



## LEGAL ANALYSIS OF DPR DECISION REGARDING THE TERMINATION OF CONSTITUTIONAL JUDGES

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Article	Abstract
<p><b>Keywords:</b> <i>Constitutional Court; Judge Termination; Judicial Independence;</i></p> <p><b>Article History</b> Received : Nov.21, 2025 Reviewed: Dec.08, 2025 Accepted : Dec.17, 2025 Published: Dec. 29,2025</p>	<p>The purpose of this article is to analyse the legal and procedural aspects of the dismissal of a Constitutional Court judge by the Indonesian House of Representatives (DPR), with a focus on compliance with constitutional provisions and the protection of judicial independence. This analysis uses a normative legal research method, examining the Indonesian Constitution, the Constitutional Court Law, and the Code of Ethics governing Constitutional Court judges. The results of this analysis show that the DPR's decision to dismiss the judge lacks a strong legal basis, ignores the oversight mechanism mandated by the Constitutional Court Honorary Council (MKMK), and threatens judicial independence. This analysis also shows that the dismissal raises concerns regarding fair legal processes in the appointment of employees in government institutions. In conclusion, the dismissal of judges by the DPR is procedurally and substantively flawed, highlighting the importance of complying with constitutional rules and ensuring the autonomy of high-level government employees.</p>

## 1. INTRODUCTION

The Constitutional Court (MK) is one state organization that is important for protecting Indonesia's constitution. Its presence is one of the main results of constitutional modification meant to preserve the principles of democracy, the rule of law, and human rights protection. In accordance to the Indonesian constitution, the MK has virtually independent authority but is positioned as a judicial body that supports the Supreme Court. The Constitutional Court (MK) has the authority to decide election disputes, settle authority disputes between state institutions, decide whether to dissolve political parties, and provide the DPR's opinion on alleged legal infractions by the President and/or Vice President in addition to reviewing laws that violate the 1945 Constitution.<sup>1</sup> Because of these duties, the Constitutional Court is the protector of the constitution and, as a last resort, guarantees that all legislation, political processes, and public policies will be implemented in accordance with constitutional principles.

The Constitutional Court's independence is important for its role as defenders of the constitution. In addition to being a perfect jurist, every constitutional judge ought to have strong moral principles and the capacity to make decisions on their own, independent of political trends. The Constitutional Court's judges do not represent the organizations that nominated them; rather, they represent the constitution itself.<sup>2</sup> This tension is intended to place constitutional judges on an equal footing with the parties that propose candidates for judges the President, the House of Representatives, and the Supreme Court without compelling them to bow to them. This is because it incorporates the concept of judicial independence, which made constitutional democracy possible.

The Constitutional Court's selection and removal procedures are outlined in Law No. 24 of 2003, which was amended by Law No. 7 of 2020.<sup>3</sup> The President, the House of Representatives, and the Supreme Court each have the power to suggest three justices for the Constitutional Court in order to preserve a balance of political power. This tripartite organization is intended to ensure a range of viewpoints in order to avoid one department of government from influencing the constitutional process. The fact that they are no longer answerable to the organizations who nominated them after being appointed as judges of the

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<sup>1</sup> Riyah, J. (2024). Position and Authority of the Constitutional Court as a State Institution. *JUSTICES: Journal of Law*, 3(2), 76–85. <https://doi.org/10.58355/justices.v3i2.52>

<sup>2</sup> Ahmad Fadlil Sumadi, *Independensi Mahkamah Konstitusi* [n.d.], accessed November 22, 2025, <https://media.neliti.com/media/publications/111911-ID-independensi-mahkamah-konstitusi.pdf>

<sup>3</sup> Undang-undang (UU) Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi; Undang-undang (UU) Nomor 7 Tahun 2020 tentang Perubahan Ketiga atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi

Constitutional Court is another, less evident point. They must carry out their constitutional responsibilities impartially, on their own, and with a focus on preserving the constitution. The regulations governing the discharge of Constitutional Court judges are significantly stricter than those governing their appointment. A judge may only be removed if it can be shown that they have gravely transgressed the code of ethics, that they are no longer eligible to hold the position, or for other reasons that are specifically mentioned in the law. It is the President who will render these decisions, and as part of the dismissal process, the Honorary Council of the Constitutional Court will conduct a de-investigation. This is to prevent judges from being fired as a political tool by the proposed institution or other political parties. Removal is not a way to sway or distort the constitutionally independent decision; rather, it is the last punishment. Because of this, the circumstances surrounding the DPR's September 29, 2022, dismissal of Constitutional Court Judge Aswanto are highly relevant. The DPR unilaterally replaced Aswanto with Guntur Hamzah during a plenary session, citing Aswanto's repeated overturning of DPR-produced laws in multiple judicial review rulings.<sup>4</sup> The DPR felt that justices chosen by its institution should "safeguard" the DPR's legislative interests, in contrast to the independent character of constitutional judges. Due to the dismissal process not being carried out through the ethical processes specified in the legislation, allegations of unconstitutional activities and violations of formal procedures that state institutions should respect have emerged. Then, there was a major debate about the limits of the DPR's authority over constitutional judges who were part of its ranks. The first question that arose was whether the DPR had the power to remove constitutional judges from office while they were in office because their decisions did not support the political goals of the organization. This conundrum is closely related to the issue of the judiciary's independence, especially in constitutional institutions that are sensitive to political dynamics and regularly clash with legislators' objectives. The DPR's actions, according to many scholars and specialists in constitutional law, could jeopardize the stability of constitutional democracy, erode the idea of the separation of powers, and establish a precedent that would be harmful to the judiciary's credibility.<sup>5</sup>

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<sup>4</sup> Lembaga Bantuan Hukum Jakarta, "Pemberhentian Hakim MK Aswanto Oleh DPR: Melanggar Hukum Dan Mengacaukan Konsep Ketatanegaraan," October 2022, <https://bantuanhukum.or.id/pemberhentian-hakim-mk-aswanto-oleh-dpr-melanggar-hukum-dan-mengacaukan-konsep-ketatanegaraan>

<sup>5</sup> Indra Jayaprana, Anton Hartanto, Pipin Zaenal Aripin and Harjanto "Pemberhentian Hakim MK Aswanto, yang Didasarkan pada Dugaan Kinerja Mengecewakan dan Kerap Menganulir Undang-Undang Hasil DPR," *Scientium Law Review* 4, no. 1 (2025), <https://doi.org/10.56282/slr.v4i1.592>

This topic is significant because it addresses the main issue of post-reform constitutional theory, which is how to prevent the return of political power control over judicial institutions, in addition to conflict between state institutions. If judges may be removed for no other reason than that their decisions are adverse to some groups, the Constitutional Court will be unable to carry out its job as an impartial protector of the constitution and the purpose of reviewing laws will be rendered useless.

Based on the statement above, the problems statement that are need to be addressed are:

- 1) Does this dismissal action potentially violate the principles of judicial independence and separation of powers?
- 2) Can the DPR's dismissal of Justice Aswanto be categorized as an unlawful termination when viewed through the principles of termination and dispute-settlement mechanisms in government institutions?
- 3) What is the legal basis for appointing and dismissing Constitutional Court judges in Indonesia, and does it justify the DPR's termination of Justice Aswanto?

## **2. RESEARCH METHODOLOGY**

This article implements a normative juridical approach, which means that the primary source of data is library research and the analysis is based on written legal texts. This method is suitable given that the issue being investigated revolves around the validity of state institution's actions and how current legal standards should be interpreted. Because of this, the study demands a careful examination of laws, legal theories, and principles that have been formed in academic papers. By using this approach, the study not only analyzes the current regulations but also assesses to what extent they align with basic legal concepts and the framework of the constitutional system.<sup>6</sup>

The statute approach, which focuses on discovering, mapping, and interpreting related normative provisions, is implemented in this study. This approach enables us to determine if the DPR's decision to remove Justice Aswanto from the Constitutional Court was within the bounds of institutional authority and Indonesia's positive legal system, as well as whether the action had a suitable legal basis. The primary legal instruments include Law Number 24 of 2003 on the Constitutional Court and its amendments, as well as the Republic of Indonesia's 1945 Constitution. These documents are the main sources for fully understanding the Constitutional Court's standing, the procedures for selecting and removing justices, also the division of power among state institutions. Legal literature, academic

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<sup>6</sup> Moch Choirul Rizal, Fatimatuz Zahro, and Rizki Dermawan, *Metode Penelitian Hukum Normatif* (Kediri, 2022).

papers, research studies, and articles concerning the removal of constitutional justices and the power dynamics between the DPR and the Constitutional Court are examples of secondary legal materials. These secondary materials assist in expanding the analytical viewpoint and offering theoretical context.

All collected legal materials are analyzed qualitatively. The analysis involves examining the substance of the norms, comparing different legal provisions, and evaluating whether the DPR's actions align with constitutional principles. This qualitative approach aims to produce a comprehensive understanding of whether the dismissal is consistent with the national legal framework and with the principle of judicial independence.<sup>7</sup>

### **3. ANALYSIS AND DISCUSSION**

#### **3.1 Does This Dismissal Action Potentially Violate the Principles of Judicial Independence and Separation of Powers?**

In accordance with the duties and authority specified in the nation's constitution, the Constitutional Court functions as an independent and autonomous judicial body that plays a crucial role in upholding the Constitution and the rule of law in Indonesia. The Court must be immune from outside influence and interference, whether driven by political objectives or personal interests, in its capacity as the guardian of the Constitution. One of the most important aspects of Indonesia's judicial power in the post-reform era is the regulations controlling the appointment and removal of judges. Because of this, the procedures utilized for selecting judges (the judicial employment process) and terminating them (the judicial dismissal process) are tightly linked to guarantees of judicial independence. These variables have an enormous effect on how judicial power is used, especially in the Constitutional Court. Justices of the Constitutional Court must be highly independent and autonomous to be able safeguard constitutional supremacy. This means that even while different institutions may have a part in nominating candidates through the appointment process, their authority cannot be influenced by outside parties and they must be shielded from any types of political or personal involvement.<sup>8</sup>

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<sup>7</sup> Muhammad Zainuddin and Aisyah Dinda Karina, "Penggunaan Metode Yuridis Normatif Dalam Membuktikan Kebenaran Pada Penelitian Hukum Use Of Normative Juridical Methods In Proving The Truth In Legal Research," in *Smart Law Journal*, vol. 2023, no. 2 [2023], <http://stikesyahoedsmg.ac.id/ojs/index.php/sljpISSN2830-6430;eISSN2830-683X>

<sup>8</sup> Wahyu Koswara and others, 'Analisis Yuridis Pemberhentian Hakim Mahkamah Konstitusi Oleh Dewan Perwakilan Rakyat Republik Indonesia Dihubungkan Dengan Undang-Undang Nomor 7 Tahun 2020 Tentang Perubahan Ketiga Atas Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi', *UNES Law Review*, 6.1 (2023), 2428–36.

According to Article 24C paragraph (3) of the 1945 Constitution, the Constitutional Court is made up of nine justices: three are nominated by the legislative branch's House of Representatives (DPR); three are nominated by the executive branch's President; and three are nominated by the judicial branch's Supreme Court (MA). By establishing a panel of justices who will eventually be in charge of ensuring the integrity of the Constitution, this system symbolizes the state's commitment to upholding the idea of checks and balances. However, because the word "oleh" is used, this rule can frequently be misinterpreted. Many people assume that "oleh" and "dari" have the same implied meaning, which leads to the false belief that these organizations not only choose justices for the Constitutional Court, but also have more power than that.<sup>9</sup>

Article 2 of Law Number 24 of 2003 on the Constitutional Court emphasizes the independence of judicial power, especially within the Constitutional Court. According to this statute, the Constitutional Court is one of the governmental organizations that has independent judicial authority to administer justice in order to preserve the rule of law. This maintains the Constitutional Court's standing as a crucial court that needs to be free from outside interference in order to fulfill its purpose.<sup>10</sup>

The dissolution of justices of the Constitutional Court is likewise regulated by Law Number 24 of 2003. A justice may be honorably discharged if they pass away voluntarily submit their letter of resignation to the Chief Justice of the Constitutional Court, turn sixty-seven, completed their whole term in office, or suffer continuing physical or mental disease as proven by a medical certificate. On the other hand, a justice may be dishonorably dismissed if they are found guilty by a final and binding court ruling of a crime carrying a minimum sentence of five years in prison, engage in disgraceful actions, miss five consecutive sessions of hearings in which they must assist without a good reason, break their oath of office, intentionally interfere with the Constitutional Court's decision-making process, occupy another position that is prohibited or no longer able to meet the qualifications to be a constitutional justice dishonorable dismissal can only take place after the justice in issue has had a chance to defend themselves before the Constitutional Court's Ethics Council (MKMK). Regardless of whether the dismissal was dishonorable or honorable, it is formally established by a Presidential Decree upon the Chief Justice of the

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<sup>9</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 24C ayat (1).

<sup>10</sup>Elisyah Arunde, Donald A. Rumokoy, and Toar N. Palilingan, 'Pemberhentian Hakim Mahkamah Konstitusi Berdasarkan Undang-Undang Nomor 7 Tahun 2020 Tentang Mahkamah Konstitusi', *Jurnal Fakultas Hukum UNSRAT : Lex Administratum*, 12.4 (2024), 356–57.

Constitutional Court's request.<sup>11</sup> There are still procedural and substantive violations in practice, despite the fact that the law explicitly regulates the criteria and procedures for dismissing justices from the Constitutional Court. One well-known example is the 2022 case of Justice Aswanto's dismissal, which was generally seen as going against the provisions of law and threatening both the separation of powers principle and judicial independence. The public was confused by his sudden resignation because it seemed completely political. The dispute emerged on July 21, 2022, after the Constitutional Court issued Decision No. 96/PUU-XVIII/2020, which reviewed Law No. 7 of 2020's Article 87 letters (a) and (b) (the third amendment to Law No. 24 of 2003 on the Constitutional Court). Following that ruling, the Court requested its justices' nominating institutions for clarity on the continuation of their terms of office, which were no longer bound by periodic term limitations. The three nominating bodies the President, the Supreme Court, and the DPR were the intended recipients of this follow-up. However, the DPR saw this request for clarification as an opportunity for evaluating the performance of the justices it had appointed. The DPR declared that Commission III had the power to evaluate constitutional justice candidates that the DPR proposed, and that the results of this evaluation, which were settled by a Commission III plenary, could be presented to a DPR plenary session with the aim to gain approval for Justice Aswanto's removal. According to the evaluation, Aswanto deserves to be terminated. The President was subsequently urged to issue a Presidential Decree regulating the removal after the results were presented to him. Due to this misunderstanding, Justice Aswanto ended up being dismissed by the DPR and replaced with Guntur Hamzah, who was sworn in on November 23, 2022, by the Indonesian President. Many people questioned whether the dismissal was genuinely due to poor performance or if it was motivated by political objectives after the occurrence, which created a heated public debate. Justice Aswanto's term was supposed to expire in March 2029, however he was forced to leave the court far earlier than expected.<sup>12</sup>

The Constitutional Court Law has been amended for the third time by Law Number 7 of 2020, which allows current judges of the Constitutional Court to continue their service until they become seventy, as long as their total term does not exceed fifteen years. This shows firmly that Justice Aswanto still fulfilled the qualifications for continuing serving as

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<sup>11</sup>Alsyam Alsyam, "Kewenangan Dewan Perwakilan Rakyat dalam Penggantian Hakim Konstitusi Yang Berasal Dari Usulannya Dalam Masa Jabatan". 2024. *Tinjauan Hukum UNES* 6 (2): 690317. <https://doi.org/10.31933/un-esrev.v6i2.1574>.

<sup>12</sup>Riska Ari Amalia and Ashari Ashari, 'Polemik Dalam Keputusan Presiden Nomor 114/P/2022', *UNES Law Review*, 5.4 (2023), 2113–21.

the Constitutional Court's Justice. despite this, Bambang Wuryanto, the Chair of DPR Commission III, declared the argument behind the dismissal in a statement. According to him, although Justice Aswanto had been chosen by the DPR, he was viewed as frequently annulling or striking down laws produced by the DPR. The Constitutional Court, an institute with judicial authority, got into the realm of politics as a consequence of this issue, as if the Court were the DPR's representative. Based on this reason, when executing constitutional duties, a justice chosen by the DPR was expected to support the DPR's interests. Furthermore, this suggested that if a justice was considered to be "not beneficial" or obstructive, nominating institutions might replace them at any moment. This sort of interpretation is a terrible mistake that threatens the integrity of a constitutional body that must remain to be independent and free from influence from politics of any kind, including from the organizations that appoint its justices.<sup>13</sup>

Given that Justice Aswanto's removal was based only on the DPR's dissatisfaction with him for frequently rejecting laws they had enacted, the DPR's justification for doing so clearly violated the principle of judicial independence. Such an explanation is absurd. Conducting constitutional review, or reviewing statutes to the 1945 Constitution in order to determine whether they stay true to the nation's constitutional framework, is one of the Constitutional Court's main duties. This system guarantees that all laws stay in line with the Constitution, which is the most important thing that the Court defends and upholds, representing the people's will and the core purposes of the state. The Court has the power to declare a statute unconstitutional or annul it if it appears to be in incompatible with the Constitution. Ironically, the DPR became frustrated with this particular function. Even though the decisions made by the Court are always based on legitimate legal grounds and are intended to defend the supremacy of the 1945 Constitution, they viewed the Court's annulment of their legislative products as an obstacle to their interests. The Court must take action when constitutional protection is at risk, even if it means declaring a legislatively enacted regulations unconstitutional.<sup>14</sup>

This case also weakened the concept of the separation of powers. In order to prevent the abuse of power, the separation of powers, which is based on the theory of trias politica, divides authority among the legislative, executive, and judicial branches. It ensures that the power of the state is not concentrated in one organization or person, but rather distributed equally. The Aswanto dismissal case, however, demonstrates how this principle could

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<sup>13</sup>Agung Barok Pratama, 'Hakim Konstitusi Di Persimpangan Jalan: Kuasa Lembaga Pengusul Dalam Pemberhentian Yang Kontroversial Manabisa : Journal of Constitutional Law', *Constitutional Law*, 4.2 (2024), 157.

<sup>14</sup>Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 24C ayat (1).

potentially be in danger. The DPR interrupted the balance of power among state institutions by acting beyond the limits of its authority. Because the Constitutional Court is a distinct body that shouldn't be interfered by any other branch, this is extremely concerning. Many believe that as Justice Aswanto's act is limited to that of a constitutional judge, he was right in rejecting the political demands of the DPR. The Constitution and the laws must also be expected to be honored and obeyed by the DPR. Due to this, it was illegal and arbitrary for the legislature to dismiss a constitutional justice and replace him without involving the Chief Justice of the Constitutional Court. Even if the DPR appointed Aswanto's replacement, he is reasonable to have continued to serve on the Constitutional Court due to the flawed dismissal process. To prevent potential conflicts and misunderstandings, it is crucial to reexamine each institution's rights, obligations, and powers. This helps to guarantee that no branch of government can unilaterally make decisions that threaten the authority of other branches of government.<sup>15</sup>

### **3.2 Can the DPR's Dismissal of Justice Aswanto Be Categorized as an Unlawful Termination When Viewed Through the Principles of Termination and Dispute Settlement Mechanisms in Government Institutions?**

The validity of the DPR's actions must be evaluated based on the formal requirements for dismissing a Constitutional Court judge, in addition to the previous question regarding judicial independence. According to Indonesian law, the validity of a dismissal depends on whether the competent authority has complied with the established dispute resolution procedures and whether the dismissal procedures stipulated in the law have been followed. Therefore, this section assesses whether the DPR's decision meets the legal and procedural requirements for a valid dismissal.<sup>16</sup>

The procedure for terminating Constitutional Court judges is regulated in Law No. 7 of 2020 on the Constitutional Court<sup>17</sup> and Constitutional Court Regulation No. 4 of 2012 on Procedures for Removing Constitutional Court Judges.<sup>18</sup> Justices of the Constitutional Court may be dismissed in one of three ways: for a while, with honor, or without honor.

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<sup>15</sup>Elisyah Arunde Et Al., Pemberhentian Hakim Mahkamah Konstitusi Berdasarkan Undang Nomor 7 Tahun 2020 Tentang Mahkamah Konstitusi, 12, No. Vol. 12 No. 4 (2024): Lex Administratum [2024]:8, <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/55756>

<sup>16</sup>Pers Pusat Studi Hukum Dan Kebijakan Indonesia, Penggantian Hakim Konstitusi Aswanto Oleh DPR: Melanggar Hukum, Menghina Sehat, Mengkhianati Konstitusi, Dan Menghancurkan Independensi, accessed November 22, 2025, <https://pshk.or.id/publikasi/siaran-pers/penggantian-hakim-konstitusi-aswanto-oleh-dpr-melanggar-hukum-menghina-akal-sehat-mengkhianati-konstitusi-dan-menghancurkan-independensi-peradilan/>

<sup>17</sup> Undang-Undang (UU) Nomor 7 Tahun 2020 Tentang Perubahan Ketiga Atas Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi.

<sup>18</sup> Peraturan Mahkamah Konstitusi Nomor 4 Tahun 2012 Tentang Tata Cara Pemberhentian Hakim Konstitusi.)

## 1) Honorable Dismissal

A judge who is honorably dismissed must meet several conditions, including:

- a) Passed away;
- b) Submitting their resignation on their own initiative to the Chief Justice of the Constitutional Court.
- c) Has attained the age of seventy.
- d) Has served out his or her whole term in office or
- e) Has been physically or psychologically ill for three consecutive months, as shown by a medical certificate, making it impossible for him or her to carry out their obligations.

## 2) Dismissal without honor

A judge may be dismissed without honor for the following reasons:

- a) Has been sentenced to imprisonment based on a court decision that has permanent legal force for committing a criminal offense punishable by imprisonment;
- b) Has committed a despicable act;
- c) Has missed five consecutive court hearings without a valid reason;
- d) Has violated an oath or pledge of office;
- e) Has purposefully prevented the Constitutional Court from delivering a decision within the time frame specified in Article 7B paragraph (4) of the 1945 Constitution of the Republic of Indonesia;
- f) Has violated the prohibition on holding multiple positions as mentioned in Article 17;
- g) Failing to be qualified to serve as a constitutional judge; and/or
- h) Breaking the Code of Ethics and Code of Conduct for Constitutional Judges.

There are regulations regarding dismissal without honor if the judge engages in any of the listed behaviors. The following is the mechanism:

- a) The judge in question will be temporarily eliminated from his role as Chief Justice prior to being dismissed without honor.
- b) The reasons listed in Article 8(a) do not qualify for temporary dismissal. The dismissal that applies is dishonorable dismissal without going through interim dismissal if the judge in question has been sentenced to imprisonment and the sentence has become final and binding (Incracht).

- c) The purpose of temporary dismissal is to provide the judge in question a chance to explain himself in front of the Honorary Council.
- d) Within a maximum of seven working days following the date of the Plenary Meeting of Judges deciding on the follow-up to the report of the alleged infringement, the President has to receive the request for temporary dismissal.
- e) If the judge in question cannot be proven to have disobeyed Article 8, they will be rehabilitated.
- f) The judge in question will be dismissed without honor if the Honorary Council determines that the judge in question has been shown to have violated Article 8

### 3) Temporary suspension

The judges mentioned above are temporarily removed from their seats for the following reasons:

- a) To provide the judge concerned with the opportunity to defend himself before the Honorary Council.
- b) There is an arrest warrant.
- c) Prosecuted in court in a criminal case.

If the judge concerned is temporarily dismissed, the following mechanism will be followed:

- a) If the judge concerned is subject to an arrest warrant or is prosecuted in court, the judge concerned shall be temporarily suspended from office by Presidential Decree at the request of the Chief Justice.
- b) The request for temporary suspension shall be submitted within a maximum of 7 working days from the date of the arrest warrant or indictment.
- c) The temporary suspension shall be for a maximum of 60 working days and may be extended for a maximum of 30 working days.
- d) The judge concerned shall not adjudicate cases from the time the temporary suspension is requested.
- e) In the event that the extension period has expired and no court decision has been made, the judge concerned shall be dismissed without honor and determined by Presidential Decree at the request of the Chief Justice.

- f) Within 7 working days after the Court receives the Presidential Decree regarding the dismissal of the judge, the Court shall notify the Presidential Decree to the institutions authorized to appoint judges, namely in accordance with the provisions of Article 26 paragraph (3) of the Constitutional Court Law, namely the DPR, the Supreme Court, and the President.
- g) In the event that the judge concerned is found not guilty based on a court decision, the judge concerned shall be rehabilitated by a Presidential Decree at the request of the Chief Justice.

According to the specifications outlined in Law Number 7 of 2020 pertaining to the Constitutional Court and Constitutional Court Regulations.<sup>19</sup> The standards outlined in Regulation Number 4 of 2012 Governing Procedures for the Dismissal of Constitutional Court Judges are obviously not met by Judge Aswanto of the Constitutional Court.<sup>20</sup> As a result, there is no legal justification for dismissing Judge Aswanto of the Constitutional Court, either with or without honor.

According to the Chairman of Commission III of the Indonesian House of Representatives, Bambang Wuryanto, this dismissal was due to Judge Aswanto frequently producing House of Representatives products. As a result, Judge Aswanto consistently violated the rules set by the House of Representatives, which is the body that supervises him.<sup>21</sup> The House of Representatives believes that the violations of the Constitutional Court represent the House of Representatives' obligation to follow its directives. The House of Representatives asserts that after the required House of Representatives procedures were completed, Judge Aswanto's dismissal was executed in accordance with the House of Representatives' supervisory function. This claim is false because the House of Representatives lacks the authority to dismiss judges from the Constitutional Court. Since the Constitutional Court is an impartial, independent body that cannot be swayed by outside forces, the House of Representatives is only able to submit ideas to it. Judges of the Constitutional Court are not representatives of the DPR because they leave the DPR after joining the Constitutional Court. The DPR is only a proposing body. The Constitutional

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<sup>19</sup>Undang-Undang Nomor 7 Tahun 2020; Peraturan Mahkamah Konstitusi.

<sup>20</sup>Peraturan Mahkamah Konstitusi Nomor 4 Tahun 2012 tentang Tata Cara Pemberhentian Hakim Mahkamah Konstitusi.

<sup>21</sup>Isthifailla, Isthifailla, and Agung Barok Pratama. 2024. "Hakim Konstitusi Di Persimpangan Jalan: Kuasa Lembaga Pengusul Dalam Pemberhentian Yang Kontroversial". *Manabia: Journal of Constitutional Law* 4 (02):155-74. <https://doi.org/10.28918/manabia.v4i02.9256>.

Court is an independent, unbiased entity that is unaffected by other organizations.<sup>22</sup>

There is no legal foundation for the House of Representatives' decision to remove Justice Aswanto from the Constitutional Court. This seems to be more of an attempt by the legislature to meddle in the legal system. By comparing the court to a business and its directors, the DPR dismissed Aswanto for political rather than legal reasons. Additionally, the Constitutional Court, This policy degrades which is supposed to be the guardian of the constitution. This activity cannot be justified by any objective, logical arguments or legal foundation.<sup>23</sup> Therefore, it is illegal to carry out this policy, and neither the President nor the judges of the Constitutional Court should consent to Judge Aswanto's replacement.

### **3.3 Legal Basis For Appointing and Dismissing Constitutional Court Judges in Indonesia, and Does it Justify the DPR's Termination of Justice Aswanto?**

The Indonesian Constitutional Court's legal framework for the appointment and removal of judges. The hiring and firing of judges of Indonesia's Constitutional Court are governed by certain legal regulations. The 1945 Constitution serves as the primary foundation. That provision is in paragraph (1) of the Article 24 which reads: Judicial power shall be free and detached from all intervention. Any interference either directly or indirectly is an infringement on the constitutional assurance of judicial independence, a guarantee also for the judges serving Constitutional Court.<sup>24</sup> Moreover, Article 24C paragraph (3) of the 1945 Constitution specifies that nine judges of the Constitutional Court are proposed by one each of Supreme Court", "House of Representatives (DPR), and "President.<sup>25</sup> But, while these institutions have the right to nominate judges, none of them has a constitutional power to remove a judge who has been appointed. Judges who must rule independently of any political forces they serve, for life or resignation can be the only way to remove a judge.

On the statutory level, Law No. 24 of 2003 on the Constitutional Court as further amended by Law No. 7 of 2020 contains specific rules concerning the qualification, office term and termination of office of a Judge of the Constitutional Court.<sup>26</sup> This legislation re-emphasizes the tripartite system of appointment and has significantly curtailed removal from office which can only be for reasons spelt out in the Act and need to meet certain standards including serious ethical violations or permanent disability. The law also provides that an

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<sup>22</sup>Suparto, Teori Pemisahan Kekuasaan Dan Konstitusi Negara Barat Dan Islam, June 2019, <https://doi.org/http://dx.doi.org/10.24014/hi.v19i1.7044>

<sup>23</sup>Durohim Amnan, Legalitas Pemecatan Hakim Aswanto Di Tengah Masa Jabatan Oleh Dewan Perwakilan Rakyat [2023], <https://doi.org/https://doi.org/10.29303/jtsw.v38i1.461>

<sup>24</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 24 ayat (1).

<sup>25</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 24C ayat (3).

<sup>26</sup> Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi.

alleged violation first be considered by the Honorary Council of the Constitutional Court (MKMK) before dismissal.<sup>27</sup> Notably, neither the 2003 Law nor its amendment in 2020 gives the DPR autonomous power to dismiss a judge it had once nominated.

In term of positive law, stipulations for appointment and tenure not only refer to the statutory provisions; the Decision of Constitutional Court No. 96/PUU-XVIII/2020 also shed light on the legal construction process in relation with appointment and tenure. The ruling upheld the constitutionality of measures brought in by Law No. 7 of 2020, which amended the retirement age and abolished a system of five-yearly reappointment. The Court also noted the significance of continuity in judicial continuation, and declared that whenever they came to power it was necessary that the appointing existing judges be appointed as per constitutional process.<sup>28</sup> This decision consolidates the precedent that political organs (in this case, the DPR) cannot meddle during a judge's continuous term.

#### **4. CONCLUSION**

The removal of Justice Aswanto shows how judicial independence can be undermined when political actors exceed constitutional limits. Although the Constitution and statutory law strictly regulate the dissolution of Constitutional Court justice, the DPR treated its nominating power as ongoing control, misreading Article 24C and weakening an institution meant to stand apart from political pressure. Because the DPR bypassed the procedures set out in the Constitutional Court Law none of which applied to this case and acted without the involvement of the Chief Justice, the Honorary Council, or a Presidential Decree, its action cannot be considered a lawful termination. Indonesia's constitutional framework makes clear that nomination does not confer authority to remove a sitting judge; dismissal is governed exclusively by limited statutory grounds and formal mechanisms designed to protect judicial independence. By acting outside this structure, the DPR's decision lacked legal basis and contradicted the safeguards that preserve the Constitutional Court's autonomy.

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<sup>27</sup>Undang-Undang Nomor 7 Tahun 2020 tentang Perubahan Ketiga atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi.

<sup>28</sup> Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 96/PUU-XVIII/2020.

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