



RESEARCH ARTICLE

Juridical Analysis Of The Dismissal Of Constitutional Judges By The House Of Representatives In Review Of Law No. 7 Of 2020 Concerning The Constitutional Court From Maslahah Perspective

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Abstract

The dismissal of a Constitutional Court justice by the Indonesian House of Representatives has generated constitutional and legal debate, particularly regarding the separation of powers and judicial independence. According to Law Number 7 of 2020, such dismissal must follow a clearly defined legal procedure. However, the DPR's removal of Justice Aswanto without proper legal justification is widely considered to be in violation of applicable laws. Viewed through the lens of *maslahah*—a foundational principle in Islamic law—this action fails to promote public benefit (*maslahah 'ammah*) and instead poses a risk of harm (*mafsadah*) to judicial legitimacy and public justice. Thus, this issue serves as a relevant case to examine whether a public policy aligns with both constitutional standards and the moral-religious values of Islamic legal theory.

Keyword: Constitutional Court, Parliament, Judicial Dismissal, Maslahah, Islamic Law, Law No. 7/2020

Introduction

In dynamics post- Indonesian constitutional state amendment to the 1945 Constitution, system government experience shift fundamental towards a more advanced model democratic with confirm principle separation power (separation of powers) and supervision as well as balance between state institutions (checks and balances). Amendment This aiming For strengthen the structure of a modern legal state, with balancing distribution authority between legislative, executive and judiciary in a way transparent and accountable. The changes allow institution justice, including Court Constitution, playing vital role in guard supremacy constitution from potential abuse power exercised by state organs.

Amendment the give runway more constitutional strong for Court Constitution as institution judicial officer in charge escort constitution. Court This given authority For test Constitution against the Constitution, dealing with dispute authority state institution, decides dissolution party politics, as well as to cut off dispute results election general. Its existence No only as complement system law, but as the vanguard in control state power to remain in corridor constitutional.

As it develops practice constitutional, court Constitution faced with challenges Serious in maintain its independence. One of them is practice political in appointment and dismissal of constitutional judges by branch power others, such as legislative. As example, dismissal of Constitutional Judge Aswanto by the DPR in 2022 raises polemic constitutional Because viewed No in accordance with applicable legal procedures and norms. This is cause question deep about

position law institution legislative in structure state administration when face to face with independence judiciary.

Incident the become point reject in evaluate to what extent the law Number 7 of 2020 concerning Court Constitution can give protection law to independence of constitutional judges. Procedure unannounced termination through mechanism justice or supervision objective ethics can leading to piracy constitution (constitutional capture), where the institution justice made into tool politics by power other. So from that 's important done study legal to DPR's action to dismiss constitutional judges said, in particular reviewed from aspect legality and provisions law positive in effect.

Issue independence institution judiciary become aspect crucial in legal state system. Court Constitution as institution guard constitution sued For free from intervention political use ensure upright justice and constitutionality of norms. Therefore that, intervention to membership of constitutional judges without base valid laws and proper procedures is threat real to principle rule of law. This is No only concerning technical administration institutional, but also integrity system law in a way comprehensive

Study This lift problem dismissal of constitutional judges by the DPR in perspective Constitution Number 7 of 2020 and to study the impact to independence institution justice constitution. With approach legal normative, study This aiming For to describe aspect relevant laws in action and provide argumentation scientific about constitutionality as well as sustainability principle independence justice in legal framework democratic.

In reviewing problem dismissal of a judge of the Supreme Court Constitution by institution legislative, approach law positive solely no Enough. More insight is also needed comprehensive with consider values benefit for life nation and state. In context this, concept benefit in Islamic law can give moral and ethical perspective to arrangement authority state institutions. Maslahah, which means welfare or kindness general, to be consideration main in set a law to be in harmony with objective five principles protection base sharia (al- kulliyat al- khams), namely religion, soul, mind, descendants, and property. Therefore that, action legislature that does not

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consider benefit public can damage joints guaranteed justice and order in constitution.

From the corner view benefit murlah , dismissal of constitutional judges who do not done in a way procedural and contradictory with the norms of justice substantial potential cause greater harm big for system constitutional law . The action can open room for practice structural injustice and reduced sense of security public to law . Within the framework of Islamic law , every state policy must be take sides to the benefit of the people, not interests political narrow. Therefore that , every form intervention to institution judiciary that does not based on the principle benefit need rejected , because contradictory with objective Sharia For realize justice and welfare for all over layer society.

Method

Study This apply approach legal normative, which is based on research against legal norms written ,either in the form of regulation legislation, decisions court , and doctrine that developed among academics law . Data used sourced from material primary law in the form of laws and documents official , material law secondary in the form of literature academic , as well as material law tertiary like dictionary law and encyclopedia . Analysis done in a way qualitative , with interpret provision normative and interesting conclusion in a way logical based on connection between norms and facts relevant laws in case dismissal of a judge of the Supreme Court Constitution by the DPR.

Results and Discussion

Legal Status Of Dismissal Of Constitutional Judges By The Dpr RI

The problem dismissal of a judge of the Supreme Court The Constitution by the People's Representative Council of the Republic of Indonesia (DPR RI) gave rise to controversy in context state administration and system Indonesian law. Based on Constitution Number 7 of 2020, mechanism dismissal of constitutional judges should done through procedures that have been set in a way constitutional and legal. In practice, the dismissal This bring up concern will existence intervention political to institution judiciary , considering that the DPR is not is institution supervisor legitimate judicial according to law . Unilateral action from institution legislative in dismiss constitutional judges reflect violation to principle independence power guaranteed justice in Article 24 of the 1945 Constitution.

Provisions of Article 23 of the Law Number 7 of 2020 states that dismissal of constitutional judges can done on base reasons certain , such as violation code ethics heavy ,no Again fulfil condition position , or to resign myself . However in case this , no found violation law or procedural matters carried out by the dismissed judge , namely Aswanto . In fact , his dismissal happen after He stated several times opinion different from decisions DPR politics . This is indicates there is a political motive lurking action termination said , not reason law legitimate substantive . Such actions This potential weaken integrity justice and demolish trust public to the legal process.

Analysis to The DPR's decision also shows that the termination process done without involving Ethics Council mechanism Court Constitution or the Presidential Decree which should be become formal and legal path . Unilateral decision from Commission III of the Indonesian House of Representatives actually show existence use power legislative in a way arbitrary . In context this , can it is said that the DPR has step over authority and interfere affairs institution judiciary , which in system democracy should stand independent and free from pressure politics. Events This become precedent bad that can used For pressuring other constitutional judges who are considered No in line with policy political certain.

Dismissal of Constitutional Judges Aswanto who did in a way political own consequence Serious for stability institution justice constitution . Court The ideal constitution become guard justice and constitution, now overshadowed by potential lack of judicial independence in operate his duties. When the judge

feels threatened by the possibility dismissed at any time Because view the law, then what happens is taking decision that is not Again objective or independent. In the long term length , thing This damage quality decision Court and lower trust public to supremacy law.

Termination this also raises question law about who is the real one authorized For to pull out mandate of constitutional judges . In the system Indonesian law , appointment and dismissal of constitutional judges is a necessary process involvement President through Presidential Decree , on base consideration clear law . However in case this, stoppage done only based on decision political in the DPR forum, without preceded by a procedure ethics or evaluation qualification as should be . So, the termination This No only unconstitutional but also flawed in a way procedural.

From the whole analysis , can concluded that action the dismissal of constitutional judges by the DPR is violation to principles of the rule of law . When the institution legislative use his power For to interfere authority judiciary , then a system of checks and balances that becomes base democracy constitutional become collapsed . Therefore that , is needed improvement regulation and strengthening mechanism ethics that can ensure that the process of dismissing judges is carried out in a way objective , professional and free from interest political a moment.

Mechanism Dismissal of Constitutional Judges According to Constitution

In general normative , mechanism dismissal of a judge of the Supreme Court Constitution has set up in Article 23 of the Law Number 7 of 2020. Provisions This mention that dismissal of constitutional judges can done in three form : with respect , no with respect , and temporary . In practice constitutional , dismissal should following a transparent and objective process , including involving institution ethics Court Constitution and Presidential Decree . However , in case dismissal of Judge Aswanto by the DPR, stages the neglected , so that cause assumption that action the No solely based on law, but rather based on consideration political in nature subjective and unconstitutional.

In the system a constitutional state that upholds tall principle constitutionalism , all action state institutions , including termination official public , must based on legal norms the highest , namely Constitution . Dismissal a constitutional judge by the DPR without through procedure the law as it should be is form deviation from principle In fact , constitutionalism demand every state institutions to act within the limits of his authority as set up in constitution . Actions outside authority the although intended For objective political certain — fixed considered unconstitutional Because violate signs the law that has been set in a way systematic in legislation .

Authority dismissal of constitutional judges No only regarding procedural norms , but also related to close with protection to independence institution judiciary . If a institution legislative can with easy dismiss the judge because non-judicial reasons , then position Court Constitution as institution bodyguard constitution will disturbed . The involvement of the DPR in dismissal of judges without base objective ethics and law show the occurrence abuse authority legislative For press institution judicial. Conditions This create imbalance detrimental state power democracy and lowering legitimacy constitution That Alone.

More far , event termination the show absence mechanism internal control and strong external in the process of assessment performance of constitutional judges . Ideally , every suspicion violations committed by a judge must be checked by mechanism independent and professional ethics , not by institutions the proposer who has interest political . When not There is separation between institution proposer and institution supervisor , then will happen conflict harmful interests objectivity and integrity institution law . Therefore that , the formation mechanism independent ethics and strengthening regulation about evaluation performance of constitutional

judges become very important For prevent practice deviation future law.

The DPR's actions are also contradictory with Spirit *judicial independence* as acknowledged universally in Bangalore Principles and Resolution UN General Assembly No. 40/32 and 40/146 of 1985. In principle the explained that the independence of judges must be protected by the state and not may compromised , including from intervention branch other state powers . Violations to principle This No only become threat for justice at the level national , but also tarnished reputation Indonesia as a country that upholds international tall law and democracy . Therefore that , practice kind of This need criticized in a way serious by the community law national and also international.

With consider context more laws wide , can concluded that the dismissal of constitutional judges by the DPR is form crisis constitutional necessity completed through Updates regulation . The state must ensure that power legislative No used in a way arbitrary For to bow down institution the judiciary that should be independent . In addition , it is necessary existence awareness high constitutional from every state institutions in operate duties and authorities . Only with put constitution as reference main in every taking decisions , principles of the rule of law and justice substantial can enforced in a way intact and sustainable.

Legal Status of Dismissal of Constitutional Judges by the DPR

Legal status the dismissal of the Constitutional Judge by the People's Representative Council (DPR) shows A problems sufficient state administration Serious in context the principle of the rule of law and independence institution judicial . Based on The 1945 Constitution which has amended , Court Constitution own role strategic in guard supremacy constitution and balance power between state institutions through principle *checks and balances* . However , in in practice , the dismissal of Constitutional Judges Aswanto by the DPR raises debate Because No reflect procedure valid and conflicting laws with principle legality and applicable legal norms , especially Article 23 of Law Number 7 of 2020 concerning Court Constitution.

In context This , Sarah Sabrina and Khalid Khalid in his view to put forward that DPR's actions in dismiss Judge Aswanto is violation to principles constitutional system that guarantees independence power judiciary . They highlight that mechanism dismissal of constitutional judges should follow procedures that have been set in regulation legislation , and actions of the DPR that are not in accordance with procedure the can considered as form intervention destructive politics integrity institution judicial.

Article 23 of the Law Number 7 of 2020 in particular firm set that dismissal of Constitutional Judge only can done through strict and based mechanism legitimate reasons , such as died , resignation self in a way written , reached age 70 years , or inability physique and also psychic during three month in a row . Dismissal in a way No respect is also a must through a strict legal process , namely existence decision a court of competent jurisdiction law remain . Therefore that , the action of the People's Representative Council (DPR) in dismissing the Constitutional Judge without follow procedure the can considered as *ultra vires* action or beyond his authority.

In the analysis the legal actions carried out by Wahyu Koswara , Deny Guntara , Muhamad Abas, and Adyan Lubis, they highlight that DPR's actions in dismiss Constitutional Judges Aswanto No only violate procedure the law that has been established ,but also reflected intervention politics that can damage independence institution judicial .They emphasize that Court Constitution should free from mix hand politics , and every process of dismissing a judge must based on considerations objective law as well as transparent . The DPR's actions considered as form violation to principle separation power and can bother balance between state institutions . They also underlined importance guard integrity and independence Court Constitution as guard constitution and protector rights constitutional citizen.

Within the framework theory authority , every state institutions only can act so far regulated by regulations legislation . In law state administration is known principle attribution , delegation , and mandate as source authority . The House of Representatives (DPR), as institution legislative , indeed own right For propose candidate for constitutional judge , but No given authority in a way explicit For dismiss constitutional judges before his term of office ends , except through procedure certain that have been set in law . Therefore that , the DPR's actions are considered No only disabled law , but also give rise to precedent negative in development Indonesian constitutional law is based on certainty laws and principles *due process of law* .

View similar delivered by Windy Rizky Putri and M. Sadam Husin in in his view , they highlight that revision Regulation of the Indonesian House of Representatives Number 1 of 2020 concerning Rules of Procedure give the DPR the authority For evaluate and recommend removal of a judge from the Supreme Court Constitution and the Supreme Court . However , the policy This cause debate Because at risk threaten independence judicial and contradictory with principle trias politics , which regulates separation power between legislative , executive , and judiciary . They emphasize that regulation This need reviewed return For guard balance power and independence justice . With Thus, the DPR's actions in dismiss constitutional judges without follow procedure valid law can considered as violation to principles base in system Indonesian state administration . This is confirm the need enforcement consistent law and respect to independence institution judicial For guard trust public to system law and democracy in Indonesia.

Termination this also brings impact Serious to independence power judiciary , which is one of the main pillars of the rule of law . According to principle *judicial independence* , institution justice must free from mix hand power legislative and also executive in operate task judicially . If the judge can dismissed in a way political by institutions legislative , then matter This open room intervention political in the judicial process , so that reduce trust public to Court Constitution as bodyguard constitution . In the context of this , the DPR's actions have to injure principle base separation power (*separation of powers*) as formulated by Montesquieu and adopted in system Indonesian state administration.

From the perspective welfare , the actions of the People's Representative Council (DPR) in to stop in a way unilateral Constitutional Judge No only to injure constitution and law positive , but also potential cause instability in life nation and state . Principles benefit in Islamic law emphasizes that all state policy should be leading to protection towards five goals main Shari'a : religion, soul , reason , lineage and property . In context This , the DPR's actions go beyond his authority can considered violate principle welfare Because ignore interest general in guard integrity institution justice and lowering trust public to justice law in Indonesia.

In a study conducted by Gigih Reformers Hadi, Galang Asmara, and Chrisdianto Eko Purnomo, they highlight that the DPR does not own authority For dismiss a Supreme Court Judge Constitution . The authority of the DPR is limited to submitting candidate for constitutional judge together with proposal from The President and the Supreme Court , which hereinafter determined by Presidential Decree in accordance with mandate of Article 18 Paragraph (1) of Law No. 24 of 2003. Procedure dismissal of constitutional judges only set up in Article 23 of the Law , which states that termination can done with method termination in a way honorable and dismissal in a way No honorable , and appointed with decision president on request chairman Court Constitution.

Discussion

Analysis Of Dismissal Of Constitutional Judges By Dpr From A Matter Of Concern Perspective

In perspective Islamic law , in particular through approach *maslahah* , state policy must directed at protection and benefit for people in a way wide . Imam al-Ghazali defines *benefit* as all

thing that brings benefits and prevention disadvantage, while Ibn Taimiyah give meaning to it as consideration a mujtahid against a action that brings kindness real and not contradictory with sharia. In the context of dismissal of constitutional judges by the Indonesian House of Representatives, approach This become relevant when evaluation to policy the directed at its impact to justice, balance power, and trust public.

unilateral action of the DPR in remove the Constitutional Judge Aswanto without legitimate procedure cause question Serious about partisanship to principle *masalah*. In a way legal, steps the contradictory with provisions of Article 23 of the Law Number 7 of 2020 which with clear arrange that dismissal of constitutional judges must through procedure certain legal and illegal arbitrary. Assessment from corner view *benefit* show that action This more approaching potential *mafsadah* (damage) than usefulness, because at risk to grind independence justice and lowering quality democracy.

Impact from the DPR's actions damage joints trust public to system the justice that should be impartial. The judge who should free from intervention political become prone to to pressure, and things This contradictory with principle *benefit mursalah*, namely the benefit that is not in a way explicit mentioned in text but acknowledged the benefits in a way general. When the independence of judges is compromised by power politics, then decisions the law that should be fair and objective become in doubt its legitimacy, which ultimately harm public as recipient benefit main from justice.

Termination unilaterally not in line with laws and principles *benefit* can create precedent bad in state governance. This is reflect action arrogant One state institutions against institution others, which should be parallel in framework *checks and balances*. If the practice kind of This left, then institution legislative will own power more on institution judiciary, which is clear violate principle separation power as taught in theory classic *Montesquieu* and also contradictory with principle *government Islamic law* in Islam which prioritizes justice and welfare people.

With Thus, based on perspective *masalah*, DPR's actions in dismiss constitutional judges in a way unconstitutional No can justified Good from side law positive and also from side Islamic law. Therefore that, revision to mechanism appointment and dismissal of constitutional judges absolute needed to be more accountable, transparent, and upholding tall principle justice as well as welfare people. Legal and constitutional reform in matter This become crucial to maintain stability, credibility justice, and honor constitution.

Conclusions and Recommendations

From the results analysis to DPR's actions in dismissing constitutional judges, can concluded that step the in a way legal No own base legitimate law and precisely contradictory with principles the Indonesian constitution, in particular principle legality and separation power. In perspective *benefit*, action the No fulfil criteria welfare Because more Lots cause loss for system justice and society in a way general. The absence of certainty law, decreasing independence justice, and the damage trust public to institution judiciary is form real from *the mistake* that must be made avoided in policy public. Therefore that, system appointment and dismissal of constitutional judges need reformed to suit with principle welfare and create a fair and integrated state governance.

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