

**LEGALITY OF TERMINATION OF CONSTITUTIONAL JUDGES  
BY THE COUNCIL OF REPRESENTATIVES BEFORE THEIR  
TERMS OF OFFICE END**

**LEGALITAS PEMBERHENTIAN HAKIM KONSTITUSI OLEH  
DEWAN PERWAKILAN RAKYAT SEBELUM MASA JABATAN  
BERAKHIR**

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Volume 2, Number 1, March 2023

Received: February 15, 2023 Accepted: February 25, 2023 Online Published: March 31, 2023.

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**ABSTRACT**

Constitutional judges must have integrity and personality that is beyond reproach, be fair, be a statesman who masters the constitution and state administration, and not concurrently serve as a state official. Dismissal of constitutional judges before the end of their term of office can only be carried out for reasons, namely resigning at their own request submitted to the chairman of the Constitutional Court, being physically or mentally ill continuously for 3 (three) months so that they cannot carry out their duties as evidenced by a doctor's certificate, as well as dishonorably dismissed for reasons as set out in Article 23 paragraph (2) of the Constitutional Court Law. Related to the legality of dismissal of Constitutional Justices by the House of Representatives before the term of office ends. This type of research is normative legal research or normative juridical. A dishonorable dismissal of a Constitutional Judge can only be carried out if the reasons for dismissal are met in accordance with the provisions in Article 23 paragraph (2) of the Constitutional Court Law. Whereas the House of Representatives is only capable of nominating candidates for Constitutional Justices through an application to the President at the request of the Chief Justice of the Constitutional Court which will then be determined based on a Presidential Decree. After the Constitutional Court accepts the Presidential Decree, the Presidential Decree will be notified to the institution authorized to apply for a replacement of Constitutional Judges.

**Keywords: House of Representatives, Presidential Decree, Dismissal of Constitutional Judges.**

**ABSTRAK**

*Hakim Konstitusi harus memiliki integritas dan kepribadian yang tidak tercela, adil, negarawan yang menguasai konstitusi dan ketatanegaraan, serta tidak merangkap sebagai pejabat negara. Pemberhentian hakim konstitusi sebelum habis masa jabatannya hanya dapat dilakukan karena alasan yaitu mengundurkan diri atas permintaan sendiri yang diajukan kepada ketua Mahkamah Konstitusi, sakit jasmani atau rohani secara terus-menerus selama 3 (tiga) bulan sehingga tidak dapat menjalankan tugasnya yang dibuktikan dengan surat keterangan dokter, serta diberhentikan tidak dengan hormat karena alasan sebagaimana termaktub dalam Pasal 23 ayat (2) Undang-Undang Mahkamah Konstitusi. Terkait legalitas pemberhentian Hakim Konstitusi oleh Dewan Perwakilan Rakyat sebelum Masa Jabatan Berakhir. Jenis Penelitian ini adalah penelitian hukum normatif atau yuridis normatif. Pemberhentian Hakim Konstitusi secara tidak hormat hanya dapat dilakukan apabila memenuhi alasan-alasan pemberhentian yang sesuai dengan ketentuan dalam Pasal 23 ayat (2) Undang-Undang Mahkamah Konstitusi. Bahwa Dewan Perwakilan Rakyat hanya mampu melakukan pengajuan calon Hakim Konstitusi melalui permohonan kepada Presiden atas permintaan Ketua Mahkamah Konstitusi yang kemudian akan ditetapkan berdasarkan Keputusan Presiden. Setelah Mahkamah Konstitusi menerima Keputusan Presiden kemudian Keputusan Presiden tersebut akan diberitahukan kepada Lembaga yang berwenang dalam mengajukan pergantian Hakim Konstitusi.*

**Keywords: Dewan Perwakilan Rakyat, Keputusan Presiden, Pemberhentian Hakim Konstitusi.**

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**I. INTRODUCTION**

Based on the mandate of the 1945 Constitution of the Republic of Indonesia in Article 24 that "Judicial power is an independent power to administer justice in order to uphold law and justice. Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, religious court environment, military court environment, state administrative court environment, and by a Constitutional Court.

This is further elaborated in Article 24C of the 1945 Constitution of the Republic of Indonesia. The Constitutional Court has the authority to try at the first and final levels whose decisions are final to review laws against the Constitution, to decide disputes over the authority of state institutions whose powers are granted by law -The Constitution, decides the dissolution of political parties, and decides disputes about general election results.

Constitutional judges must have integrity and personality that is beyond reproach, be fair, be a statesman who masters the constitution and state administration, and not concurrently serve as a state official. There are several conditions that need to be met in order to be appointed as a Constitutional Justice based on the Law on the Constitutional Court.

In the case of dismissal of a Constitutional Justice from his position as a Constitutional Justice consisting of:

- 1) Honorable discharge.
- 2) Dishonorable discharge.
- 3) Temporary stop.

Dismissal of constitutional judges before the end of their term of office can only be carried out for reasons, namely resigning at their own request submitted to the chairman of the Constitutional Court, being physically or mentally ill continuously for 3 (three) months so that they cannot carry out their duties as evidenced by a doctor's certificate, as well as dishonorably dismissed for reasons as set out in Article 23 paragraph (2) of the Constitutional Court Law.<sup>1</sup>

Substitution of Constitutional Judges by the proposing institution can be followed up after the President's decision regarding the dismissal of the Constitutional Justices.<sup>2</sup>

The attributive authority guaranteed constitutionally in the Constitution needs to be interpreted in detail (atomistic) at the level of the law. The nine constitutional justices appointed by the President were proposed by the Supreme Court, 3 (three) by the Government and 3 (three) by the House of Representatives.<sup>3</sup>

The appointment of Constitutional Justices submitted by the DPR, the President and the Constitutional Court is a philosophical basis that is attribution and cannot be changed, before Article 24C paragraph (3) of the 1945 Constitution of the Republic of Indonesia was amended. The philosophical basis for the appointment of constitutional judges based on the provisions of Article 24 C paragraph (3) of the 1945 Constitution of the Republic of Indonesia is a symbolic representative of the trias politica, but the submission of prospective constitutional judges from three different institutions is only symbolic, meaning that there is no obligation for a representative to representing by being represented, but the representatives of each of these institutions are symbols of the three powers that support the State.

In order to obtain Constitutional Justices who have integrity and personality that is beyond reproach, are just, and are statesmen who master the constitution and state administration as mandated in the Law on Constitutional Courts which clearly regulates the requirements for candidates for Constitutional Justices. In addition, provisions regarding the appointment and dismissal of the nomination process are also regulated in a transparent and participatory manner, and the election of Constitutional Justices is objective and accountable.

Based on the background mentioned above, the problem to be studied is formulated, namely related to the legality of dismissal of Constitutional Justices by the House of Representatives before the term of office ends.

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<sup>1</sup> <https://www.mkri.id/index.php?page=web.Berita&id=18715&menu=2>

<sup>2</sup> <https://nasional.kompas.com/read/2022/11/24/15452451/mk-nyatakan-pemberhentian-hakim-di-luar-uu-mk-inkonstitusional-bagaimana>

<sup>3</sup> Setyorini, I. (2015). Tinjauan Filosofis Pengangkatan Hakim Mahkamah Konstitusi Dalam Konsep Negara Hukum. *Syariati : Jurnal Studi Al-Qur'an Dan Hukum*, 1(02), 291–302. <https://doi.org/10.32699/syariati.v1i02.1116>.

## **II. METHOD**

This type of research is normative legal research or normative juridical, as described in a book entitled *Legal Research Methods*. Normative legal research is legal research that places law as a building norm. The norms in question are regarding principles, rules of laws and regulations, court decisions, agreements and doctrines. In accordance with the characteristics of this study, this study used the library research method (literary study).

## **III. ANALYSIS AND DISCUSSION**

### **a. Philosophical Basis for the Appointment of Constitutional Justices**

The Constitutional Court is one of the results of the 1945 reforms and amendments. The addition of article 24C to the 1945 Constitution of the Republic of Indonesia regulates the position and authority of the Constitutional Court, which in paragraph (1) states that the authority of the Constitutional Court includes among others examining laws against laws. - the constitution, decides on disputes over the authority of state institutions, whose authority is granted by the constitution, decides on the dissolution of political parties and decides on disputes over election results. In addition, it also has the authority to and provide opinions on the opinion of the DPR regarding alleged violations by the President and/or Vice President according to the constitution.<sup>4</sup>

The appointment of Constitutional Justices is carried out through a selection process that is transparent and involves the active participation of the community. Constitutional judges must meet the requirements, namely having integrity and personality that is not reprehensible, fair and statesman who masters the constitution and state administration and to be appointed as a constitutional judge a candidate must meet the specified requirements, including:<sup>5</sup>

However, the Constitutional Court then issued Decision Number 91/PUU-XVIII/2020 which in essence stated that:

- 1) Indonesian citizens.
- 2) Doctoral degree (three degrees) with a bachelor degree (one degree) background in education in the field of law.
- 3) Have faith in God Almighty and have noble character.
- 4) Minimum age of 55 (fifty five) years.
- 5) Able physically and spiritually in carrying out duties and obligations.
- 6) Never been sentenced to imprisonment based on a court decision that has permanent legal force.
- 7) Not being declared bankrupt based on a court decision.
- 8) Have work experience in the field of law for at least 15 (fifteen) years and/or for prospective judges coming from the Supreme Court

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<sup>4</sup> Setyorini, I. (2015). Tinjauan Filosofis Pengangkatan Hakim Mahkamah Konstitusi Dalam Konsep Negara Hukum. *Syariati: Jurnal Studi Al-Qur'an Dan Hukum*, 1(02), 291–302. <https://doi.org/10.32699/syariati.v1i02.1116>.

<sup>5</sup> Lihat pada ketentuan Angka 5 Pasal 15 Undang-Undang Nomor 7 Tahun 2022 tentang Perubahan Ketiga Atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi.

environment, currently serving as high court judges or as supreme justices.

In the provisions of Article 18 of Law Number 23 of 2004 concerning the Constitutional Court as regulated regarding the application for submission of Constitutional Judges each 3 (three) persons by the Supreme Court, 3 (three) persons by the House of Representatives, and 3 (three) persons by the President, which is then stipulated through a Presidential Decree within a period of no later than 7 (seven) days since the submission of candidates is received by the President.<sup>6</sup> Serta pemilihan Hakim Konstitusi dilaksanakan secara obyektif dan akuntabel.

Prior to the establishment of the President, the Constitutional Justices submitted by each institution must go through a fit and proper test carried out by a Panel of Experts as stipulated in Article 18A of Law Number 4 of 2014 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2013 concerning the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court Becomes a Law.

The Supreme Court, the House of Representatives, and/or the President nominate candidates for Constitutional Justices to the Panel of Experts each at a maximum of 3 (three) times the number of Constitutional Justices required to carry out a fit and proper test.<sup>7</sup> Then the Expert Panel submits the candidate Constitutional Justices who have passed the fit and proper test with the required number of Constitutional Judges plus 1 (one) person to the Supreme Court, the People's Representative Council, and/or the President.<sup>8</sup>

In the provisions of Article 18A paragraph (4) of Law Number 4 of 2014 concerning Stipulation of Government Regulation in lieu of Law Number 1 of 2013 concerning the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court Becomes Law, the Supreme Court, the Council Representatives of the People, and/or the President may nominate another candidate for Constitutional Justices at most 3 (three) times the number of Constitutional Justices still needed. Candidates for Constitutional Justices declared to have passed the fit and proper test by the Panel of Experts shall be submitted to the President to be appointed as Constitutional Judges.

#### **b. Legal Rules for Dismissal of Constitutional Judges**

In its development, several provisions in Law Number 24 of 2003 concerning the Constitutional Court as amended several times, most recently by Law Number 4 of 2014 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2013 concerning the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court to Become a Law has

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<sup>6</sup> Lihat pada Pasal 18 Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi.

<sup>7</sup> Lihat pada Pasal 18A ayat (2) Undang-Undang Nomor 4 Tahun 2014 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2013 tentang Perubahan Kedua Atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi Menjadi Undang-Undang

<sup>8</sup> Lihat pada Pasal 18A ayat (3) Undang-Undang Nomor 4 Tahun 2014 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2013 tentang Perubahan Kedua Atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi Menjadi Undang-Undang

also been reviewed and declared contrary to the 1945 Constitution of the Republic of Indonesia by the Constitutional Court.

Law Number 7 of 2020 is the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court. The change in the law was motivated by the fact that there were several provisions that were no longer in line with developments in the legal needs of society and state administration.

Several important points in the third amendment to Law Number 24 of 2003 concerning the Constitutional Court, among others regulate the dismissal of Constitutional Judges.<sup>9</sup>

Based on the description and results of the research conducted, several conclusions can be drawn as follows:

- 1) Constitutional Court Decision Number 91/PUU-XVIII/2020 suspends all strategic policies with broad implications. It is not justified to issue new implementing regulations related to the Job Creation Law so that the Government cannot issue new implementing regulations. Outsourcing implementation still refers to the old provisions, namely Regulation of the Minister of Manpower Number 19 of 2012 and its amendments.
- 2) The implementation of licensing for outsourcing companies refers to Article 24, paragraphs (1) and (2) of the Minister of Manpower Regulation Number 11 of 2019 concerning the second amendment to the Minister of Manpower Regulation Number 19 of 2012 concerning the conditions for handing over part of the implementation of work to other companies, namely applications for business licenses outsourcing is submitted to the OSS agency, not to the Manpower Office.

Table 1. Provisions for Dismissal of Constitutional Judges

<b>Law Number 24 of 2003 concerning the Constitutional Court</b>	<b>Law Number 8 of 2011 concerning the Constitutional Court</b>	<b>Law Number 4 of 2014 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2013 concerning the Second Amendment to Law</b>	<b>Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court</b>
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<sup>9</sup> Lihat pada Pasal 18A ayat (6) Undang-Undang Nomor 4 Tahun 2014 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2013 tentang Perubahan Kedua Atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi Menjadi Undang-Undang

**Number 24 of  
2003  
concerning  
the  
Constitutional  
Court**

<b>Honorable discharge</b>	Article 23 paragraph (1)	Article 23 paragraph (1)	-	Article 23 paragraph (1)
	Constitutional judges are honorably dismissed if: a. Die; b. Resigned at his own request submitted to the Constitutional Court; c. 67 (sixty seven) years old; d. The term of office has ended; or e. Continuous physical or mental illness as evidenced by a doctor's certificate.	The Constitutional Justices were honorably dismissed for the following reasons: a. Die; b. Withdraw from his own request submitted to the Chief Justice of the Constitutional Court; c. 70 (seventy) years old; d. The term of office has ended; or e. Physically or mentally ill continuously for 3 (three) months so that they cannot carry out their duties as evidenced by a doctor's certificate.		The Constitutional Justices were honorably dismissed for the following reasons: a. Die; b. Resigned at his own request submitted to the Chief Justice of the Constitutional Court; c. 70 (seventy) years old; d. Deleted; or e. Physically or mentally ill continuously for 3 (three) months so that they cannot carry out their duties as evidenced by a doctor's certificate.
<b>Dishonorably discharged</b>	Article 23 paragraph (2)	Article 23 paragraph (2)	-	Article 23 paragraph (2)

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<p>Constitutional judges are dishonorably dismissed if:</p> <p>a. Sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a crime which is punishable by imprisonment of 5 (five) years or more;</p> <p>b. Doing a disgraceful act;</p> <p>c. Not attending the trial which is his duty and obligation for 5 (five) consecutive times without a valid reason;</p> <p>d. Violating the oath or promise of office;</p> <p>e. Deliberately obstructing the Constitutional Court from rendering a decision within the period referred to in</p>	<p>A Constitutional Justice is dishonorably dismissed if:</p> <p>a. Sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a crime that is punishable by imprisonment;</p> <p>b. Doing a disgraceful act;</p> <p>c. Not attending the trial that is his obligation for 5 (five) consecutive times without a valid reason;</p> <p>d. Violating the oath or promise of office;</p> <p>e. Deliberately obstructing the Constitutional Court from rendering a decision within the time frame referred to in Article 7B paragraph (4) of the 1945</p>	<p>A Constitutional Justice is dishonorably dismissed if:</p> <p>a. Sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime that is punishable by imprisonment;</p> <p>b. Doing a disgraceful act;</p> <p>c. Not attending the trial which is his duty and obligation for 5 (five) consecutive times without a valid reason;</p> <p>d. Violating the oath or promise of office;</p> <p>e. Deliberately obstructing the Constitutional Court from rendering a decision within the time frame referred to in Article 7B paragraph (4) of the 1945</p>
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Article 7B paragraph (4) of the 1945 Constitution of the Republic of Indonesia;	Constitution of the Republic of Indonesia;	Constitution of the Republic of Indonesia;
f. Violating the prohibition as referred to in Article 17; or	f. Violating the prohibition of concurrent positions as referred to in Article 17;	f. Violating the prohibition of holding multiple positions as referred to in Article 17;
g. No longer fulfills the requirements as a Constitutional Justice.	g. No longer fulfills the requirements as a Constitutional Justice; and/or	g. No longer fulfills the requirements as a Constitutional Justice; and/or
	h. Violating the Code of Ethics and Code of Conduct of Constitutional Judges.	h. Violating the Code of Ethics and Code of Conduct of Constitutional Judges.

### c. Procedures for Dismissal of Constitutional Judges

Arrangements related to the procedure for dismissing Constitutional Judges are regulated in the Constitutional Court Regulation Number 4 of 2012 concerning Procedures for Dismissal of Constitutional Judges, that in order to elaborate on the provisions of Article 23 of Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 regarding Amendments to Law Number 24 of 2003 concerning the Constitutional Court.

In the provisions of Article 2, the dismissal of a Constitutional Justice consists of honorable discharge, dishonorable discharge, and temporary dismissal. What is meant by honorable dismissal consists of judges who pass away, resigned judges, and judges who are approaching the age of 70 (seventy) years or nearing the end of their term of office, as well as judges who are physically or mentally ill.<sup>10</sup>

First, the procedure for honorable dismissal as stipulated in Article 4 of Constitutional Court Regulation Number 4 of 2012 concerning Procedures for Dismissal of Constitutional Judges in the event that a Judge dies, the Chief

<sup>10</sup> Lihat pada Pasal 2 Peraturan Mahkamah Konstitusi Nomor 4 Tahun 2012 tentang Tata Cara Pemberhentian Hakim Konstitusi

Justice submits a request for the honorable discharge of the Judge concerned to the President. Which application is made within a maximum period of 7 (seven) working days after receiving a death certificate from the competent authority. And within a maximum period of 14 (fourteen) working days after the Court receives the Presidential Decree regarding the dismissal of the Judge in question, the Court notifies the said Presidential Decree to the Institution authorized to propose a replacement Judge, to be processed in accordance with the provisions of Padal 26 paragraph (3) of the Law Act on the Constitutional Court.

In the event that a judge resigns, the Chief Justice of the Constitutional Court submits a request for honorable dismissal of the Judge concerned to the President to be carried out within a period of 7 (seven) working days from the receipt of the resignation letter of the Judge concerned. And within a maximum period of 14 (fourteen) working days after the Court receives the Presidential Decree regarding the dismissal of the Judge in question, the Court notifies the said Presidential Decree to the Institution authorized to propose a substitute Judge, to be processed in accordance with the provisions of Article 26 paragraph (3) of the Law -Law on the Constitutional Court.

Continued in the event that a judge is approaching the age of 70 (seventy) years or nearing the end of his term of office, the Court will notify the state institution authorized to propose a substitute judge, regarding a judge who is approaching the age of 70 (seventy) years or the term of office of the judge concerned will end. Conducted within a maximum period of 6 (six) months before the relevant Judge turns 70 (thirty) years old or ends his term of office. And within a maximum period of 30 (thirty) working days before the Judge turns 70 (seventy) years of age or ends his term of office, the Chief Justice of the Constitutional Court submits a request for the honorable dismissal of the Judge concerned to the President.

Then the Judge who experiences physical or mental illness, the Chief Justice of the Constitutional Court submits a request for the honorable dismissal of the Judge concerned to the President within a period of 7 (seven) working days after receiving a doctor's certificate from the hospital. And within a maximum period of 14 (fourteen) working days since the Court received the Presidential Decree regarding the dismissal of Haki, the Court notifies the said Presidential Decree to the institution authorized to propose Judges, to be processed in accordance with the provisions of Article 26 paragraph (3) of the Law on the Constitutional Court .

Second, the procedure for dishonorably dismissing a Constitutional Justice is to carry out a temporary dismissal from his position prior to a Presidential Decree at the request of the Chief Justice on the grounds of giving the opportunity to the Judge concerned to defend himself before the Honorary Council of the Constitutional Court.

The temporary dismissal is submitted within a maximum period of 7 (seven) working days after the Plenary of Judges decides on the follow-up to the report on alleged violations of provisions. And temporary dismissal is carried out no later than 60 (sixty) working days and can be extended for a maximum of 30 (thirty) working days.

In the event that a request for an extension of the temporary dismissal is proposed by the Honorary Council to the Chief Justice no later than 14

(fourteen) working days prior to the end of the temporary dismissal period. Then the Chief Justice submits a request for an extension of the temporary dismissal to the President no later than 3 (three) working days after the Chief Justice receives a letter proposing an extension of the temporary dismissal. And since the temporary dismissal was requested, the judge in question has not tried the case.

The dishonorable discharge of a Constitutional Justice shall be stipulated by a Presidential Decree at the request of the Chief Justice of the Constitutional Court submitted to the President within a maximum period of 3 (three) working days from the receipt of the Honorary Council Decision. And within a maximum period of 7 (seven) working days after the Court receives the Presidential Decree regarding the dismissal of Constitutional Judges, the Court notifies the Presidential Decree to the state agency authorized to propose Constitutional Judges to be processed in accordance with the provisions of Article 26 paragraph (3) of the Law on the Court Constitution.

Third, the procedures for temporary dismissal of Constitutional Justices due to 3 (three) reasons include:

- 1) Giving the opportunity to the Judge to defend himself before the Honor Council.
- 2) There's a restraining order.
- 3) Sued before the court in a criminal case.

In the event that a Constitutional Justice has an order for detention or is prosecuted before a court, the Judge in question shall be temporarily dismissed from his position by Presidential Decree at the request of the Chief Justice of the Constitutional Court. The request for temporary dismissal is filed within a maximum period of 7 (seven) working days after the detention order or being prosecuted before the court which is decided in the Plenary Meeting of Judges. And the temporary dismissal of a Constitutional Justice is carried out no later than 60 (sixty) working days and can be extended for a maximum of 30 (thirty) working days in which case the request for an extension of the temporary dismissal is proposed by the Chief Justice of the Constitutional Court no later than 14 (fourteen) working days before expiry of the suspension period.

Since the temporary dismissal was requested, the Constitutional Judge in question was dishonorably discharged as determined by a Presidential Decree at the request of the Chief Justice of the Constitutional Court. Then submitted to the President within a maximum period of 3 (three) working days since the extension of time, and within a maximum period of 7 (seven) working days since the Court received the Presidential Decree regarding the dismissal of the Judge, the Court notifies the Presidential Decree to the competent authority filed with the judge for processing.

In the event that the Constitutional Justice concerned is found not guilty based on a court decision, the Constitutional Justice concerned is rehabilitated by Presidential Decree at the request of the Chief Justice of the Constitutional Court. Where the request for rehabilitation is submitted no later than 3 (three) working days after the court decision.

#### **d. Legality of Dismissal of Constitutional Judges by the House of Representatives before their term of office ends**

The Constitutional Court as one of the perpetrators of judicial power as well as upholding justice and protecting human rights is formally carried out by Constitutional Justices through legal products in the form of decisions. In carrying out its constitutional duties, the Constitutional Court seeks to realize its institutional vision, namely the upholding of the constitution in the framework of realizing the ideals of a rule of law and democracy for the sake of a dignified national and state life.<sup>11</sup>

Article 19 of Law Number 23 of 2003 as amended into Law Number 8 of 2011 concerning the Constitutional Court stipulates that "Nominations for Constitutional Justices shall be carried out in a transparent and participatory manner." This means that in the process of selecting Constitutional Justices, the selection process must be held in a transparent manner and involve the active participation of the community.<sup>12</sup>

The practice of appointing Constitutional Justices is carried out through a selection process that is transparent and involves the active participation of the community. Constitutional judges must meet the requirements, namely having integrity and personality that is not reprehensible, fair and statesman who masters the constitution and state administration and to be appointed as a constitutional judge a candidate must meet the specified requirements, among others, are Indonesian citizens, have a law degree education and are at least 40 years old. (forty) years at the time of appointment. In addition, the prospective constitutional judge concerned must make a statement regarding his willingness to become a constitutional judge. Constitutional judges are proposed by the Supreme Court for 3 (three) persons, 3 (three) persons by the DPR, and 3 (three) persons by the President, with the process of selecting constitutional judges carried out in an objective and accountable manner, then determined by a Presidential Decree within a period of no later than 7 (seven) working days since the submission of candidates is accepted by the President and the nomination of constitutional judges shall be carried out in a transparent and participatory manner.<sup>13</sup>

Constitutional justices have a term of five years and can be re-elected for only one subsequent term. This provision has been tried to be corrected through a request for a judicial review of the Constitutional Court Law, but there is no Constitutional Court decision stating that the term of office for constitutional judges is contrary to the 1945 Constitution of the Republic of Indonesia. This paper analyzes the need for reformulation of provisions regarding term periods. the position of constitutional judge is associated with the principle of independence of judicial power.<sup>14</sup>

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<sup>11</sup> Sabungan Sibarani. 2018. *Kajian Hukum Mengenai Pengangkatan Hakim Konstitusi oleh Presiden Ditinjau dari Prinsip Transparansi dan Partisipasi*. Seminar Nasional Cendekiawan Ke-4 Tahun 2018. Buku 2: "Hukum, Politik, Manajemen, Ekonomi, Akuntansi, Konseling, Desain dan Seni Rupa". hlm.1175.

<sup>12</sup> *Ibid.*

<sup>13</sup> *ibid*

<sup>14</sup> Hantoro, N. M. (2020). Periode Masa Jabatan Hakim Konstitusi dan Implikasinya terhadap Kemandirian Kekuasaan Kehakiman (Term of Office for Constitutional Justices and Its Implications against Judicial Independence). *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 11(2), 191–210. <https://doi.org/10.22212/jnh.v11i2.1705>

Regarding the periodization of the term of office of judges, the Constitutional Court in its legal considerations explained, the legal politics forming the Constitutional Court Law [Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court from the term of office of judges who recognize periodization to non periodization of the position of judges is something that is constitutional. Such legal politics is in line with the Constitutional Court Decision Number 53/PUU-XIV/2016, which was pronounced in a plenary session open to the public on 19 July 2017, which among other things stated that the independence and/or independence of the judicial power was determined by a selection process (the manner of the appointment or the mode of appointing judges) and tenure (term of office or the tenure judges). Therefore, in the Constitutional Court Decision Number 53/PUU-XIV/2016 it is further emphasized that the tenure of office of Constitutional Justices should only be for one period with a longer deadline.<sup>15</sup>

The process of replacing constitutional judges by the proposing institution will only be followed up after the President's decision regarding the dismissal of constitutional judges before the end of their term of office. Within the limits of reasonable reasoning, the existence of clear and firm regulations concerning the possibility of dismissing a constitutional judge before the end of his term of office is intended to maintain independence and at the same time protect the independence and independence of the judicial power. This means that actions taken outside the provisions of the norms of Article 23 of the Constitutional Court Law are not in line with the 1945 Constitution of the Republic of Indonesia.<sup>16</sup>

Such a matter, apart from potentially damaging and disrupting the independence of constitutional judges, actions outside these provisions also undermine the independence or independence of the judiciary as the main bastion of the rule of law as set forth in Article 1 paragraph (3) and Article 24 paragraph (1) of the Constitution of the Republic of Indonesia. Republic of Indonesia Year 1945. With the argument of the Petitioners, the legal considerations mentioned above are sufficient to explain and confirm the existence of the norms of Article 87 letter b of the Constitutional Court Law in relation to legal considerations in the Constitutional Court Decision Number 96/PUU-XVIII/2020. These legal considerations, as well as the Court's legal considerations in other decisions, have binding force so that a Constitutional Justice who is in office can only be dismissed before the end of his term of office as long as it is in accordance with the norms in Article 23 of the Law on the Constitutional Court. Thus, the norms of Article 87 letter b of the Constitutional Court Law are unnecessary and irrelevant in the interpretation as requested by the Petitioners. Apart from having been confirmed and considered in the Constitutional Court Decision Number 96/PUU-XVIII/2020, providing direct confirmation into the norms of Article 87 letter b of the Constitutional Court Law, as requested by the Petitioner, can shift the meaning of the a quo norm as a transitional norm which

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<sup>15</sup> <https://www.mkri.id/index.php?page=web.Berita&id=18715&menu=2>

<sup>16</sup> *Ibid.*

einmalig. Therefore, the Petitioner's argument is groundless according to law.<sup>17</sup>

Thus, based on all the legal considerations as described above, the Court considers that there is no issue of the constitutionality of norms regarding fair legal certainty in upholding an independent judicial power as guaranteed by Article 1 paragraph (3), Article 24 paragraph (1), Article 24C paragraph (3), and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia in Article 10 paragraph (1) letter a, Article 57 paragraph (1) and paragraph (2), and Article 87 letter b of the Law Constitutional Court, therefore the Petitioner's petition is groundless according to law.<sup>18</sup>

As stated in the Constitutional Court Case Decision Number 103/PUU/XX/2022 a brief interpretation submitted by the House of Representatives of the confirmation letter from the Constitutional Court which is based on the judge's considerations regarding the interpretation of Article 87 letter b of the Constitutional Court Law.

Whereas in the provisions of Article 18 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court it is explained that the House of Representatives only has the authority to nominate candidates for Constitutional Justices, which will then be determined by a Presidential Decree. Then it is linked to the mechanism for dismissing Constitutional Judges based on Article 23 of the Constitutional Court Law whereby the dismissal of Constitutional Judges includes honorable discharges, dishonorable discharges, and temporary discharges where the procedure for dismissal of Constitutional Judges has been clearly regulated in the Constitutional Court Regulations. Number 4 of 2012 concerning Procedures for Dismissal of the Constitutional Court.

A dishonorable dismissal of a Constitutional Judge can only be carried out if the reasons for dismissal are met in accordance with the provisions in Article 23 paragraph (2) of the Constitutional Court Law.

#### **IV. CONCLUSION**

The process of dismissing a Constitutional Justice needs to adjust and implement what has been clearly stipulated by the establishment of the Constitutional Court Law. It is clearly stipulated that the House of Representatives is only able to nominate candidates for Constitutional Justices through an application to the President at the request of the Chief Justice of the Constitutional Court which will then be determined based on a Presidential Decree. After the Constitutional Court accepts the Presidential Decree, the Presidential Decree will be notified to the institution authorized to apply for a replacement of Constitutional Judges.

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<sup>17</sup> *Ibid.*

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