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### **Independence of Judicial Power in The Problems of The Period of Constitutional Judge in Indonesia**

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#### **Abstract**

Amendments to the Constitutional Court Law (UU) No. 7, 2020 The third amendment to the Constitutional Court Law No. 24, 2003, abolished the obsolescence of Constitutional Judges. However, your formulation does not provide a solid basis for why the legislature has switched from the periodization to the 70-year age limit. Doing so can jeopardize the quality of constitutional judges who have a sincere understanding of national administration and who have a politician-like character. This investigation uses a normative legal investigation method by investigating the main norms of law. The results of this study show that the changes in norms during the tenure of the Constitutional Judge are carried out with minimal thinking, lack of scrutiny, and a relatively unfair process. Apart from that, the third amendment to the Constitutional Court Act significantly expands the consequences of extending the severance period instead of the term division without improving or changing the initial choice, especially during the term of office of the Constitutional Judge. It was also pointed out that it was. The stage of the Constitutional

Judge. We conclude that the development of the judicial independence system in the Constitutional Court was partially and narrowly interpreted by the revision of the Constitutional Court Law, only by changing the term of judges and by periodicizing the terms of judges.

**Keywords:** Independence of power, constitutional justice, periodization, politician.

## **Introduction**

Rules on the Age Division of Constitutional Judges and the Process of Appointing Judges (Judge Election (Engelkamp, 2008). The Constitutional Court is the starting point for efforts to enforce the Constitution in Indonesia. Law enforcement and a full understanding of the Constitution are the most effective and sensitive parameters of state and government survival and dignity. Support the law and support the nation. The law will collapse and the nation will collapse. Syahrul and Datuk (2020) According to its authority, the Constitutional Court is both a guardian of the Constitution and an official interpreter (of Supreme State law) (L. Hakim & Sudaryanto, 2015). Empirically, each Constitutional Judge's referral process is different, as is the timing of re-election for the next period. The practice practiced in Indonesia uses a split citation pattern proposed by choices from the three divisions of state power: the legislature, the executive branch, and the judiciary. (Fajriyah, 2016). The President, the Supreme Court, and the DPR have traditionally used non-standard and different methods to appoint a Constitutional Judge and exercise the power to re-appoint a Constitutional Judge for the second term. .. Article 22 of the Constitutional Court Law before the amendment stipulates that the term of office of a Constitutional judge is five years, and only the following one term can be re-elected (Reutter, 2021). The rule on periodization or reelection is considered appropriate to cause interference in the reelection of constitutional judges by stakeholders. The appointment of the Constitutional Judge as a political institution by the President and DPR led to the entry of the Constitutional Court into the territory of the political system environment. A five-year term may also affect the Constitutional Court's performance in handling and deciding cases. This can happen at the same time if the majority of judges, or even all judges, had to go through a selection process that was held. .. Even if many constitutional judges finish their two-term term very well. However, further consideration is needed regarding the term of office of the Constitutional Judge.

Regarding the terming of the status of Constitutional Judge in Law No. 7 of 2020 regarding the 3rd amendment of Article 24 of the 2003 Law of the Constitutional Court, the provision regarding the terming has been deleted and replaced with a minimum age limit of 55 years and retirement. I did. Starting age of 70 years. In this case, the Constitutional Judge will serve for 15 years if he is 55 at the time of appointment. The relevant provisions are also not explained in detail. The difference is that the original bill changed the minimum age of a constitutional judge to 55 years, while the passed bill changed the minimum age

of a constitutional judge to 55 year (Fauzani et al., 2020). In addition, the Constitutional Court Law provides for the term of office of the President and Vice President of the Constitutional Court to 2.5 to 5 years. This study was interesting because the new law passed did not address any substantive issues.

The issues related to the periodization of the Constitutional Judges mentioned above are the subject of this paper. This paper answers why more comprehensive regulation and research of the Constitutional Judge's periodization is needed so that the Constitutional Judge can fulfill the guarantee of judiciary independence. To answer this question, this paper relies on the theory of judicial independence as an analytical tool. The theory of judicial independence and de jure independence proposed by Melton and Ginsberg is interesting in forming the theoretical basis for this study. Judicial independence is a complex and disputed concept, but at the heart of it is the judiciary's ability and willingness to make decisions based on legislation without considering the views of other government officials (Melton & Ginsburg, 2014). Consider all other qualities that may be desired in the judiciary. B. Consistency, accuracy, predictability, and swift decision-making do not deny independence, the highest value that can be achieved to the fullest extent.

## **RESEARCH METHOD**

This investigation uses a normative legal investigation method by investigating the main norms of law. Secondary data in the study serves the main purpose of the study. There is a problem that seems unreasonable. This study focuses on secondary data related to the revision of the Constitutional Court Act (UU) No. 7 of 2020. The third amendment to Article 24 of the 2003 Act on the Constitutional Court abolished the periodization of Constitutional judges.

## **RESULTS AND DISCUSSION**

### **1. Problems in the Periodization of Constitutional Judges**

The Constitutional Court is a state agency that exercises jurisdiction under the 1945 Constitution of the Republic of Indonesia. Since the 1945 Constitution established its position with the revision of the 1945 Constitution, the existence of the Constitutional Court as the main body of the judiciary whose authority is defined in the 1945 Constitution is very necessary. As the highest law of the country (Hermanto et al., 2020). The magnitude of the Constitutional Court's power and the extent of the influence of the Constitutional Court's ruling are the reasons why there are nine politicians Lutfi and Nur (2022) with a sincere and impeccable personality that governs the Constitution. Administration as a constitutional judge is an absolute requirement for achieving constitutional hegemony in Indonesia.

Therefore, the procedure of referral by the Constitutional Judge and the mechanism of re-introduction by the Constitutional Judge require highly selective terms and mechanisms. The role in the interpretation of the constitution becomes an important point of emphasis in finding the figure of a Constitutional Justice statesman. The importance of interpretation is encouraged that the resolution of the problem of constitutional interpretation has consequences for the lives and existence of many people (Hermawan, 2019). Constitutional judges must be able to reflect on each article text related to the facts of events found in the trial into a judge`s decision containing the values of Pancasila and the basic constitutional values in the 1945 Constitution.(Adonara, 2015)

All Constitutional Judges must have the integrity and personality of being a politician who deserves blame, is unfair, controls the Constitution and the administration of the state, and at the same time does not serve as an official in another state. This is the only civil servant whose qualification is called a politician. Therefore, the qualities of a constitutional judge truly reflect the ideals described in the words of politicians (Aulia, 2021). The politician who becomes a constitutional judge certainly does not have a position in another state. From a grammatical point of view, a politician is defined as a person who respects the Constitutional Corridor and has the knowledge and expertise of national administration, sufficient experience and commitment to the execution and protection of national life (Clor, 1985). Just make a stepping stone so that the Constitutional Judge does not want to reach any position after the fact. Politicians must also be long-term visionary figures by prioritizing the interests of the community, supporting egalitarianism and justice, and protecting all parts of the country.

Regarding terms of office, the UN Basic Principles on Judicial Independence state that "the terms of judges, their independence, security, impartial compensation, terms of service, pensions and retirement age must be adequately secured by law" Melander et al. (2004). .. .. "Judges, whether appointed or elected, shall be guaranteed a term of office until retirement or at the end of their term." (Valieiev et al., 2019)

Article 22 of the Constitutional Court (MK) Act before the amendment determines the term of office of a Constitutional Judge for five years and can only be re-elected for one term. There are some differences in some countries regarding this term. In other words, it may be decided in only one term or re-elected in one term. If only one period is specified, that period corresponds to two periods (8-10 years). Regarding retirement age, we may use only the period excluding retirement age. Elections must be based on the realization of independence and impartiality of the Constitutional Judge, and the integrity and maintenance of national skills of the Constitutional Judge. In this regard, Constitutional Court decisions have been issued since 2016 at the latest, and the considerations relate to, or at least imply, the term of judges of the Constitutional Court, that is, the Constitutional Court's decisions. increase. The

proceedings claiming No. 53 / PUUXIV / 2016, Supreme Court Law No. 3/2009 refer to the requirements of non-working judges, but this argument is ideal for judges, including constitutional judges.

It also mentions similarities in terms of tenure. court. Pages 96-d of Recital [3.8.9], as quoted from the Recital of Constitutional Court Judgment 53 / PUUX IV / 2016. 98:

Amid continuous efforts to improve the selection process to realize such objectivity and accountability, another elementary issue that has received widespread attention is the issue of the periodization of the tenure of Constitutional Justices. As is known, Article 24C of the 1945 Constitution does not at all regulate the term of office and the periodization of being a Constitutional Justice. The term of office and periodization is regulated in Article 22 of the Constitutional Court Law which states that "The term of office of constitutional judges in five years and can be re-elected only for one subsequent term". From these provisions, if used twice, the term of office of constitutional judges is a maximum of 10 years. Whereas, as previously stated, the matter of the independence and/or independence of the judicial power is determined by the selection process (the manner of the appointment or the mode of appointing judges) and the term of office (term of office or the tenure judges). Although in theory the selection process and the length of time (terms of office) of judges including Constitutional Justices are often separated, in practice the two are intertwined and cannot be separated explicitly. Referring to the experience of several countries involving political institutions, the selection process for Constitutional Justices tends to be somewhat more political. For example, in Germany, Constitutional Justices (Bundesverfassungsgerichtshof) are elected by the parliament, half by the upper house (Bundesrat) and half by the lower house (Bundestag). With this trend, many countries determine the term of office of Constitutional Justices is longer and only for one period or does not recognize periodization [see table 1]. With only one term and a longer-term, contact with the political institutions involved in the selection process will only take place once. From the data available in the table, the term of office of Indonesian Constitutional Court Justices is the shortest term of office and with the opportunity to open the two terms, it is possible to only serve 10 years. Whereas if the two-term model with a shorter term of office is applied, Constitutional Justices who wish to be re-elected as judges in the second period are feared that their independence and consistency will be disturbed, but this does not necessarily mean that the five-year term of office is unconstitutional. Therefore, the tenure of office for Constitutional Justices should only be one period with a longer deadline. However, even though the idea of making a period with a much longer-term of service for Constitutional Justices has a strong argumentation and basis for comparison to maintain the independence and consistency of judges and at the same time maintain the independence or independence of judicial power, changes through the decisions of the Constitutional Court are not appropriate.

The most basic reason for arriving at this conclusion is the application of the universal legal principle (general principle) that judges (including Constitutional Justices) cannot adjudicate a case related to their interests (*Nemo iudex in propria causa*). In which case, if it is decided to become a term with a longer term of office (7 or 9 or 11 years) or become a term of office of 70 years or for life, of course, it will provide direct benefits for the Constitutional Judge who decides this case. Due to the idea of changing the term of office of constitutional judges to be longer and only one period correlated with efforts to realize the independence of judicial power, the Court left this matter to the legislators. Whereas the fact is that the Court has decided cases related to constitutional judges but the issues or issues in the decision are not related to the personal interests of constitutional judges as is the case with the *quo case*, but rather to issues of legal relations between state institutions or constitutional issues in general.

Based on the above considerations, although the Court believes that the term of office of constitutional judges will be better if a period with a longer duration of time is determined, this does not mean that the provision for a five-year term of office currently in force is contrary to the 1945 Constitution. unconstitutional). In addition, due to the reason that judges (including Constitutional Justices) are unable to adjudicate a case that is directly related to their interests (*Nemo iudex in propria causa*), the petition of the Petitioners must be declared groundless according to law.

The decision of the Constitutional Court regarding the polemic of the periodization of the tenure of constitutional judges, in the end, makes the arrangement towards the domain of the authority of legislators (open legal policy) which of course depends on the direction of the political will of the legislators. The discourse in the international world that has emerged in addressing the problems of the independence of the judiciary has touched on the term of office of judges as in The Universal Charter of The Judge, in Central Council of the International Association of Judges in Taipei Article 8 mention "A judge must be appointed for life or such other period and conditions, that the judicial independence is not endangered"(Ralph, 2005). In Indonesia, the regulation of the term of office of Constitutional Justices with an open legal policy is considered by some to have the potential to interfere with the impartiality of judicial power, but the Indonesian constitution has outlined that judicial power is an independent power (Rubin & Feeley, 2002). In connection with the current term, there are many concerns that if the judge in question wishes to participate in the second term selection, it will interfere with the judge's independence and impartiality, especially with respect to the proposing body. It is feared that the judge's decision will be an assessment of the proposing body as to whether it is disadvantageous or beneficial to the proposing body (Safa'at, 2016). The term of office of the Constitutional Judge is only five years and may be re-elected for another term, which opens up space for establishing a harmonious relationship

with the proposing body. Judges are expected to serve only one long term, so using the short-term two-office model raises concerns about their independence and coherence.

The Constitutional Judges of this state agency have undergone some changes. Representatives arise because of the expiration of their term, reaching the age limit, personal resignation, or being dismissed from the position of Constitutional Judge for being involved in an illegal case (Lamprea, 2010). In Phases 1 and 2, led by Jimmy Acidikier and Mo Mahud MD, expectations for establishing the rule of law in Indonesia are slowly but surely showing hope. Many Constitutional Court decisions are highly regarded by the general public because they are considered to represent a sense of justice in the community. The Constitutional Court was one of the most respected and prestigious law enforcement agencies in the eyes of the people at the time. Unfortunately, this fighting spirit will not be passed on to the next generation. Some deputy judges no longer retain the noble values and principles that were built and inherited from their predecessors as politician judges. The story of the Constitutional Court's next journey is no longer a story of achievement and patience to uphold Constitutional supremacy, but the Constitutional Court is indistinguishable from other law enforcement agencies that began with the affected judicial mafia.

It became an institution. Even part of the Mafia came from an internal judge of the Constitutional Court. Problems such as the arrest of Judge Akil Mochtar of the Constitutional Court for being involved in corruption in 2013 have raised great concerns, especially in the process of being reappointed as the second judge of the Constitutional Court. It is becoming more and more politicized (Dressel & Inoue, 2018). The re-election of active Constitutional judges (periodization issues) carries the risk that the "negotiation process" between the Constitutional Court and the Supreme Court, the DPR and / or the President will occur on certain issues. In addition, Richard A. Posner recalled that the faster the judge was replaced, the less legally stable it was (Botting, 2010). Arrangements for regularizing the term of a Constitutional Judge are such that the judge (possibly re-elected) will actively contact, make political calculations, and at the end of the term the Supreme Court, DPR, or Aharon. Barak recalled that impartiality meant that the judge had no personal interest in the outcome, Morris and Newman (2007) but the judge later said to the MA, DPR, or the president in the second term. There is a possibility of holding an election. Experience has shown that former Constitutional judges who may be re-elected in the second term have different attitudes and views on whether to participate in the election of candidates for the next Constitutional Judge.

The Constitution Judge, which you want to continue in the first period, should have the procedure for selecting a new constitution candidate. The first period of constitutional judges certainly tested their abilities and states. The import of the judge's position is that Article 4 Earth Law Article 8 Article 8 Earth Article 8 Eighth Law Article 8 Article 8 Article 8 Eighth Law Article 8 Eighth Method

No. 8 8 Related to Article 8 Article 1. The appointment of the judge's term is not recognized by comparing the provisions of the provisions 3 of the Supreme Court Law 3. When he reaches a 70-year-old retirement age. The termination of term terms of the term of the term of the term of the term of the term of the term of the term of office can be returned only at a time of 5 years at a time, creating the difference between the Constitutional Court (MK) and the Supreme Court (MA). Article 24 (2), MK, MA The 1945 configuration in MA has the same position. The restrictions on the provisions of the Court of the Constitutional Court apply to limit the Constitutional Court to the Constitutional Court of Justice. Thus, in contrast to Article 24, these documents are in contrast to those that apply to the Constitution of Article 24-4 of Indonesia, Indonesia, as opposed to There should be no difference to deal with topics. Between these two judicial agencies. This is because both the Supreme Court and the Constitutional Court have equal positions. The authority may be different, but the office terms should be balanced. This should conform to the same regulations, ie 1945 (2) Constitution of the Indonesian Constitution of Article 24 (2). This standard occurs because the term office terms are different or distinguished. The second five-year established judge mechanism is the position of the Constitutional Court Judge's position of the AD Hoc judge, and conforms to Article 24 (2) of the Article 2 Constitution of the 1945 It brings about that there is no. The number of years for the Constitutional Court Jury is the same as the state fee to reselect the candidate candidate for members of the committee without prioritizing whether it is a new candidate or established candidate am. The first five-year conceptual reproduction of the Constitution of the Judge is 1945, ie, Article 24 (2) and 1 (3), then on the construction of Article 24 (1) and 28D (1). Therefore, it is important to consider the periodization by the Constitutional Judge more closely.

## **II. The shackles of the independence of judicial power**

The enshrinement of the rule of law in the Constitution outlines that the judiciary is an independent power. It is governed by Article 24 (1) of the 1945 Constitution, stating that "the judiciary is an independent authority to enforce justice for the purpose of maintaining law and justice." One of the most important features of any democratic constitutional state (democratic constitutional state) or law-based democracy (constitutional democracy) is the existence of an independent and equitable judiciary. Regardless of the legal system applied or the form of government chosen, the implementation of the "principles of judiciary independence and impartiality" must be guaranteed in all constitutional democracy. Therefore, judiciary independence is a major precondition for the enforcement of law and justice.

Issues related to the recruitment of constitutional judges and periodization will certainly affect the judicial independence of the Constitutional Court. Judicial independence has two main components: (i) independence and (ii) independence. Independence is defined as personal independence, and independence is defined



as institutional independence (Simanjuntak, 2020). In the first concept, the judiciary can make a decision without fear of internal (vertical) or external (horizontal) pressure to resolve the case under certain conditions. Achieved independence. Judges who are under external pressure or concerned about the consequences of the benefits of a decision cannot make a fair decision on the case, as external influences are considered to affect their independence. It will be difficult (Pimentel, 2016). The second concept affects the fundamental issue of policy making in the judiciary, namely institutional independence (Chandranegara, 2012).

The Constitutional Court as one of the state institutions that exercise judicial power is a power that is independent of all kinds of extra-judicial influences and is responsible for the people through the administration of the Constitutional Court based on the principles of good and clean governance through its decisions by the constitution, the people's will and democratic ideals (Rosencranz & Jackson, 2003). Strengthening the position and status of judges both within the Supreme Court and the Constitutional Court is a must so that they do not depend on institutions outside the jurisdiction of the judiciary (Chandranegara, 2019). Howard and Carey convey the concept regarding the independence of judicial power which will only be realized if the Supreme Court or Constitutional Court is truly independent of the influence of executive and legislative powers (Howard & Carey, 2003).

Internationally, the principles of independence of judicial power can be found in *The United Nations Basic Principles on the Independence of the Judiciary* (1985) (Schachter, 1994), which stated *The judiciary shall decide matters before them impartially, based on facts and by the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason* (Lederman, 1956).

The Supreme Court of the Republic of Indonesia in the Blueprint for Judicial Reform 2010-2035, describes the independence of judicial power as Machmudin (2018) institutional independence, namely that the judiciary is an independent institution from having to be free from intervention by other parties outside the jurisdiction of the judiciary, and functional independence, namely that every judge is obliged to maintain independence in carrying out his duties and functions. This means that a judge in deciding cases must be based on facts and legal basis that he knows, and free from influence, pressure, or threats, either directly or indirectly, from anywhere and for any reason. The independence of judges is a guarantee for the rule of law and justice and is a prerequisite for the realization of the ideals of a rule of law.

According to M. R. Hakim (2018) Street, independence or independence can be divided into four types, namely substantive independence (independence in deciding cases), personal independence [for example, the existence of guaranteed terms of office and tenure], internal independence (for example,

independence from superiors and colleagues) and collective independence (for example, the court's participation in court administration, including in determining court budgets) (M. R. Hakim, 2018). Street explained that substantive independence refers to the freedom of judges to carry out their functions independently. Meanwhile, the characteristics of personal independence include protection of position and tenure, as well as adequate remuneration and pensions (Shimon Shetreet, 2020). *Personal and substantive independence are two important things for the protection of every judge from every threat.*

Alexander Hamilton in federalist paper 78 states that courts can be judged to be independent in terms of 1) the pattern of filling the positions of judges (the mode of appointing the judges), 2) the tenure of judges (the tenure by which they are to hold their places), 3) the division of the judicial authority between different courts and their relations to each other (the partition of the judiciary authority between different courts and their relations to each other) (Hamilton et al., 2003).

In the independence of the office, of course, there is an appointment and dismissal mechanism which also includes the term of office which limits the executive and legislative space to regulate and determine from the side of the process to the results determined in the political agreement to form laws. This includes, of course, protection against a definitive term of office for judges. Based on several principles and opinions of legal experts, the term of office of constitutional judges is closely related to the issue of the independence of judges, which cannot be separated from the issue of appointment and supervision or dismissal (Siregar, 2015).

Discussing the periodization of office needs to be explored further regarding the relationship between the Constitutional Court and the law-making institutions (Lindsey, 2002). There is a problem in the form of tension between the Constitutional Court and the legislators about the decision and legislation. Therefore, the legislators initiated the need for a revision of the Constitutional Court Law. In its development, the revision was successfully carried out in line with the ratification of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court (Al Uyun). In his dissertation, Fajar Laksono said that Law Number 8 of 2011 started a period of tension between the Constitutional Court and the legislators. Through Law Number 8 of 2011, the legislators are considered to have used the authority to limit the exercise of the authority of the Constitutional Court. The presence of Law Number 8 of 2011 is seen as a form of anger from the lawmakers against the Constitutional Court (Yulia, 2017). This can be read, among others, from the existence of Article 45A of Law Number 8 of 2011 which prohibits ultra petite for the Constitutional Court (Vesterdorf, 2006). It is said to be able to kill the judicial activism of the Constitutional Court. The nature of the Constitutional Court with the authority to review laws cannot be separated from the existence of judicial activism which is very close to ultra petita (Horowitz, 2006). Decisions of the

Constitutional Court can lead to movements or dynamics of political interests, including conflicts between parties that encourage and other parties that hinder the implementation of decisions. This puts the Constitutional Court in a position to deal with other state powers, namely the legislators. In addition, lawmakers do not always have an interest in implementing the decision, especially if the Constitutional Court's decision is detrimental to their interests.

The third amendment to the Constitutional Court Law, among others, regulates the tenure of constitutional judges. In line with the idea of abolishing the term of office of constitutional judges, the legislators have abolished that period, so that constitutional judges serve from the time they are appointed until they reach the age of 70 (seventy) years. Changes also occurred in the age requirement to become a candidate for a constitutional judge, which was originally a minimum age of 47 years and a maximum age of 65 years at the time of the first appointment to a minimum age of 55 years. In the bill proposed by the DPR, the minimum age requirement for constitutional judge candidates is 60, the President proposed a change to 55 years and the proposal was approved. With this change, the age requirement using the phrase "highest" has also been removed in line with the idea of removing the "upper limit".

Without clarity in the transitional provisions, this article could threaten and result in constitutional judges being trapped in a puddle of conflicts of interest. This means that there will be constitutional judges who are harmed or benefited from the provisions of the amendment to the Constitutional Court Law. Mathematically, the term of office of a constitutional judge based on the third amendment to the Constitutional Court Law is 15 years, if appointed at the lowest age of 55 (fifty-five) years and retired at the age of 70 years. Juridically, it cannot be said that the term of office of constitutional judges is 15 years, considering the provisions regarding how long a constitutional judge has been in office have been abolished in the law. However, for constitutional judges who are currently in office, a Transitional Provision applies which stipulates that a constitutional judge who is currently serving ends his/her term of office until the age of 70 years as long as the entire term of office does not exceed 15 years. That is if there is a current constitutional judge when counted until the age of 70 years, he serves more than 15 years, the person concerned does not stop at the age of 70 years, but when he serves for 15 years. (Mason, 1986)

When referring to the provisions of the revised article a quo, there will be constitutional judges who may serve up to twenty years. It is conceivable that when the revision of the quo Law is finally tested in the Constitutional Court, the panel of constitutional judges will not only judge the interests of the institution, but also the interests of its position. Therefore, the revision of the Constitutional Court Law should be aimed at optimizing the fulfilment of the constitutional rights of citizens. Examining the institutional needs of the Constitutional Court is far more substantive than simply regulating the age of judges. Not the other way

around, the momentum for the revision of the Constitutional Court Law is only a step backwards in efforts to protect citizens' constitutional rights. (Darwis, 2019)

With the abolition of the term of office of Constitutional Justices, it has eliminated the evaluation space for Constitutional Judges that is owned by the public to assess the implementation of the duties and authorities of Constitutional Justices during their first term of office, especially by the Proposing State Institution [vide Article 24 paragraph (3) of the 1945 Constitution] and by the public through providing input to the proposing State Institution during the selection process. This condition has implications for the potential for abuse of power and unprofessional actions because of the safe position of the Constitutional Court Justices who are free from evaluation at each end of their term of office.

The Constitutional Court in the Constitutional Court Decision Number 53/PUU/XIV/2016 has emphasized that independent judicial power is a judicial power that is free from interference from any party and in any form so that in carrying out its duties and obligations, there is a guarantee of impartiality of the judicial power except for the law and regulations. Justice. With a conflict of interest with the legislators, this has the potential to interfere with the independence and impartiality of the constitutional judges who were in office at the time the quo Law was promulgated in conducting judicial review of the law, thus contradicting Article 24 paragraph (1) of the 1945 Constitution. (Shirmon Shetreet, 2009)

The term of office of constitutional judges in five years can be re-elected with negative implications for the independence of judicial power. The long period of up to retirement age has positive implications for the independence of judicial power, but the strict selection and monitoring methods are needed to prevent abuse of power. The long term of office needs to be balanced with a better filling mechanism for the position and an effective supervisory mechanism.

However, the conditions are different from the revision of Law on the Constitutional Court Number 7 of 2020. The DPR and the government ratified Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court. This change caused a polemic because the content only revolved around the age requirements for candidates for constitutional judges, pensions, and the tenure of the chairman and deputy chairman which were deemed not to answer the needs of the Constitutional Court.

The enactment of Article 87 letter b of Law 7/2020 has made Constitutional Justices who were in office at the time Law 7/2020 was promulgated able to hold their positions as constitutional judges up to the age of 70 years even though they have served their second term of office and without going through a re-selection process by the Supreme Court, the House of Representatives, and the President. The enactment of Article 87 letter b of Law 7/2020 has made the Constitutional Justice who was in office at the time Law

7/2020 was promulgated the potential to result in the constitutional judge being trapped in a conflict of interest with the legislators because he had regulated the provisions of Article 87 letter b of Law 7/2020 provisionally. the product of the legislators is the object of in litis in the judicial review of the law in the Court. This condition is further exacerbated by the difficulty of the mechanism for correcting constitutional judges as regulated in the provisions of Article 23 of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court and Law 7/2020.(Olivier, 2016)

It is clear that this change, instead of guaranteeing the independence of judicial power through the abolition of periodization, has become excessive in the context of the term of office. In addition, it has been criticized in previous research conducted by Faiz [2016], where it was stated that the ideal mechanism for a constitutional judge should be through a selection committee mechanism that is open, credible, transparent, and accountable, which today is only a Constitutional Justice from the government element. who underwent a selection process through an independent committee, while others did not. So that means, extending the term of office without improving the selection process mechanism is an effort that is just as futile. Or with a simple formula, it can be described that a very long term of office [minimum age range - with retirement] + the same election mechanism [proposed by the President, Parliament, and MA] = a large potential for abuse of power.

Meanwhile, for the retirement age, the presidents of other countries are deemed insufficient to be immediately imitated and taken for granted, because in addition to legal factors, it is also important to see the background of a country applying a reference to a retirement period, for example, differences in life expectancy index [life expectancy index]. which is experienced in every country, were based on worldometers.info Indonesia is in the 122 position in the country's ranking with a maximum average age of 72.32 years, it is the maximum age of life, which means that the productive age can be drawn from 5 to 5 years. 7 years before that or about 63 s.d. 65 years (Sormin et al.)

The revision of the Constitutional Court Law is also considered to be formally flawed because from the start it was not included in the National Legislation Program (Prolegnas) and did not meet the carryover requirements, the academic text was bad, and the discussion was carried out in a closed and non-participatory manner in a very short time, namely three days. The problem of formal legitimacy contained in the formation of Law 7/2020 can be viewed from the principle of the formation of good laws and regulations, namely the principle of openness. Based on these provisions, Law 7/2020 can be said to violate the principle of the formation of laws and regulations as regulated in Article 5 letter g concerning the principle of "Openness" of Law 12/2011 in conjunction with Law 15/2019 (Harijanti & Lindsey, 2006).

The academic text of this law is said to be bad because it only weighs 25 pages, an inadequate explanation for the very significant discussion of age

(Carter Jr, 2006). In terms of objectivity, cherry-picking has taken place, in which many materials and sources have been taken according to the tastes of academic manuscripts and for writing ends, such as references to countries with a much more advanced legal culture and relatively long retirement age, so that only those who are taken are taken. The side that matches the research intention while discarding the other side that is less profitable. In addition, it does not cover both sides, it is also shown by only prioritizing aspects of independence and rights from the side of the judge's profession, while almost no section discusses the importance of the accountability aspect and the facts of the performance of the judge's profession. This document does not qualify to be referred to as an academic manuscript because of the logic of the writing that is not coherent, the failure to prove a cause-effect relationship, and it is legible where hypotheses and conclusions are made from scratch, while the data, theories, methodologies, and findings are only used as a reference. justification.

Therefore, according to the researcher of the Initiative Code who is also the applicant for the review of the revision of the Constitutional Court Law, Violla Reininda, the legislators violated four principles for the formation of good laws and regulations, namely the principle of clarity of purpose, the principle of usability and effectiveness, the principle of clarity of formulation, and the principle of openness (Slawson, 1960). Experts in the field of constitutional law assess that the practice of formal review of laws at the Constitutional Court often makes civil society nervous or pessimistic. Civil society often oversees the law-making process, including the judiciary. This is because the legislative and executive institutions often abuse the process. There are two challenges in conducting a formal review of the law, particularly Law no. 7 of 2020 concerning the Third Amendment to Law No. 24 of 2003 concerning the Constitutional Court. First, there are allegations of political mounts regarding the impact of the decision. According to him, political considerations also tend in many countries. It is undeniable that the Constitutional Court has a significant political aspect. Because the design of the Constitutional Court in many countries also has political actors. Therefore, when the Constitutional Court is considering making a decision, there is a consideration of the impact of the Constitutional Court's decision. Second, conflict of interest. According to him, there is a real interest of judges in the case for the formal review of Law 7/2020. The reason is related to the term of office of constitutional judges. On the other hand, there is the principle of *Nemo iudex in propria causa*, a person cannot be a judge when judging his interests. Meanwhile, the Constitutional Court has deviated from this principle in the Constitutional Court's decision No.066/PUU-II/2004, the Constitutional Court's decision No.005/PUU-IV/2006, and the Constitutional Court's decision No.49/PUU-IX/2011. For reasons similar to the previous decisions, it becomes appropriate to apply the formal review of the Constitutional Court Law regarding the principle of *Nemo iudex idoneus in propria causa*. According to him, Law 7/2020 has a conflict of interest and the real impact is visible. Such as the

privileges given to nine judges of the Constitutional Court. This makes the Constitutional Court powerless to provide a check and balance function to the executive and legislative institutions (Kischel, 1994)

According to the researcher, the material changes in the revision of the Constitutional Court Law are not substantive and full of conflicts of interest. The emphasis of the changes includes extending the term of office of constitutional judges to the age of 70 with a maximum term of 15 years, and the extension of the tenure of the Chair and Deputy Chair of the Constitutional Court from 2.6 years to 5 years. Extension of term of office applies to constitutional judges who are currently serving. He considered that the revision of the Constitutional Court Law was a form of weakening through legislation, such as what happened to the Judicial Commission and the Corruption Eradication Commission. According to him, the ways to weaken the constitutional institutions are part of undermining democracy. The revision of the Constitutional Court Law is a way to interfere with the independent judges who are in office and there are motives for weakening the Constitutional Court. Procedurally, one of the arguments that became the argument was put forward for a formal test related to the absence of the principle of openness to the community. The discussion on the revision of Law 7/2020 at that time was carried out closed and the discussion was faster, only within 7 working days. Methods like this, are considered to violate the principles of the constitution. This weakening was also acknowledged by the STH Indonesia Jentera lecturer who assessed that the weakening of the Constitutional Court this time was a form of illiberal democracy that had occurred in Hungary in 2010 and Poland in 2015. The two countries also "controlled" the Constitutional Court by limiting the authority, changing and replacing the composition of judges, removing senior judges through reducing the retirement age, to changing internal rules.

### **Conclusion**

This study concludes that the need for independence of the position of judges aims to limit the space for the government or legislators to regulate the term of office of Constitutional Justices. The Constitutional Court is a crystallization of three powers, namely the President, DPR, and MA. When members of the DPR and the President have political periods and term limits, the Constitutional Court also needs to limit their terms of office. Constitutional judges need to be distinguished from Supreme Court justices who are appointed to retirement age, because Supreme Court judges come from career and non-career judges, while constitutional judges have different backgrounds and are political representations. Therefore, limiting the term of office of constitutional judges also serves to prevent abuse of power.

Building a judicial independence system in the Constitutional Court cannot be seen partially only in the realm of the tenure of judges or the periodization of constitutional judges' positions which are interpreted very narrowly by lawmakers

in changing the current Constitutional Court law by only changing the periodization of the positions of constitutional judges using the standard age and not exceeding 15 years of service. However, the judicial independence system must be viewed holistically and comprehensively starting from the realm of recruitment (HR, qualifications), the implementation of the Constitutional Court's authority (institutionalization and secretariat), and the supervisory system.

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