

Article 23 of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court regulates the reasons for the dismissal of constitutional judges, either honorably or dishonorably. based on the decision to dismiss the judges of the Constitutional Court, it is regulated in law number 7 of 2020 in article 23 which reads that the dismissal of judges of the constitutional court is divided into 3 (three) namely: (1) Respectful stop; (2) Dismissal with no respect; (3) Temporary suspension.

In a plenary meeting held by the DPR RI on September 29, 2022, Judge MK Aswanto was removed from his position by the DPR RI. Based on the plenary meeting held by the DPR RI, Aswanto was dismissed from his position on the grounds of Aswanto's disappointing performance, his position as a Constitutional Justice by the DPR RI was considered to have often annulled the DPR RI product laws in the Constitutional Court. The most obvious product of the law is seen in the annulment of Law Number 11 of 2020 concerning Job Creation. Aswanto along with four other constitutional judges stated that the Copyright Act was unconstitutional. The removal of the Constitutional Court Judge by the DPR RI has clearly tarnished the existing law, belittled the independence of the Constitutional Court, and had overstepped the principles of independence, freedom, and independence. and judicial power as well as injuring the existing constitutional concepts. The DPR RI has acted beyond its authority by doing so. The dismissal of Constitutional Justice Aswanto by the DPR RI is a violation of the law. As mentioned above, the reasons for the dismissal of constitutional judges are contained in Article 23 of the Constitutional Court Law, namely, respectful dismissal can be carried out if one dies, resigns at his own request submitted to the Chairman of the Constitutional Court, is 70 years old, physically ill. or spiritually continuously for 3 months so that they cannot carry out their duties as evidenced by a doctor's certificate. The dismissal of Constitutional Justice Aswanto by the DPR RI is a violation of the law. As mentioned above, the reasons for the dismissal of constitutional judges are contained in Article 23 of the Constitutional Court Law, namely, respectful dismissal can be carried out if one dies, resigns at his own request submitted to the Chairman of the Constitutional Court, is 70 years old, physically ill. or spiritually continuously for 3 months so that they cannot carry out their duties as evidenced by a doctor's certificate. The dismissal of Constitutional Justice Aswanto by the DPR RI is a violation of the law. As mentioned above, the reasons for the dismissal of constitutional judges are contained in Article 23 of the Constitutional Court Law, namely, respectful dismissal can be carried out if one dies, resigns at his own request submitted to the Chairman of the Constitutional Court, is 70 years old, physically ill. or spiritually continuously for 3 months so that they cannot carry out their duties as evidenced by a doctor's certificate.

Next is regarding the dishonorable dismissal of a constitutional judge if sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a crime punishable by imprisonment, committing a disgraceful act, not attending a trial which is his duty and obligation for 5 consecutive times. without a valid reason, and violates the oath of promise or position.

If viewed carefully, the dismissal of the judges of the Constitutional Court, apart from violating the law, is closely related to politics and subjective institutional decisions or is arbitrary. Basically, the Constitutional Court Judges may not submit to anyone and anything except the Law, the Constitution, and Human Rights and the principles of truth and justice. The actions taken by the DPR RI have undermined and bypassed the constitutional concepts that have been made and formulated and have violated the independence, independence, freedom and power of judges as universal principles and the Constitutional Court's institutions. From this explanation, it is clear that the DPR's decision violates the existing mechanism in the provisions of Law Number 7 of 2020 concerning the Constitutional Court. There is confusion regarding the mechanism carried out by the DPR by using political means to intervene in the independence of the judicial power which is clearly not allowed according to the 1945 Constitution. The researcher aims to discuss the juridical analysis related to the DPR's decision to dismiss the judges of the Constitutional Court. This research provides theoretical and practical understanding of readers and legislative bodies in reviewing and applying the law so as not to violate existing rules.

2. Literature Review

The theory of authority as the theoretical basis or basis for this thesis research, because the authority of the District Court in deciding a case cannot be separated from the theory of authority which contains teachings about the types and sources of authority. Types of authority include binding authority and independent authority. Meanwhile, the sources of authority include: attribution, delegation and mandate. In the concept of constitutional law, authority or authority is described as "rechtsmacht" (legal power). In

public law, authority related to power there is little difference between authority (Authority, gezag) is what is referred to as formal power, power that comes from being granted by law or legislature. While the authority (competence, bevoegdheid) only regarding a certain "onderdeel" (part) of authority. Authority in the field of judicial power or judicial power is commonly called competence or jurisdiction.

In the Netherlands the concept of bevoegdheid is used both in the field of public law, therefore bevoegdheid does not have a legal character. Whereas in Indonesia, the concept of authority is always interpreted as a concept of public law, because authority is always associated with the use of power. In accordance with the above opinion, Prajudi Atmosudirdjo stated: "authority is the power to carry out all actions in the field of public law, while the power to take action in the field of private law is called rights". Authority consists of at least three components, namely: influence, legal basis and legal conformity. The influence component is intended, that the use of authority aims to control the behavior of legal subjects; the basic components of the law are intended, that the authority must be based on a clear law; and the legal conformity component requires that the authority must have clear standards (for general authorities), and specific standards (for certain types of authority). Juridically, authority is the ability given by laws and regulations to carry out actions that have legal consequences.

Every use of authority must have a legal basis in positive law to prevent arbitrary acts. The use of government authority is always within the limits set at least by positive law. In relation to the concept of a state of law, the use of such authority is limited or always subject to written or unwritten law,¹² which furthermore for unwritten law in government law in Indonesia is referred to as "general principles of good governance" this is in accordance with explanation of Article 4 letter a of Law Number 37 of 2008 concerning the Ombudsman, which reads: "The rule of law is a State which in all aspects of people's lives, as a nation and state,

As stated above, that in public law authority is related to power. Power has the same meaning as authority because the power possessed by the executive, legislative and judicial branches is formal power. Power is an essential element of a country in the process of governance. Power is the ability of individuals or groups to carry out their will despite facing other parties who oppose it.

Authority is what is called "formal power", power that comes from powers conferred by law or legislature from executive or administrative powers. Authority is the power of a certain group of people or the power over a letter in the field of government or certain unanimous government affairs. While the authority is only about a certain part of the authority. Authority is the right to give orders and the power to ask for obedience. Authority can also be defined as the power to make decisions, govern, and delegate responsibilities to others, functions that may not be carried out.

3. Methods

In an article preparation, the use of research methods is a fundamental aspect that is needed because in addition to facilitating research, it is also an effective way of working in order to achieve optimal research. So that this research can be carried out rationally and directed and get maximum results, a systematic method or method is needed.

This type of research is normative juridical research, as described in the book entitled Legal Research Methods. Normative legal research is legal research that puts law as a building norm. The norms in question are about principles, rules of legislation, court decisions, agreements and doctrines. In accordance with the characteristics of this study, this study uses the library research method (library study) with a qualitative approach. This normative legal research method is also commonly referred to as doctrinal legal research or also called library research. It is called doctrinal law research, because this research is only aimed at written regulations so that this research is very closely related to the library because this normative law will require secondary data in the library.

This study uses a statutory approach, which is a research that prioritizes legal materials in the form of legislation as a basic reference material in conducting research. The statutory approach is usually used to examine laws and regulations which in their normalization there are still deficiencies or even foster irregularities, either at the technical level or in their implementation in the field. This approach is carried out by reviewing all laws and regulations related to the problems (legal issues) that are being faced. This statutory approach, for example, is carried out by studying the consistency/compatibility between the Constitution and the Law, or between one law and another. The data search is based on an assessment of the laws and regulations, on books and other written data that are useful and support this research. Data research whose object is an explanation of the DPR Decision on the dismissal of judges of the Constitutional Court Number 7 of 2020 concerning the Constitutional Court and Constitutional Court Regulation Number 4 of 2012 concerning Procedures for Dismissing Constitutional Court Justices,

In writing or doing scientific work, researchers must of course choose the right data collection techniques. This technique is considered very crucial or important for the smooth running of the research. In addition, data collection techniques must also be carried out so that research is more focused and controlled. In choosing a data collection technique, of course there are several techniques that must be done to minimize any obstacles, errors, or problems that occur during the research. So the technique chosen must also be precise and take place systematically. For that, you must know various things about data collection techniques, ranging from understanding, the data collection process, various kinds of data collection techniques, and also what types of data to be collected have the type or classification.

Data collection techniques are techniques or methods used to collect data to be studied. That is, data collection techniques require strategic and systematic steps to obtain valid data and also in accordance with reality. In addition, this data collection technique or method is usually used for researchers to collect data that refers to an abstract word that is not manifested in an object, but can only be seen in its use. Data collection for research is carried out so that the data and theories in it are valid and also in accordance with reality, so researchers must really go directly and know the data collection techniques. Thus, researchers will know the validity or truth of the research concept.

In carrying out data collection techniques or the process of collecting data, the existence of research instruments becomes a very integral part and is included in the component of the research methodology because the research instrument is a tool used to collect, examine, and investigate the problem under study. Of course, the existence of these instruments will help various searches for the symptoms that exist in the study so that they can be used to prove the truth or to refute various hypotheses. Therefore, the instrument used must have good validity and reliability. The data collection technique uses legal sources, namely: Secondary legal sources regarding the DPR's decision on the dismissal of Constitutional Court judges in Law Number 7 of 2020 concerning the Constitutional Court and Constitutional Court Regulation Number 4 of 2012 concerning Procedures for Dismissing Constitutional Judges, as well as data sources that can support and explain primary data. The following are 2 sources of data used in this study:

Primary data sources: the 1945 constitution article 24 paragraph 1 concerning judicial power, law number 7 of 2020, the third amendment to law number 24 of 2003 concerning the constitutional court, as well as regulation of the constitutional court number 4 of 2012 concerning procedures for dismissal constitutional judge,

Secondary data sources: Books, journals, freelance writings in the mass media and websites or several other sources related to research.

This research method is not enough just to use data collection techniques, this research is also equipped with data processing techniques, namely: The data analysis method that the researcher uses is qualitative analysis. A descriptive research method (pictures) using analysis of normative material or theoretical theory in looking at existing problems and has obtained an overview in the form of preliminary data about the problems raised in the DPR's decision to dismiss the judges of the Constitutional Court in Law No. 7 of 2020 concerning The Constitutional Court, in which the dismissal of the judges of the Constitutional Court is not based on the proposal of the Chief Justice of the Constitutional Court as mandated by Law Number 7 of 2020 concerning the Constitutional Court and is regulated in the case of dismissing the Judges of the Constitutional Court in the Regulation of the Constitutional Court Number 4 of 2012 concerning Procedures for the Dismissal of Judges of the Constitutional Court.

4. Results

On September 29, 2022, the leadership of the DPR RI received a letter from Commission 3 of the DPR RI number B101 regarding a request for scheduling which followed up on the results of the meeting of the leadership of the DPR RI on September 29, through a letter from the leadership of the DPR RI number R45, dated September 23, regarding: The DPR RI will then hold an internal meeting on Wednesday, September 28, 2022. The decisions of the 3 DPR RI commission internal meetings are as follows:

Will not extend the term of office of constitutional judges from the proposal of the House of Representatives on behalf of Dr. Aswanto, SH, M.Sc., DFM and appointed Prof. Dr. Guntur Hamzah, SH, MH, as a constitutional judge from the House of Representatives of the Republic of Indonesia.

Furthermore, the Commission 3 of the DPR RI held an internal meeting on Thursday, September 29 to ask for the willingness to become a constitutional judge from the House of Representatives. Dr. Guntur Hamzah, SH, MH, as a construction judge from the People's Representative Council.

The consultation meeting in lieu of the Bamus meeting today, 29 September has discussed the commission letter 3 and with the following decisions: 5 (five) factions approved, 1 (one) faction approved with notes according to the mechanism, 1 (one) faction rejected, 2 (one) faction rejected two) the faction is not present.

The meeting was approved by the most elected members of the DPR and decided by the chairman of the plenary session, Prof. Dr. Ir. Sufmi Dasco Ahmad, SH, MH/deputy chairman of the Indonesian House of Representatives in the field of matchsticks. The DPR's decision made at the plenary session above started from a misunderstanding of the DPR's interpretation of the notification letter sent by the Constitutional Court to the DPR regarding the Constitutional Court's decision number 96/P Law-XVIII/2020 which was read out on 20 June 2022 regarding the judicial review of Article 87 letter a and Article 87 letter b of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court. Article 87 letter a of Law Number 7 of 2020 is canceled so that the terms of office of Judges of the Constitutional Court return to Law Number 24 of 2003. A constitutional judge who currently serves as the Chair or Deputy Chairperson of the Constitutional Court shall continue to serve as the Chairman or Deputy Chairperson of the Constitutional Court until his term of office expires based on the provisions of this law". Furthermore, in Article 87 letter b it is stated that "Constitutional judges who are in office at the time this Law is promulgated are deemed to meet the requirements according to this Law and end their term of office until the age of 70 (seventy) years as long as their total term of office does not exceed 15 (five) years. twelve) years". According to the letter, the decision of the Constitutional Court requires the Constitutional Court to carry out legal action in the form of confirmation to the institution that proposes and proposes the constitutional judge who is currently serving. The confirmation in question means that the constitutional judge through the Constitutional Court conveys notification regarding the continuation of his term of office which no longer recognizes the existence of periodization to each of the proposing institutions, namely the DPR, the President, and the Supreme Court (MA). In the letter signed by the Chief Justice of the Constitutional Court Anwar Usman, the Constitutional Court would like to request confirmation from the DPR regarding the change in the tenure of the 3 judges of the Constitutional Court proposed by the DPR who are currently serving for confirmation. They are:

Prof. Dr. Arief Hidayat, SH, MS Based on Law 24 of 2003 served from April 1, 2013 to March 27, 2023, and based on Law 7 of 2020 served until February 3, 2026.

Prof. Dr. Aswanto, SH, M.Sc., DFM. Based on Law 24 of 2003, he will serve from March 21, 2014 until March 21, 2024, and based on Law 7 of 2020, he will serve until March 21, 2029.

Dr. Wahidudin Adams, SH, MH Based on Law 24 of 2003 served from March 21, 2014 to March 21, 2024, and based on Law 7 of 2020 served until January 17, 2024.

The legislature misinterpreted the letter from the Chief Justice of the Constitutional Court. According to him, the letter sent by the Chief Justice of the Constitutional Court to the Chair of the DPR whose substance was limited to confirmation of the impact of the Constitutional Court's Decision Number 96/P Law-XIII/2020. The Constitutional Court's decision changed the periodization of the positions of the Constitutional Court judges. That is, it no longer refers to a five-year cycle, but refers to the limitation on the retirement age of constitutional judges (70 years). Instead of understanding the letter, the DPR actually performed acrobatics by using the letter as a basis for dismissing Constitutional Justice Aswanto. The DPR has violated the provisions of Article 24 paragraph (1) of the 1945 Constitution which guarantees the existence of the independence of the judiciary. The meaning of independence must be interpreted as free from political interests from all branches of power from the executive and legislative branches. The DPR's decision to dismiss Aswanto shows that the legislature is ahistorical with its own laws. Because,

In terms of material regulation, Aswanto is not actually being dismissed with or disrespectful. Because, without going through the correct mechanism or the process is problematic, namely sending a letter from the Chief Justice of the Constitutional Court to the President for the subsequent issuance of a Presidential Decree (Keppres) the dismissal of constitutional judges. The DPR's decision to dismiss Aswanto is thick with political nuances towards the judiciary. This is because, referring to the statement from the Chairman of Commission III of the DPR RI and a politician from the PDI-P, Bambang Wuryanto, the reason for Aswanto's dismissal was because the constitutional judge annulled a law carried out by the DPR. As a result, Aswanto, who is actually a constitutional judge proposed by the legislature, was dismissed.

Referring to Article 3 paragraph (1) of Law Number 48 of 2009 concerning Judicial Powers, it is clear that constitutional judges are obliged to maintain the independence of the judiciary. Therefore, there is no obligation for constitutional judges to comply with or justify all laws and regulations initiated by the government or the DPR. Moreover, Law No. 11 of 2020 and the revision of Law No. 20 of 2002 concerning the Corruption Eradication Commission (KPK) on Job Creation, until the third revision of Law 24/2003 concerning the Constitutional Court which was worked on by the DPR and the government did reap a lot. problem. In addition, the opinion of the Chairman of Commission III, Bambang Wuryanto, regarding Aswanto's representatives from the DPR in the Constitutional Court, was wrong. This is because,

considering Article 18 paragraph (1) of the Constitutional Court Law, the presence of the DPR in the election of constitutional judges is limited to submitting,

The legislative rationale for dismissing Aswanto contained a conflict of interest. Even as if he wanted to subdue or control the Court. According to him, the reason that said Aswanto annulled the legislative products of the DPR indicates that the Chairman of Commission III has an interest in the process of selecting constitutional judges, the practice of disobeying the provisions of laws and regulations as seen by the DPR is a bad precedent for the future of the Constitutional Court. According to him, the steps of the legislature may potentially be imitated by other branches of power that propose constitutional judges, such as the president and the Supreme Court. The DPR's move to terminate the term of office of a constitutional judge in the midst of his unfinished term can be linked to the upcoming 2024 political contestation. Because, it is not impossible to be a strategy of certain parties in securing their political consolidation. Especially in relation to legislation products or even other MK authorities such as deciding disputes over general election results.

The results of this study indicate that the DPR's decision to dismiss the Constitutional Court judges on the grounds that the judges often annul the products of the law proposed by the DPR at the trial of the constitutional court on judicial review. there are rules, because in the regulations the DPR can only propose Constitutional Court judges without being able to dismiss them, even while they are still in office.

5. Discussion

Authority must be based on existing legal provisions (the constitution), so that authority is a legitimate authority. Officials (organs) in issuing decisions are supported by the source of that authority. The authority for government officials or organs (institutions) is divided into:

Attributive (original) authority, namely the granting of government authority by legislators to government organs (attributie: toekenning van een best UUsbevoegheid door een wetgever aan een best UU orgaan). Attributive authority is permanent or persists, as long as the law regulates it. In other words, the authority attached to a position. In the review of constitutional law, this attributive is shown in the authority possessed by government organs in carrying out their government based on the authority established by the legislators. This attribute refers to the original authority on the basis of the constitution/basic constitution or statutory regulations.

Non-attributive (non-original) authority is the authority that is obtained due to the delegation of authority from other officials. Non-attributive authority is incidental and ends when the competent authority has withdrawn it. The delegation of part of the authority of the superior official to the subordinate helps in carrying out his duties and obligations to act alone. This delegation of authority is intended to support the smooth running of tasks and the orderly flow of responsible communication, and as long as it is not specifically determined by the applicable laws and regulations.

In legal politics, the delegation of authority is divided into two types, namely mandate and delegation. In a mandated delegation of authority, when a government organ allows its authority to be exercised by another organ on its behalf (mandaat: eenbest UU orgaan laat zijn bevoegheid namens hem uitoefenen door een ander), the mandate is transferred to only part of the authority, responsibility remains with the commander. This is explained by Ridwan HR: "While in the mandate, the mandate recipient, the mandate acts for and on behalf of the mandate giver (mandans), the final responsibility for decisions taken by the mandate remains with the mandans". Delegation of authority is the delegation of government authority from one government organ to another (delegatie: overdrach van een bevoegheid van het ene best (Law of the Aan een ander) which is transferred is the entire authority of the delegates, so the delegates are fully responsible. The conditions for delegation according to Hadjon are:

Delegation must be definitive and delegates can no longer use the authority that has been delegated.

Delegation must be based on the provisions of the legislation, meaning that delegation is only possible if there are provisions for it in the laws and regulations.

Delegation is not to subordinates, meaning that in the employment hierarchy relationship no delegation is allowed. Attribution, delegation and mandate are forms of authority of government organs (institutions) that are strengthened by positive law to regulate and maintain them. Without authority, a correct juridical decision cannot be issued.

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Through the framework of thinking in the theory of legal authority, it can be judged that the DPR RI has strayed from the law, abused the independence, independence, freedom of judicial power and acted beyond its authority for the following reasons:

First, the unilateral removal of Aswanto by the DPR RI is a violation of the law. Article 23 paragraph 4 of the Constitutional Court Law has stated that the dismissal of a judge of the Constitutional Court can only be carried out through a Presidential Decree at the request of the Chief Justice of the Constitutional Court. The reason is also regulated in a limited manner in Article 23 paragraphs 1 and 2 of the Constitutional Court Law. Dismissal with honor is carried out for reasons including death, resignation, 70 years of age, and physical or spiritual illness. Disrespectful dismissal is carried out if a constitutional judge is sentenced to prison in accordance with the court's *inkracht* decision, commits a disgraceful act, does not attend a trial without a valid reason, violates an oath or promise of office, deliberately prevents the Constitutional Court from giving a decision, holds concurrent positions, no longer meets the requirements as a judge. constitution,

Second, the dismissal of Aswanto who was immediately replaced by Guntur Hamzah is also not in accordance with the provisions of Article 19 of the Constitutional Court Law which requires the nomination of constitutional judges to be carried out in a transparent and participatory manner. Furthermore, the selection of constitutional judges must also be carried out in an objective and accountable manner. In addition to violating the law, this action of removal is full of political interests and absolute subjective institutional decisions that depart from the unfounded wild assumptions of a few parties who feel, "Aswanto failed to represent the (interests of) DPR RI". Judges of the Constitutional Court may not submit to anyone and anything except the Constitution and Human Rights (HAM) and the values of truth and justice.

Third, this action disrupts constitutional principles and undermines the independence, independence, freedom and power of judges as universal principles and the Constitutional Court's institutional. The filling of the positions of the Constitutional Court judges through the 3 branches of power of the President, DPR and the Supreme Court is not intended to represent the interests of each institution, but to guarantee the independence of the Constitutional Court as the guardian of the constitution. If left unchecked, this action is only a form of legislative domination and control over the judicial power which has implications for Indonesia's position which is further away from the corridors of the rule of law and human rights.

DPR has no authority to choose new judges because there is no vacancy of judges here This is an arbitrary act committed by the MPR. If allowed to continue, this can destroy the judiciary. The submission of Constitutional Court judges from the DPR as in the Constitution does not mean that the DPR has abused of power so that it applies arbitrarily and at any time can replace Constitutional Court Judges who do not follow the path of the dismissal mechanism regulated in PMK No. 04 of 2012. As an organ of judicial power that performs judicial functions, the Constitutional Court is independent, both structurally and functionally. To support its independence, under the provisions of the Act, the Constitutional Court also has its own budgetary currency, separate from the budget currency of other agencies. The Constitution cannot be construed according to the political interests and needs of DPR alone. Thoughtfully DPR has done pragmatic things, by adding its new authority to dismiss someone without following the mechanisms created, by abruptly dismissing aswanto. And this could be brought into the realm of TUN judiciary against Justice Aswanto and thunder.

Indeed, so far, the constitution has not expressly stated whether constitutional court judges can come from one of them from the DPR or the DPR, just to propose candidates. This statement is because it is not regulated complexly in an implementing regulation, so stakeholders can interpret as needed. This is what DPR itself ultimately interprets for its political interests. While this institution is an independent institution, political institutions should not interfere in the realm of independent institutions, so that in the end the DPR has committed abuse of power.

6. Conclusion

Based on the theory of legal authority, the DPR's actions cannot be justified because Article 23 paragraph 4 of the Constitutional Court Law has stated that the dismissal of a Constitutional Court judge can only be carried out through a Presidential Decree at the request of the Chief Justice of the Constitutional Court. The reason is also regulated in a limited manner in Article 23 paragraphs 1 and 2 of the Constitutional Court Law. So the DPR's decision can be ignored.

Limitations and suggestions

There are limitations and suggestions: (1) The president needs to give an official statement against the act of dismissal of the Constitutional Court judge by the DPR; (2) The Chairman of the Constitutional Court needs to maintain the independence of judicial power by reporting the actions of the DPR to the

President; (3) DPR needs to review the decision to dismiss constitutional court judges to comply with the constitutional mandate of the 1945 Constitution.

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