The next step was the appointment of nine judges, more formally known as justices, to serve on the Constitutional Court. In accordance with Article 24C(3) of the Indonesian Constitution, the state institutions entrusted with proposing Constitutional Court justices, namely the DPR, the President, and the Supreme Court, each recruited three people for the positions. Each institution then proposed its selections to be appointed by the President. Through Presidential Decree No. 147/M of 2003, dated 15 August 2003, President Megawati appointed nine Constitutional Court justices, who then took their oath of office at the Presidential Palace on 16 August 2003. As stipulated in the Constitutional Court Law, the Chief Justice and Deputy Chief Justice of the Constitutional Court are selected from among the Constitutional justices, rather than being chosen by other branches of government.
3 Powers and Functions

Before discussing the powers of the Constitutional Court as outlined in Article 24C(1) and (2) of the Indonesian Constitution, it is important to first understand the Constitutional Court’s role in the design of judicial power. As stated in Article 24(1) of the Constitution, “The judicial power is an independent authority in organizing the judicature for the sake of law enforcement and justice.” This principle is central to the concept of the rule of law, which emphasizes the necessity of judicial power being independent as an absolute requirement for a constitutional democratic state.17 The idea of judicial power as a separate and independent authority was first introduced by Montesquieu, who developed the doctrine of the separation of powers, also known as the *trias politica*. Montesquieu believed that oversight was necessary to prevent abuse of power, and that this oversight had to be conducted through or by means of power. His statement forms the basis of his belief that it is important to separate the powers within the state, and not allow them to be consolidated in one hand.18

In addition, Montesquieu emphasized the significance of an independent judiciary, free from the influence of other branches of government, as the judiciary plays a pivotal role in the event of confrontation between the government, the law and individuals. Thus, the judiciary must function as a primary barrier to government actions that disregard the law. To achieve this, Montesquieu suggested that judges should be selected from the community, and their terms of office should be limited.19 With regard to the establishment of Indonesia’s Constitutional Court, this highlights the essential need for judicial independence since the Constitutional Court’s power is closely tied to the processes and outcomes of political institutions. Given the intimate relationship between its powers and the political process, the Constitutional Court can also be referred to as a “political court”. As the court has jurisdiction over various cases related to politics, the resolution of political cases is known as the “judicialization of politics”.20

18 Ibid.
19 Ibid., 182–183.
In addition to the aforementioned guarantee of independence, judicial power in Indonesia is not exercised by a single institution as it was before the amendment of the 1945 Constitution, or like the US Supreme Court or the High Court in Australia. In terms of the design of the holders of the judicial power, Article 24 (2) of the Constitution states: “The judicial power is exercised by a Supreme Court with its subordinated judicial bodies within the form of general courts, religious courts, military courts, administrative courts, and by a Constitutional Court.” The phrases “by a Supreme Court” and “by a Constitutional Court” indicate judicial power in Indonesia is exercised by two institutions with different authorities, in an equal position, and with different jurisdictions.  

Compared to other countries’ state institutions with the power of judicial review, the Indonesian Constitutional Court tends to follow the European or Kelsenian model. This model is a centralized system of constitutional review, which is centered on a single institution called the Constitutional Court or Verfassungsgerichtshof. In contrast, the model of constitutional review introduced in the United States does not establish a separate institution with the power of constitutional review, but rather vests this power in the Supreme Court, which then acts as the guardian and protector of the Constitution.

As one of the judicial powers in Indonesia, the authority of the Constitutional Court differs from that of the Supreme Court. Article 24C, (1) and (2) of the Constitution state:

1. The Constitutional Court has the authority to adjudicate at the first and final level, whose decision is final to review laws against the Constitution, to adjudicate on authority disputes of state institutions whose authorities are given by the Constitution, to adjudicate on the dissolution of a political party, and to adjudicate on disputes regarding the result of a general election.

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21 M. Luthfi Chakim, “Institutional Improvement of the Indonesia Constitutional Court: Based on Comparative Study with South Korea and Germany” (Master Thesis, Graduate School of Seoul University College of Law, Seoul, 2020), 9.
25 Ibid., 45.
2. The Constitutional Court shall render a decision on the opinion of the House of Representatives regarding an alleged violation by the President and/or Vice-President according to the Constitution.

Article 24C(1) confers four powers to the Constitutional Court: (1) reviewing laws against the Constitution, (2) adjudicating disputes over authority between state institutions, (3) ruling on the dissolution of political parties, and (4) deciding on contested election results. Additionally, as specified in Article 24C(2), the Constitutional Court has another authority, which, while framed as a duty by I D.G. Palguna, is to render a decision on the opinion of the DPR on alleged violations by the President and/or Vice President in accordance with the Constitution. These powers can be attributed to the Constitutional Court's function of constitutional review, which upholds the principles of a constitutional democratic state. Therefore, the phrase “shall render a decision” in Article 24C (2) should not be construed as an obligation of the Constitutional Court because it cannot be dissociated from the time limit given to the Court to decide on the DPR’s opinion for legal certainty on allegations of violations committed by the President and/or Vice President. The following section elucidates the five powers of the Constitutional Court outlined in Article 24C (1) and (2).

In implementing its powers and functions, the Constitutional Court has been guided by Pancasila, the philosophical foundation of the Indonesian state which has five key principles: belief in the One and only God, just and civilized humanity, unity of Indonesia, democracy through representation and social justice for all Indonesians. One example of Pancasila’s influence on the Court is the way it interprets the national motto of Unity in Diversity (Bhinneka Tunggal Ika) which is seen as a fundamental value of Indonesian society. The Court has used this principle to protect Indonesian diversity.

The Constitutional Court’s five powers establish its role as the defender of the constitution and democracy, as well as the safeguard of human rights and citizens’ constitutional rights. These authorities will be expounded upon in the subsequent section.

3.1 Reviewing Laws against the Constitution

Upon examining Article 24C(1) of the Indonesian Constitution, it is clear that the authority to review laws against the Constitution is the primary power
of the Constitutional Court. This is hardly surprising, as the review of laws against the Constitution was the primary reason for the establishment of the Constitutional Court. Initially, Law No. 24 of 2003 on the Constitutional Court restricted the laws that could be tested or assessed for their constitutionality by the Constitutional Court. Article 50 of Law No. 24 of 2003 stated that only laws enacted after the amendment of the Constitution could be subjected to review. The Elucidation of Article 50 of Law No. 24 of 2003 further specified that “after the amendment of the Constitution” referred to the first amendment of the Constitution on 19 October 1999. Consequently, this provision implies that all laws enacted before that date were beyond the purview of the Constitutional Court’s constitutional review. However, Article 24C(1) of the Constitution does not impose any such limitations and merely refers to “laws” that are against the Constitution.

If the limitation in the Elucidation of Article 50 of Law No. 24 of 2003 is justified, then it is reasonable to argue that laws enacted before 19 October 1999 do not fall within the jurisdiction of the Constitutional Court to examine them. However, laws enacted before 19 October 1999 are very likely to be contrary to the Constitution. This creates a gap in the institution authorized to examine, adjudicate and decide on requests to review laws enacted before the first amendment, namely before 19 October 1999.

Regarding the limitation, the Constitutional Court, which is obligated to examine and adjudicate cases submitted to it, made a breakthrough in Decision No. 004/PUU-I/2003 dated 30 December 2003, by “setting aside” Article 50 of Law No. 24 of 2003. In its legal considerations, the Constitutional Court stated that it has the authority to declare law that is not in line or even contradictory to the Constitution, as not bound by the said law.27 This effectively removed the limitation on reviewing laws that were enacted before the First Amendment to the 1945 Constitution. Stefanus Hendrianto referred to the examination of Article 50 of Law No. 24 of 2003 as a “standing battle”.28 After the ruling, the Constitutional Court was able to review all existing laws without being bound by the limitation of when they were enacted.29

In addition to the normative limitations that have been set aside, the authority of the Constitutional Court is also limited to reviewing only laws against the Constitution. Reviewing regulations lower than laws, against laws,

is the authority of the Supreme Court, under Article 24A(1) of the Constitution. Consequently, the jurisdiction of the Constitutional Court is narrow. The division and, at the same time, limitation of the reviewing authority between two different institutions is similar to the reviewing system model in the Constitutional Court of South Korea. However, in practice, the separation of the jurisdiction of reviewing laws by the Constitutional Court and reviewing regulations under laws by the Supreme Court can create problems and legal uncertainty.

Despite the division of authority between the Constitutional Court and the Supreme Court, reviewing laws against the Constitution provides an avenue for the judiciary to correct any legislative processes or materials that are in conflict with the Constitution. This is based on the understanding that laws, as a result of political compromise, have the potential to produce oppressive or despotic provisions. Legal and political philosopher Jeremy Waldron even expressed concern “that legislation and legislatures have a bad name in legal and political philosophy, a name sufficiently disreputable to cast doubt on their credentials as respectable source of law”. This suspicion, combined with the possibility of laws conflicting with the constitution, makes the assessment of the constitutionality of laws necessary as part of the checks and balances process.

The assessment of the constitutionality of a law pertains not only to its material or substantive aspects but may also be carried out on the validity of its formalities. Sri Soemantri asserts that a law may be assessed either materially (materiele toetsing) or formally (formele toetsing). Formal review pertains to the procedures for drafting a law. If the review involves alleged procedural errors or deliberate bypassing of procedures in law-making, the process is called formal review. Conversely, if what is being reviewed is the material

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content of the law because it is alleged to be in conflict with the Constitution, it is called substantive review.

Formal review is a useful tool for evaluating at least four aspects of the constitutionality of laws, namely: (1) whether the format of the law conforms to the Constitution or laws derived from it; (2) the extent to which the procedures followed during the law-making process were observed; (3) whether the institutions involved in creating the law were actually authorized to do so; and (4) whether the procedures for enacting and implementing the law comply with the provisions outlined in the Constitution or laws based on the Constitution. The distinction in review yields different consequences. Substantive review, if upheld, may result in some or even all of the content of the law being deemed in conflict with the Constitution and declared devoid of binding force. In contrast, if formal review is upheld, the legal effect of the law as a whole is deemed to be in conflict with the Constitution and is declared to have no binding legal force.

Although Article 24C (1) of the Constitution states the Constitutional Court has the authority to review laws against the Constitution, in practice, a Government Regulation in Lieu of Law, also known as an Interim Emergency Law (Peraturan Pemerintah Pengganti Undang-Undang, Perppu), can also be reviewed for its constitutionality by the Constitutional Court. This ‘expansion’ of authority is based on Constitutional Court Decision No. 138/PUU-VII/2009, dated 8 February 2010. The basis of the Constitutional Court’s consideration stems from the understanding that a Perppu is not the same as a government regulation, as stipulated in Article 5 (2) of the Constitution. In this case, the purpose of government regulations is to carry out laws as they should be, while a Perppu is regulated in the Constitution’s Chapter VII on the DPR, where the DPR holds the power to form laws. Thus, Perppu material should be material that, according to the Constitution, is regulated by law and not material that enforces the law as referred to in Article 5 (2) of the Constitution. Furthermore, the Constitutional Court considers that in situations where the substance of a law has not been processed in accordance with established procedures or provisions, a legal vacuum may occur. In such cases, urgent legal needs may arise that require immediate action. To address such needs, Article 22 of the Constitution authorizes the President to issue a Perppu. This special provision enables the President to address the urgent matter and fill the legal vacuum without going through the time-consuming process of creating a law.

through the usual process, which involves the submission of a draft law by the
DPR or the President.\textsuperscript{38}

The Constitutional Court’s decision not only established the differences
between Perppu and government regulations and confirmed that Perppu is
substantively a form of law, but it also clarified the meaning of “in the event
that exigencies compel”, in other words, when there is an urgent situation, as a
condition for issuing a Perppu, as outlined in Article 22 (1) of the Constitution.
The determination of this requirement is significant as there had been no prior
legal interpretation of the term. Prior to this ruling, debates regarding the issu-
ance of Perppu and its requirement were mainly based on doctrine or expert
opinions. The Constitutional Court identified three criteria that must be satis-
fied for a situation to be considered urgent or compelling and thus warrant the
issuance of a Perppu, namely:

1. There is a compelling situation that demands a timely resolution of a
   constitutional legal issue.
2. Either there is no law in place to address the matter, creating a legal
   vacuum, or an existing law is insufficient to deal with the urgent legal
   problem.
3. The legal vacuum cannot be overcome by creating a law through the
   usual procedure, as it would take a considerable amount of time,
   while the urgent situation requires prompt resolution.\textsuperscript{39}

Based on those three criteria, the Constitutional Court clarified that the “com-
pelling exigency” concept should not be interpreted only as a state of danger,
as referred to in Article 12 of the Constitution. Although the presence of dan-
ger may hinder the regular law-making process, it is not the sole circumstance
that qualifies as a compelling exigency under Article 22(1) of the Constitution.
In its legal reasoning, the Constitutional Court explained that a Perppu could
establish legal norms with the same binding force as a law. Therefore, the
Constitutional Court has the authority to assess whether the norms outlined
in a Perppu conflict materially with the Constitution.\textsuperscript{40}

The Constitutional Court’s jurisdiction includes constitutional review
cases, which are more frequent than other cases. As of the end of 2022, the
Constitutional Court had ruled on 1,603 cases involving law and Perppu reviews,
with 297 cases either partially or entirely granted. This translates to an annual

\begin{footnotes}
\item[38] Ibid., 19.
\item[39] Ibid.
\item[40] Ibid., 20–21.
\end{footnotes}
grant rate of around 18.41% for law review cases. Figure 3.1 provides further details on the verdicts in all law review cases decided by the Constitutional Court between 2003 and 2022.

### 3.2 Adjudicating on Authority Disputes between State Institutions

Textually, Article 24C(1) of the Constitution grants the Constitutional Court the authority to “to adjudicate on authority disputes of state institutions whose authorities are given by the Constitution”. Regarding this authority, the phrase provides two main elements, namely “authority disputes of state institutions” and “whose authorities are given by the Constitution”. This means that only matters of authority, not other disputes, can be disputed in the Constitutional Court. Furthermore, state institutions that can file disputes are those whose authority is granted by the Constitution. Therefore, the phrase “whose authorities are given by the Constitution” serves as an attributive authority.\(^{41}\)

The phrase “to adjudicate on authority disputes of state institutions whose authorities are given by the Constitution” has been the subject of study by the Consortium for National Law Reform, which has examined the constitutional limits contained in the phrase. The consortium stated in its research on this matter:

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With respect to disputes that fall under the jurisdiction of the Constitutional Court, the Constitution sets a clear and specific limit. First and foremost, the dispute must pertain to issues of authority. Disputes over authority are the primary matters that can be brought before the Constitutional Court; all other disputes are outside its purview. The contested authority may stem from either the Constitution or other laws. Second, only state institutions with authority granted by the Constitution may be parties in such disputes. Thus, state institutions that derive their authority from sources other than the Constitution cannot file requests for the resolution of disputes over authority between state institutions from the Constitutional Court.\textsuperscript{42}

In fact, the construction of norm formulation in the phrase “adjudicate on authority disputes of state institutions whose authorities are given by the Constitution” essentially involves constitutional authority disputes that arise from the implementation of authority granted by the Constitution. However, the phrase “whose authorities are given by the Constitution” can have a broader meaning than the authority granted by the Constitution. The term “constitution” itself theoretically has a broader meaning than “constitutional law”. Constitutional law scholar Jimly Asshiddiqie, who was the inaugural chief justice of the Indonesian Constitutional Court, formulates a dispute of constitutional authority as follows:

Therefore, the Constitutional Court’s authority to resolve disputes concerning the authority of state institutions with authority granted by the Constitution can be referred to more simply as inter-institutional constitutional authority disputes. There are two elements to the notion of constitutional authority disputes: (i) the existence of constitutional authority as defined in the Constitution; and (ii) the emergence of disputes in the implementation of constitutional authority due to varying interpretations among two or more related state institutions.\textsuperscript{43}

The Constitution does not explicitly identify which state institutions may bring disputes before the Constitutional Court, apart from the phrase “to
adjudicate on authority disputes of state institutions whose authorities are given by the Constitution'. According to Achmad Roestandi, state institutions whose authority is granted by the Constitution can be classified into three groups. The first group consists of institutions whose form, name and authority are specified in the Constitution, such as the MPR, DPR and the Regional Representative Council (DPD). The second group comprises institutions whose form and name are not specified in the Constitution, but whose authority is granted by law, including the Presidential Advisory Council and the General Elections Commission (KPU). Last, the third group encompasses institutions whose form, name and authority are not specified in the Constitution, but are granted by law, such as the central bank and other bodies whose functions are related to the power of the judiciary.

In fact, the debate regarding “state institutions” and “authorities given by the Constitution” in the phrase “adjudicate on authority disputes of state institutions whose authorities are given by the Constitution” could have been clarified during the drafting of Law No. 24 of 2003 on the Constitutional Court. However, the wording of the law does not provide much help in resolving the debate. Article 61(1) of Law No. 24 of 2003 states: “The petitioner is a state institution whose authority is granted by the Constitution and has a direct interest in the disputed authority.” The construction of the norm in this provision still does not explicitly state which state institutions can file a dispute to the Constitutional Court.

In general, when examining the norm construction governing disputes of authority in Law No. 24 of 2003, three requirements must be met for a dispute of authority between state institutions to fall under the jurisdiction of the Constitutional Court. First, the dispute must concern authority between state institutions. Second, the authority must be granted by the Indonesian Constitution. Third, the state institution in question must have a direct interest in the disputed authority. Initially, Law No. 24 of 2003 limited the state institutions that could become parties in a dispute of authority before the Constitutional Court. Article 65 of the Law states the Supreme Court cannot be a party in a dispute of authority between state institutions in the Constitutional Court. However, in Law No. 8 of 2011, which amended Law No. 24 of 2003, the restriction on the Supreme Court was lifted, and this institution can now be a party in disputes of authority before the Constitutional Court.

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In its development, the Constitutional Court has played a significant role in interpreting and defining the phrase “adjudicate on authority disputes of state institutions whose authorities are given by the Constitution”. The Constitutional Court Decision No. 004/\text{SKLN-IV}/2006, dated 12 July 2006, is considered one of the most important decisions in explaining the meaning of disputes over state institutions’ authorities. There are at least three basic explanations concerning disputes over state institutions’ authorities. First, it is essential to determine if there are specific authorities (\textit{objectum litis}) granted by the Constitution, and then to which agency those authorities are granted (\textit{subjectum litis}). Second, in determining the content and limits of the authority that becomes the \textit{objectum litis} of a dispute over authority, the Constitutional Court does not solely rely on the textual interpretation of the provisions of the Constitution that grant authority to a particular agency. The Constitutional Court also considers the possibility of implicit authority that may be used to carry out the main authority.\footnote{Eddyono, \textit{Penyelesaian Sengketa}, 131.} Furthermore, in Decision No. 3/\text{SKLN-X}/2012, dated 19 September 2012, the Constitutional Court held that disputed authority does not necessarily have to be explicitly stated (\textit{expressis verbis}) in the Constitution. The authority in question can also include delegated authority derived from the attributed authority mentioned in the Constitution. In this regard, the most important factor to assess is whether the state agency in dispute has been granted authority by the Constitution.\footnote{Constitutional Court Decision No. 004/\text{SKLN-IV}/2006, 12 July 2006, 90–91.}

Meanwhile, constitutional law professor Ni’matul Huda has identified several causes of constitutional disputes over the authorities of state institutions. First, disputes can arise due to overlapping of authority between two or more state institutions as regulated in the pre-amendment Constitution and the post-amendment Constitution. Second, a state institution may ignore the authority of another state institution, which is obtained from the pre-amendment Constitution or the post-amendment Constitution. Third, a state institution may carry out authority obtained from the pre-amendment Constitution or the post-amendment Constitution that is designated for another state institution, and so on.\footnote{Ni’matul Huda, \textit{Sengketa Kewenangan Lembaga Negara dalam Teori dan Praktik di Mahkamah Konstitusi} [Disputes on the Authority of State Institutions in Theory and Practice at the Constitutional Court] (Yogyakarta: FH UII Press, 2016), 179–180.}

Compared to the review of laws, the number of cases regarding disputes over state institutions’ authorities brought to the Constitutional Court is relatively small. This is due to the very limited number of state institutions
that can become parties to disputes over state institutional authority in the Constitutional Court. By the end of 2022, the Constitutional Court had decided on 29 cases of disputes over state institutional authority. Of all these cases, only one case was granted, namely Case No. 3/skln-X/2012, which concerned a dispute between the KPU and the Papuan People’s Representative Council.49 The details of the rulings on all disputes over state institutional authority are outlined in Figure 3.2.

### 3.3 Deciding on the Dissolution of Political Parties

The Constitutional Court’s authority to decide on the dissolution of political parties is closely linked to the objective of preventing arbitrary actions that could infringe upon citizens’ rights to organize and associate. To this end, the Venice Commission has established guidelines that uphold the principle of every person’s right to form and join political parties. The prohibition or forced dissolution of political parties is only permissible in cases where a party employs violence to undermine the democratic order that guarantees individual rights and freedoms.50 The dissolution of a political party cannot be initiated solely because of the errant actions of individual members, if such actions were not mandated by the party. Prohibition or dissolution of political parties

49 Constitutional Court Decision No. 3/skln-X/2012, 19 September 2019.
should be determined by the Constitutional Court or other judicial institutions while ensuring due process, transparency and a fair trial.\textsuperscript{51}

In those instances, where political parties may be banned, there is usually a review of some sort by the highest court, given the final and binding nature of the decision to dissolve. The primary authority for the dissolution of political parties is the Constitutional Court. Many countries with a Constitutional Court, such as Albania, Armenia, Austria, Azerbaijan, Chile, Croatia, the Czech Republic, Georgia, Germany, Hungary, Macedonia, Moldova, Poland, Portugal, Romania, Slovakia, Slovenia, South Korea, Spain, Taiwan, Thailand and Türkiye, have conferred the authority to dissolve political parties within their jurisdiction to the Constitutional Court.\textsuperscript{52}

Just like the aforementioned countries, the Indonesian Constitutional Court has the authority to dissolve political parties, as granted under Article 24C(1) of the Constitution. However, the Constitution does not outline the specific requirements for dissolution. Instead, the requirements for dissolving a party are set forth in Law No. 2 of 2008, as amended by Law No. 2 of 2011 on Political Parties. In accordance with this law, a political party may be dissolved by the Constitutional Court if it violates the prohibitions stated in Article 40(2), which include engaging in activities that are against the Constitution and other regulations, or engaging in activities that endanger the integrity and safety of the Unitary State of the Republic of Indonesia.

The Constitutional Court is authorized to dissolve political parties, but Law No. 24 of 2003 does not specify the requirements for political parties that can be dissolved. However, the law establishes that the applicant for the dissolution of a political party is the central government. According to Article 68, (2) of Law No. 24 of 2003, the applicant must clearly outline in its request the ideology, principles, goals, programs and activities of the political party in question, which are deemed to be in conflict with the Constitution. To provide clarity on these requirements, Constitutional Court Regulation No. 12 of 2008 on Procedures for the Dissolution of Political Parties contains two alternative reasons for the Constitutional Court to dissolve a political party. First, if the ideology, principles, goals or programs of the political party are in conflict with the Constitution. Second, if the activities of the political party are in conflict with the Constitution, or if the consequences of these activities are in conflict with the Constitution. Meanwhile, Constitutional Court Decision No. 53/
PUU-IX/2011, dated 3 January 2013, states that a political party can be proposed for dissolution through a Constitutional Court decision if:

1. The political party has engaged in activities that are contrary to the Constitution and other laws and regulations, after previously being subject to a temporary suspension.
2. The political party engages in activities that endanger the integrity and safety of the Unitary State of the Republic of Indonesia, after having previously been subject to temporary suspension.
3. The political party adheres to and promotes the teachings or doctrines of communism/Marxism-Leninism.

One of the issues that is often debated with regard to the dissolution of political parties is the restriction in Article 68(1) of Law No. 24 of 2004, as amended by Law No. 7 of 2020, which stipulates that only the central government is allowed to initiate the dissolution of political parties. The Constitutional Court's ruling supports this provision, citing that Article 24C of the Constitution does not specify which parties are entitled to file a case on the dissolution of political parties to the Constitutional Court. The Court argues that designating the government as the applicant in cases of dissolving political parties is a choice made by the lawmakers (the DPR and the President) when formulating and establishing procedural legal provisions of the Constitutional Court under the Constitutional Court Law.53

It is worth noting that while the Constitutional Court’s authority to dissolve political parties is stipulated in Article 24C(1) of the Constitution, several laws have also established requirements or grounds for the dissolution of political parties, and procedural laws have been arranged accordingly. However, as of the end of 2022, the Constitutional Court has never received a petition for the dissolution of a political party. This means that the legal instrument regarding the dissolution of political parties has not yet been put to the test. As argued by the petitioner in Case No. 53/PUU-IX/2011, it is quite possible that the restriction in Article 68(1) of Law No. 24 of 2003, which limits the petitioner to only the government, specifically the central government, becomes a safeguard against the exercising the power provided by the Constitution to dissolve political parties.
3.4 Deciding Disputes Over General Election Results

The constitution drafted by the Indonesian state's founders did not explicitly regulate elections as a mechanism for selecting the President or legislative members. The pre-amendment 1945 Constitution only stipulates that the President and Vice President are to be elected by the MPR. Meanwhile, the process of selecting MPR and DPR members is not clearly regulated in the Constitution but rather delegated to be regulated by law. This choice was likely made intentionally to avoid lengthy debates on the formulation of the basic law due to limited time. However, in addition to this possibility, the founders of the state at that time may not have viewed elections as an urgent constitutional instrument for organizing democracy.

As part of constitutional reform during Indonesia’s reform era, the principle of constitutional democracy was emphasized and strengthened. In line with this principle, the implementation of democracy through general elections was also strengthened, as shown by the adoption of regulations on the basic principles of organizing general elections in the Constitution. Chapter VII B of the Constitution regulates the principles of organizing general elections, the types of positions elected, and the institutions responsible for conducting general elections. The Constitution aims to ensure that general elections are conducted democratically according to the general guidelines set out in Article 22E, (1), which includes being “direct”, “general”, “free”, “secret”, “honest”, “fair”, and “periodic.” Although the Constitution delegates detailed regulations on the conduct of general elections to the law, the general election laws must still adhere to the principles of general election administration set out in the Constitution.

Elections serve as an important means to fill political positions in state institutions, but more fundamentally, they are a tangible expression of the people’s sovereignty. As Jimly Asshiddiqie suggests, the purposes of elections are to...
ensure the peaceful and orderly transfer of leadership; to enable the replacement of officials who represent the interests of the people in representative institutions; to uphold the principle of popular sovereignty; and to uphold the principles of human rights and citizenship. The right to vote is a crucial safeguard of citizens’ rights in the practice of governance, and citizens must be treated fairly to ensure that their right to vote is protected in the electoral process.

One central issue in conducting elections is how to ensure the election results are fair and just. To address this, the International Institute for Democracy and Electoral Assistance (International IDEA) popularized the term “electoral justice” as a paradigm to uphold citizens’ right to vote. Electoral justice encompasses the ways and mechanisms available, whether at the country, community, regional, or international level, to ensure that every action, procedure, and decision related to the election process complies with the legal framework. It aims to protect or restore the right to vote and enables citizens (voters) whose right to vote has been violated to file a complaint, attend a trial, and obtain a decision.

Instruments for upholding electoral justice are implemented through the enforcement of election laws with a legal design that effectively regulates dispute resolution mechanisms. According to International IDEA, there are seven principles in the resolution of election disputes, namely: (i) transparency, clarity and simplicity in developing arrangements for resolving election disputes; (ii) effective and comprehensive resolution; (iii) freedom and reasonable cost; (iv) a legal framework; (v) the right to defend or be heard in the legal process; (vi) full and timely enforcement of judgments and rulings; and (vii) consistency in the interpretation and application of election laws.

In relation to electoral justice, according to Article 24C(1) of the Indonesian Constitution, the Constitutional Court is given the authority to “decide disputes concerning the results of general elections”. This authority is in line with the research findings of Ginsburg and Versteeg on 204 countries for the period 1781–2011, which showed that the formation of a constitutional court is highly

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61 Ibid.
influenced by domestic electoral politics. Textually, the dispute over the results is generally understood as a settlement based on the numbers derived from the vote count. In addition, the results of the general election are also defined as the final outcome of the election process. Furthermore, based on Article 75 of Law No. 24 of 2003, the main issues that must be submitted to the Constitutional Court in filing a dispute resolution application over the election results are: first, an error in the vote count announced by the KPU and the correct vote count according to the applicant. Second, a request to annul the vote count announced by the KPU and to establish the correct vote count according to the applicant. This qualification indeed provides an interpretation that the phrase “results of general elections” in Article 24C(1) of the Constitution is only limited to the quantity or numbers of the vote count.

The narrow interpretation of the phrase “the results of general elections” as solely referring to disputes over the national election results announced by the KPU has been criticized as a weakness in the electoral process. This narrow interpretation has led to the Constitutional Court being called a “calculator court” in settling disputes over election results, rather than fulfilling its role as the guardian of democracy, including ensuring the principles of direct, general, free, secret and fair elections as outlined in Article 22E(1) of the Constitution.

Furthermore, the electoral disputes brought to the Constitutional Court are limited to matters that can have an impact, such as the election of candidates for the Regional Representative Council, the determination of presidential and vice-presidential candidates who enter a second round of voting, the election of the president and vice-president, and the acquisition of seats by political parties participating in the elections in a certain electoral district. In fact, in many cases, the issue of candidates who have won seats within political parties is often submitted as a dispute application to the Constitutional Court. In this regard, the experience of disputes over the determination of seats within political parties during the 2019 legislative elections was also resolved through the dispute settlement mechanism of the Constitutional Court.

The development of handling electoral disputes in the Constitutional Court is not just about determining the numerical results of the election obtained by

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64 Harry Setya Nugraha, “Redesain Kewenangan Mahkamah Konstitusi dalam Penyelesaan Sengketa Perselisihan Hasil Pemilihan Umum Presiden dan Wakil Presiden di Indonesia [Redesigning the Authority of the Constitutional Court in Settlement of Presidential and Vice Presidential Election Disputes in Indonesia],” Jurnal Hukum Ius Qua Qua Qua 22, no. 3 (2015): 422.
contestants or participants, but also concerns the quality of the election process.\textsuperscript{65} Therefore, the Constitutional Court not only reviews quantitative issues (numerical election results), but also assesses the qualitative aspects (the fulfillment of constitutional principles) of the election process.\textsuperscript{66}

According to the Constitutional Court’s decisions, disputes related to the quality of the election process are a concern for the Constitutional Court only if the principles specified in Article 22E,(1) and (5) of the Constitution are violated. For example, in Case No. 062/PHPU-B-II/2004, it was stated that the Constitutional Court, as a constitutional guard, is obligated to ensure that the election process is qualitatively carried out in accordance with the principles set forth in Article 22E,(1) and (5) of the Constitution. Therefore, in several Constitutional Court decisions, there have been orders for election organizers (KPU, provincial KPU, district/city KPU, the Independent Election Commission of Aceh) to conduct a recount or even a revote if the Court finds that these principles have been violated.\textsuperscript{67} Specifically for legislative elections, if the settlement of disputes over the results from the 2004 to 2019 elections is tracked, a total of 671 applications have been filed. Of these, 53 applications were granted (10.3%), with various verdicts, such as orders for a revote, vote recount, determination of the number of political party votes, and others. The Constitutional Court’s decisions related to the settlement of legislative election disputes can be seen in Figure 3.3.

Similarly, in the case of presidential and vice-presidential elections, since the first direct presidential election in 2004 until the 2019 presidential election,
there have been five requests for disputes over the presidential election results submitted to the Constitutional Court. All five requests were rejected. Despite that, there were also no requests for disputes over the election results that were deemed inadmissible (niet onvankelijke verklaard or no), meaning that the requests were dismissed due to not meeting the formal requirements for submission. Until now, all such requests submitted in relation to presidential elections were rejected because they were not legally justified (Figure 3.4).

In addition to disputes over the election results of legislative members (DPR, DPD, and DPRD) and presidential and vice-presidential election results, the Constitutional Court also has the authority to settle disputes over the results of regional head elections, namely the election of governors and vice governors, regents and vice regents, as well as mayors and deputy mayors. The Constitutional Court began settling disputes over the results of regional head elections in 2008. Previously, Article 106 of Law No. 32 of 2004 on Regional Governance stated that objections to the determination of the results of regional head elections could be submitted to the Supreme Court. Specifically, objections to the results of regent and vice-regent as well as mayor and deputy mayor elections, the Supreme Court delegated its authority to the provincial high court with jurisdiction over the area where the dispute occurred.

With the development of electoral laws in Indonesia, Article 106 of Law No. 32 of 2004 was further amended by Article 236C of Law No. 12 of 2008, which states, “The handling of disputes over the vote count of regional head elections by the Supreme Court is transferred to the Constitutional Court no later than 18 months after this law is enacted.” To meet this deadline, on 29 October 2008, the Chief Justice of the Supreme Court and the Chief Justice of the Constitutional Court signed a Record of Transfer of Jurisdiction to Adjudicate.

![Figure 3.4](http://example.com/image.png)

**Figure 3.4** Recapitulation of presidential election dispute decisions (requests rejected)

*Source: Secretariat General and Registrar Office of the Constitutional Court*
This event marked the beginning of the Constitutional Court’s authority to handle disputes over regional head elections.

Looking back, the transfer of authority for resolving disputes over the results of local head elections from the Supreme Court to the Constitutional Court was also influenced by Law No. 22 of 2007 on the Organization of General Elections. As the first to regulate general elections after the amendment of the Constitution, it introduced the notion that local head elections are part of general elections. Article 1 number 4 of Law No. 22 of 2007 states that “elections for local heads and deputy local heads are general elections to directly elect local heads and deputy local heads within the Unitary State of the Republic of Indonesia based on Pancasila and the Constitution of the Republic of Indonesia.” In addition, it explicitly states that one of the tasks of the election organizers is to hold local head and deputy head direct elections by the people.

Even before the existence of Law No. 12 of 2008, Constitutional Court Decision No. 72–73/PUU-11/2004, dated 22 March 2005, essentially interpreted that constitutionally, the legislator can ensure that the direct election of regional heads is an expansion of the understanding of elections as stipulated in Article 22E of the Constitution, so that disputes over the results of regional head elections become the authority of the Constitutional Court in accordance with the provisions of Article 24C(1) of the Constitution.68 This Constitutional Court decision marked the beginning of a change in the way many parties, especially legislators, categorized regional head elections as part of general elections.

However, through Decision No. 97/PUU-XI/2013, dated 19 May 2014, the Constitutional Court changed its position from its previous decision by stating that its authority to adjudicate disputes over the results of regional head elections by expanding the meaning of general elections in Article 22E of the Constitution was unconstitutional. The Constitutional Court’s decision in No. 97/PUU-XI/2013 was not unanimous, as three justices of the Court expressed a dissenting opinion from the majority of other justices. In the latest development, the Court has issued Decision No. 85/PUU-XX/2022, dated 29 September 2022, which essentially states there is no longer a distinction between the conduct of general elections and regional head elections. This is because the Court has affirmed its authority to resolve disputes over the results of regional head elections in the simultaneous elections in 2024. This decision ends the debate about whether or not a special court should be established to replace

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68 For more, read the legal considerations of Constitutional Court Decision No. 72–73/PUU-11/2004, especially page 115.
the Constitutional Court's authority in resolving disputes over the results of regional head elections.

Despite the academic debates surrounding the direct election of regional heads and deputy regional heads, since the authority for resolving disputes over the election of regional heads has been transferred to the Constitutional Court, 982 cases have been decided. Of these, 63 petitions, or about 6.4%, were granted with various orders, such as orders for a recount, a revote, and others, as detailed in Figure 3.5. 69

3.5 Decide on the DPR’s Opinion Regarding Alleged Violations of the Constitution by the President and/or Vice President

Article 24C,(2) of the 1945 Constitution of the Republic of Indonesia states that the Constitutional Court is required to provide a ruling on the opinion of the DPR regarding alleged violations of the Constitution by the President and/or Vice President, commonly known as impeachment. In this regard, Article 7A of the Constitution states that the President and/or Vice President may be dismissed during their term of office by the MPR upon the proposal of the DPR on the grounds of proven violations of the law in the form of treason against the state, corruption, bribery, other serious crimes, or reprehensible conduct; and if it is proven that they no longer meet the qualifications as President. 69

69 For further discussion on the settlement of regional head election result disputes at the Constitutional Court, see Pan Mohamad Faiz et al., eds., Menegakkan Keadilan Pemilu, Menjaga Kemurnian Suara Rakyat. Dinamika Penyelesaian Sengketa Hasil Pilkada di Mahkamah Konstitusi [Upholding Election Justice, Maintaining the Purity of the People’s Voice. Dynamics of Regional Election Result Dispute Resolution at the Constitutional Court] (Depok: Rajawali Pers, 2021).
and/or Vice President. Even if the DPR believes that the President and/or Vice President have fulfilled these reasons, the DPR cannot directly propose the dismissal of the President and/or Vice President to the MPR. Constitutionally, the DPR must first submit the matter to the Constitutional Court, and the Constitutional Court is obliged to provide a ruling on the opinion of the DPR.

Under Article 7A and Article 7B of the Constitution, the process for impeachment of the President and/or Vice President goes through three stages: first in the DPR, second in the Constitutional Court, and third in the MPR. The first stage is the proposal stage carried out by the DPR as one of its supervisory functions. The second stage is in the Constitutional Court. If the DPR’s opinion on a violation of the law or a condition that does not meet the requirements of the President and/or Vice President has been approved in accordance with the above requirements, the DPR will then submit the opinion to the Constitutional Court which will examine, adjudicate, and decide fairly within a certain period of time. The Constitutional Court will decide whether the DPR’s opinion is proven or not.

As noted by I.D.G. Palguna, in this context, the function of the Constitutional Court is related to its task in maintaining the functioning of the principle of checks and balances, in this case, to maintain the functioning of the presidential system of government. On the one hand, the Constitutional Court must consider that the President (and Vice President) are elected for a definite term through direct legitimacy from the people, namely through general elections. On the other hand, the Constitutional Court must also consider, constitutionally, that the DPR has the authority to oversee the governance led by the President (and Vice President). In addition, the process carried out by the Constitutional Court is a continuation of the political process, precisely assessing the political process carried out by the DPR, and therefore the Constitutional Court is obliged to make a decision within a certain period of time.

Upon the request of the DPR to the Constitutional Court, there are three possible verdicts that can be delivered. First, if the Constitutional Court considers that the request from the DPR does not meet the requirements from the applicant and the request, the verdict states that the request cannot be accepted (niet ontvankelijke verklaard). Second, if the Constitutional Court decides that the President and/or Vice President have not been proven to have committed a legal violation or to no longer meet the requirements as stated in the DPR’s opinion, the verdict of the Constitutional Court is to reject the request. Third,
if the Constitutional Court decides that the President and/or Vice President have been proven to have committed a legal violation or to no longer meet the requirements as stated in the DPR’s opinion, the verdict of the Constitutional Court is to approve the DPR’s opinion. If the Constitutional Court approves the DPR’s opinion in its verdict, the DPR will then request the MPR to hold a Special Session to carry out the process of removing the President and/or Vice President. Therefore, in this case, the Constitutional Court’s verdict still needs to be followed up by the DPR and MPR as the final stages of the impeachment of the President and/or Vice President.

Similar to the dissolution of political parties, although the Constitutional Court’s authority to rule on the DPR’s opinion regarding alleged violations by the President and/or Vice President has been regulated in Article 24C(2) of the Constitution, up until time of writing, the Constitutional Court has never handled such a case. This means that the legal instrument regarding the Constitutional Court’s authority to rule on the DPR’s opinion on alleged violations of the Constitution by the President and/or Vice President has not been tested. Nevertheless, if placed within the framework of the presidential system of government and the experiences of the removal of President Soekarno (1967) and President Abdurrahman Wahid (2001), the Constitutional Court’s authority as stipulated in Article 24C(2) of the Constitution can be considered part of the design to strengthen the presidential system of government.

4 Appointment Mechanism for Justices

Article 24C(3) of the Constitution states, “The Constitutional Court is composed of nine members of constitutional justices who are designated by the President, of whom three are nominated by the Supreme Court, three by the House of Representatives, and three by the President.” Following this provision, Article 24C(5) of the Constitution stipulates the requirements for Constitutional justices, including having integrity and an impeccable character, be fair, be a statesperson with mastery of the constitution and constitutionalism, and not concurrently hold any position as a state official. However,

71 Safaat et al., Hukum Acara, 446–447.
72 Compare this with the impeachment mechanism of the President in South Korea, where the South Korean Constitutional Court’s decision does not need to be discussed again in parliament to dismiss the President. See Jin Wook Kim, “Korean Constitutional Court and Constitutionalism in Political Dynamics: Focusing on Presidential Impeachment,” Constitutional Review 4, no. 2 (2018): 222.
Article 24C(6) of the Constitution delegates the appointment and dismissal of Constitutional justices, procedural laws, and other provisions related to the Constitutional Court to be regulated by law.

The number and composition of Constitutional Court justices in Indonesia are similar to those of South Korea. Article 111(2) of the 1987 South Korean Constitution states, “The Constitutional Court shall be composed of nine adjudicators qualified to be court judges, and they shall be appointed by the President.” Furthermore, Article 111(3) states, “Among the adjudicators referred to in (2), three shall be appointed from persons selected by the National Assembly, and three appointed from persons nominated by the Chief Justice [of the Supreme Court].”

Meanwhile, Article 112(2) of the South Korean Constitution of 1987 requires that Constitutional Court judges are not members of a political party or involved in political activities. Although the Indonesian Constitution has set stricter requirements for becoming a Constitutional Court justice, compared to South Korea, the provision of Article 24C(6) of the Indonesian Constitution still delegates further regulation to the law regarding the appointment and dismissal of Constitutional Court justices, procedural law, and other provisions related to the Constitutional Court.

The delegation under Article 24C(6) of the Constitution was first implemented through Law No. 24 of 2003. Chapter IV of this law regulates the appointment and dismissal of Constitutional justices. Regarding the requirements, Law No. 24 of 2003 sets three important aspects: requirements to be met as a Constitutional justice, requirements to be met as a candidate for appointment as a Constitutional justice, and a prohibition on holding multiple positions while serving as a Constitutional justice. The three aspects related to the appointment of Constitutional justices are regulated in Articles 15, 16(1), and 17 of Law No. 24 of 2003, as last amended by Law No. 7 of 2020. Article 15(1) of Law No. 7 of 2020 states, “Constitutional justices must meet the requirements: (a) possess integrity and a respectable character; (b) be fair; and (c) be a statesman who has a mastery of the constitution and state administration.” Furthermore, Article 15(2) of Law No. 7 of 2020 states that to be appointed as a Constitutional justice, a candidate must meet the following requirements:

a. Indonesian citizen;
b. Hold a doctoral degree (level three) based on a bachelor’s degree in the field of law;
c. Pious and of good moral character;
d. At least 55 years old;

e. Physically and mentally capable of carrying out duties and obligations;

f. Never sentenced to imprisonment based on a final and binding court decision;

g. Not declared bankrupt based on a court decision; and

h. Has at least 15 years of work experience in the legal field and/or for prospective judges from the Supreme Court environment, currently serving as a high-level justice or as a supreme justice.

In addition to the aforementioned requirements, Law No. 24 of 2003 also includes prohibitions for Constitutional justices, specifically regarding holding multiple positions. Article 17 of Law No. 24 of 2003 states that Constitutional justices are prohibited from holding concurrent positions as: (a) other state officials; (b) members of political parties; (c) entrepreneurs; (d) lawyers; or (e) civil servants. In a broader context, this prohibition is common in the appointment of public officials. When related to the phrase “not holding concurrent positions as state officials” in Article 24C(5) of the Constitution, the prohibition in Article 17 of Law No. 24 of 2003 provides an interpretation and expands the intended meaning of the phrase. However, in the context of the judicial institution, the prohibition of holding multiple positions is crucial to the position of the Constitutional Court as an independent judiciary. Similarly, the requirements for a candidate for a Constitutional justice in Law No. 24 of 2003 are necessary because Article 24C of the Constitution only regulates the requirements for a Constitutional justice, and not the requirements for becoming a candidate for the position.

In addition to the qualifications, the process of appointing Constitutional justices is also regulated in more detail in Law No. 24 of 2003. In this regard, Article 19 of Law No. 24 of 2003 states that the nomination of Constitutional justices shall be carried out in a transparent and participatory manner. Furthermore, Article 20(1) of Law No. 24 of 2003 states that the provisions regarding the selection, election, and submission of Constitutional justices shall be regulated by each authorized institution, namely the Supreme Court.

Regarding the minimum age requirement for Constitutional justice candidates, there have been two changes to the Constitutional Court Law, from an initial requirement of a minimum age of 40, then changed to a minimum age of 47, and most recently changed to 55. Lawmakers reasoned that maturity of age is necessary for someone to be appointed as a Constitutional justice, so the minimum age limit for candidates has always been increased. However, at the time of writing this chapter, the DPR plans to revise the Constitutional Court Law again by lowering the minimum age limit for Constitutional justice candidates to 50 years.
the DPR, and the President. Subsequently, Article 20(2) of Law No. 24 of 2003 states that the selection of Constitutional justices shall be conducted objectively and accountably. Based on these provisions, the recruitment process for Constitutional justice candidates requires transparency and public participation. In fact, the explanation of Article 19 of Law No. 24 of 2003 requires that candidates be published in the mass media so that the public has the opportunity to provide input on the respective Constitutional justice candidates. Thus, the process of selecting Constitutional justice candidates will be conducted objectively and accountably.

Although Article 20(1) of Law No. 24 of 2003 mandates that proposing institutions regulate the selection, nomination, and submission procedures for Constitutional Court justices, the implementation of Article 20(1) of Law No. 24 of 2003 is only reflected in the DPR’s Code of Conduct, which pertains to the DPR’s authority to elect and propose three Constitutional Court justice candidates to be appointed by the President. Meanwhile, the Supreme Court and the President have not issued any specific regulations regarding the selection of Constitutional Court justice candidates. Therefore, every time the position of Constitutional Court justice is filled from a source proposed by the President and the Supreme Court, problems always arise because there are no standardized criteria used as a reference in the recruitment process for Constitutional Court justices.74

As cited by I D.G. Palguna, the fulfillment of the requirements for becoming a constitutional justice mandated by the Constitution consists of two major components: capacity and integrity. The capacity component refers to the fulfillment of requirements for mastery of the constitution and state governance, while the integrity component refers to the fulfillment of requirements for integrity and an unblemished character, fairness, and statesmanship.75 Within reasonable limits, both of these components can be traced and examined if the recruitment of constitutional judge candidates is conducted transparently and participatively and the process is objective and accountable. This means that the requirements that must be met by Constitutional justice candidates, along with a transparent and participatory selection process that is objective and accountable, are a conditio sine qua non in recruiting Constitutional justices as required by Article 24C(5) of the Constitution.
5 Reasons for Dismissal of Constitutional Justices

Although the Constitution does not specify the term of office for Constitutional justices, Article 22 of Law No. 24 of 2003 initially regulated that the term of office for Constitutional justices was five years and could be re-elected for only one more term. During the five-year term, a Constitutional justice may be dismissed before the end of their term. However, the periodicity of the term of office was eliminated after the enactment of Law No. 7 of 2020, which amended some provisions in Law No. 24 of 2003. Article 23(1) of Law No. 7 of 2020 specifies the grounds for the honorable dismissal of a Constitutional justice, which are:

a. Deceased;
b. Resignation at one’s own request submitted to the Chief Justice of the Constitutional Court;
c. Has reached the age of 70 years;
d. (deleted);^76 or
e. Physically or mentally ill continuously for three months, making it impossible to carry out duties, as evidenced by a doctor’s certificate.

In addition to regulating honorable dismissal, Article 23(2) of Law No. 7 of 2020 also regulates the dismissal of Constitutional justices without honor if they:

a. have been sentenced to imprisonment based on a legally binding court decision for committing a crime punishable by imprisonment;
b. committed dishonorable acts;
c. did not attend the hearing that is their duty and obligation for five consecutive times without valid reasons;
d. violated oaths and pledges of office;
e. deliberately obstructed the Constitutional Court from issuing a ruling within the time specified in Article 7B(4) of the Constitution.^77
f. hold multiple positions as referred to in Article 17;
g. no longer meet the requirements as a constitutional justice; and/or

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^76 This provision previously regulated the reason “has ended their term”, but the provision has now been deleted because the term periodization has been eliminated, so the term of office is now based on the retirement age of constitutional judges, which is 70 years old.

^77 Article 7B(4) of the Constitution regulates the authority of the Constitutional Court to examine allegations of violations committed by the President and/or Vice President. The content of the provision states that “the Constitutional Court must examine, judge, and decide fairly on the request from the DPR within a maximum of 90 days after it is received by the Constitutional Court.”
h. violate the Code of Ethics and Guidelines for the Conduct of Constitutional justices.

Regarding the non-honorable dismissal, Article 23(3) of Law No. 7 of 2020 stipulates that a request for non-honorable dismissal on the grounds of committing a despicable act, failing to attend a hearing for five consecutive times without a valid reason, violating oaths and promises of office, intentionally obstructing the Constitutional Court in deciding on the DPR’s opinion regarding alleged violations by the President and/or Vice President, violating the prohibition on holding multiple positions, no longer meeting the qualifications as a Constitutional justice, and/or violating the code of ethics and guidelines of Constitutional justice behavior, shall be carried out after the concerned party is given the opportunity to defend themselves before the Ethics Council (Majelis Kehormatan) of the Constitutional Court (MKMK).

Regarding the enforcement of the code of ethics and behavior for judges, the Constitutional Court has ratified Constitutional Court Regulation No. 1 of 2023 on the Ethics Council of the Constitutional Court as a follow-up to Law No. 7 of 2020. The purpose of the Ethics Council is to maintain and uphold the honor, dignity, and behavior of judges, as well as the code of ethics and guidelines for the behavior of constitutional justices (Sapta Karsa Hutama). The membership of the Ethics Council consists of three people, with the composition being one Constitutional Court justice, one community figure, and one academic with a background in law. This membership can be permanent for a three-year term or ad hoc as determined in the Council of Justices’ Meeting. In the event of a suspected violation of the code of ethics and guidelines for the behavior of constitutional judges, the Ethics Council may impose sanctions on constitutional justices in the form of oral reprimands, written reprimands, or dismissal without honor.

6 Conclusion

In the context of a constitutional democracy, the Indonesian Constitutional Court is an essential institution. In reaching its 20th anniversary, the Constitutional Court has made significant contributions to strengthening the state system in Indonesia, particularly in protecting human rights and consolidating democracy. As experienced by other constitutional courts in other

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countries, the Indonesian Constitutional Court has had ups and downs in its performance and effectiveness. One of its main challenges currently is how to strengthen the quality of its decisions with adequate legal considerations, so that it can contribute to the development of constitutional theory and practice in Indonesia. In the implementation of the Constitutional Court’s powers and function, Pancasila has been a significant influence in shaping the Court’s approach to protecting citizens’ rights and freedoms. The Court has relied on Pancasila’s principles to interpret the Constitution and ensure that its decisions align with the country’s values.

The Constitutional Court is viewed as an important institution for protecting citizens’ rights and upholding the rule of law in the country. It has gained the trust of the Indonesian people, particularly due to its efforts to increase transparency and ensure due process in its decision-making process. However, there have also been instances where the Court’s decisions have been questioned or criticized, particularly when decisions are deemed too progressive, such as a case concerning the recognition of traditional beliefs to be added to mandatory identity cards, or the recognition of the ‘noken’ voting system as a traditional right of Papuan people in elections. The Court has also faced criticism from some legislators for deeming some laws to be unconstitutional or conditionally unconstitutional.

Therefore, it is crucial for the Indonesian Constitutional Court to maintain its independence and autonomy in examining, adjudicating, and deciding cases, without any external intervention. The legislature, judiciary, and executive branches must respect the Constitutional Court’s authority and not attempt to undermine its independence. This is necessary to ensure that the Court can uphold the Constitution and protect citizens’ rights, free from any vested interests or political pressures. By upholding the principles of judicial independence, the Constitutional Court can serve as a safeguard against abuses of power and ensure that constitutional justice is served fairly and impartially. Furthermore, the Constitutional Court does not need to base its decisions on populist opinions. Instead, the Constitutional Court must adhere to constitutional values that serve as the basic guidelines in governing the state.

Bibliography


