

An Analysis of the Current Regulations on the Term of Office of Constitutional Court Justices Based on the Principles of the Rule of Law

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Submission date: 06-Dec-2024 04:11PM (UTC+0700)

Submission ID: 2542798580

File name: Ilmu_Hukum_Alya_Putri_Nabila_1312100129.docx (128.9K)

Word count: 5920

Character count: 32723

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Article history: Received: 25 May 2022, Accepted: 1 June 2022
Published: 1 July 2022

Abstract: The revision of Law Number 7 of 2020, concerning the Third Amendment, to Law Number 24 of 2003, concerning the Constitutional Court (hereinafter referred to as Law No. 7 of 2020), has sparked controversy in the community. Where the substance of the regulation since the first revision until now has always seemed to only tinker with the technical realm and the periodisation of the term of office of Constitutional Court (MK) judges. The public has drawn attention to the closed and hasty nature of the formulation process. This has given rise to a long debate among the community regarding the potential threat to judicial independence, where the changes made are considered to be able to influence the decision-making process of MK judges. In the context of a state of law, changes to the regulation of the term of office of MK judges should consider the principles of justice and transparency to maintain the integrity of the judicial institution. To make sure that the judicial power can work independently and objectively, in line with democratic values, it is important to have rules that are clear and fair. (Frans Samuel Junero Butarbutar and Irwan Triadi 2024) Open and collaborative dialogue between the government, legislative institutions, and civil society is essential to creating regulations that are not only technical in nature but also reflect the aspirations of the community and uphold the principles of justice and transparency as studied in the concept of a state of law.

Purpose: This research aims to comprehensively analyse how the current MK judges' tenure arrangements are based on the principles of the rule of law. This research study explores the legal framework governing the tenure

of MK judges, as well as the implications of these arrangements for the independence and accountability of the judicial institution. In addition, this study is expected to provide an in-depth analysis of legal issues related to the tenure of MK judges.

Design/Methodology/Approach: This study is a normative legal analysis focused on identifying relevant legal rules, principles, and doctrines to address pressing legal issues. To achieve this, the research employs several methodologies, including a legislative approach, a conceptual approach, and a case-based approach. By utilizing these diverse methods, the research aims to thoroughly examine the implications of the current regulations governing the terms of office for MK judges on the principles of independence and accountability. These principles are essential ideals within the framework of a rule-of-law state, emphasizing the need for a renewable commitment to uphold judicial integrity and public trust. In addition, this research will also explore the impact of these regulations on public trust in judicial institutions.

Findings: In this research, it was found that the substance of the MK judges' term of office regulated in Law Number 7 of 2020 does not reflect the principle of a state of law, which should be the theoretical basis in the process of draughting legal regulations. One of the main problems identified is the inconsistency in the draughting of articles relating to the period of the MK judges' term of office. This uncertainty creates confusion and the potential for abuse of power, as well as concerns that the decision-making of MK judges can be caused by political intervention alone. In addition, the process of draughting Law Number 7 of 2020 is considered too hasty and closed. This further worsens the legitimacy of the law and raises doubts among the public.

Originality/value: This research emphasises the importance of legal certainty that supports the principle of independence in the judicial power. This research highlights the importance of term office arrangements that not only guarantee stability but also protection against intervention from political power. Judges' terms of office that are too short or dependent on external influences can risk eroding public trust in the integrity of the judicial

institution. In this context, this research provides insight that optimal arrangements must be based on the principle of a state of law in order to maintain a balance between stability and independence, so as to create a strong foundation for justice and legal order.

Keywords: Term of Office, Constitutional Court Judge, Rule of Law.

Paper Type: Article-Research.

Introduction

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The Constitutional Court is one of the main components in the judicial power system, which has a crucial role in implementing supervision and balance between state institutions (checks and balances) within the framework of governance. (Utami and Wardhani 2024) To sustain the stability and effectiveness of the Court's operations, it is essential to establish legal frameworks that govern the Court itself. Law Number 7 of 2020 provides the foundational legal basis for the duties and authorities of Constitutional Court judges. This regulatory framework can be viewed as a renewable commitment to uphold constitutional integrity, allowing the Court to adapt effectively to evolving legal challenges while maintaining its essential role in protecting the constitution and reinforcing the rule of law. In this context, it is important to emphasise that MK judges are expected to always comply with and follow the provisions contained in the law when carrying out their responsibilities and authorities.

Highlighting Law No. 7 of 2020, polemics and controversy often arise in the community. Where the draughting process did not involve public participation and seemed to be carried out in a hurry. The House of Representatives (DPR) and the government as the law-making institutions in this case ignore the principle of meaningful participation. Law No. 7 of 2020 has continuously undergone changes, where in each revision the contents of the Draft Law on the Constitutional Court (RUU MK) always seem to

only tinker with the technical aspects and the period of office of the MK judges.

It has become a public concern that at that time the revision process of Law No. 7 of 2020 was carried out secretly and in the midst of the Covid-19 pandemic that was hitting Indonesia. Moreover, the amendment to Law No. 7 of 2020 was not included in the 2020 priority National Legislation Program (Prolegnas), so it was not an urgent matter that had to be implemented. However, the DPR and the government continued to perpetuate the process of violating the constitution and ratified Law No. 7 of 2020 in a hurry. The changes caused controversy because the content of the material only focused on the age requirements for constitutional judge candidates, retirement, and the term of office of the chairman and deputy chairman, which were deemed not to meet the needs of the Constitutional Court.(MZ 2022)

Highlighting this, there has been a debate in society and legal experts that Law No. 7 of 2020 is considered formally flawed because, from the start, it was not included in the 2020 Prolegnas list. This is further strengthened by the fact that Law No. 7 of 2020 also does not meet the carryover requirements; the academic paper is poor; and the discussion was carried out behind closed doors and did not involve public participation. This kind of condition is feared to damage the supremacy of law and create public distrust of the existing legal system. In addition, this can create a bad stigma for future law-making, where transparent and inclusive legislative processes are increasingly ignored.

In the process of draughting laws, supervision and involvement of various parties are very important to ensure that changes are made fairly and transparently. Especially in the context of Law No. 7 of 2020, which plays an important role in maintaining the constitution and democratic principles, any changes must consider their long-term impact on the balance of power. The involvement of various stakeholders, including civil

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society and academics, can enrich the process of making laws and prevent deviations from the principles of the rule of law. In this context, Indonesia, as a rule of law state, must ensure that every step in the draughting of laws not only fulfils the legality aspect but also reflects the values of justice and transparency that are the foundation of a democratic society. (M. Reza Saputra and Taufiqurrohman Syahuri 2024)

Legislative processes involving close scrutiny and public debate can help prevent abuse of power. Open legislative procedures allow the public to identify and voice potential problems or negative impacts of changes to the law. It also ensures that changes to the law are based on a broader consensus and not just the interests of certain groups. This approach is important to maintain the integrity and credibility of the legal system. In addition, strengthening the system of checks and balances must be a priority in any changes to the law, especially those related to constitutional institutions such as the Constitutional Court. Effective checks and balances ensure that each branch of government can supervise and control the other branches of government, preventing excessive concentration of power. With this mechanism, the potential for abuse of power can be minimised, and the principles of democracy in the rule of law are maintained. This is essential to maintain the health of the state system as a whole.

Democracy holds significant respect as it enables a balanced functioning of the rule of law, which thrives in a supportive democratic system. In this framework, a strong connection exists between a constitution-based rule of law and the authority of the people, expressed through democratic processes. (Bouk 2020) This relationship emphasizes the renewable nature of democracy, where ongoing participation and engagement by the populace are crucial for sustaining and revitalizing the principles of justice and governance. By fostering a dynamic interplay between the

constitutional state and the will of the people, democracy ensures that the rule of law remains relevant and responsive to societal needs, reinforcing its foundational ideals. If democracy is ignored, how can a state of law run in balance? Of course, the collapse and chaos in the state administration process will increasingly emerge.

Based on the explanation that has been presented previously, this study conducts an in-depth analysis of the suitability of the MK judges' term of office regulations with the principles of the rule of law. The purpose of this study is to assess whether the length of the MK judges' term of office affects the integrity and independence of the institution. In other words, this study seeks to explore whether the length of the judges' term of office can affect the institution's ability to carry out its functions fairly and objectively, as well as maintain public trust in the justice system. In addition, the impact of the regulation of the term of office on the quality of the decisions produced, as well as public perception of the legitimacy of the Constitutional Court, will also be analyzed. Thus, the results of the study are expected to provide constructive recommendations for improving the judicial system in Indonesia.

Methods

This research is a normative legal study that aims to identify legal norms, legal principles, and legal teachings that are relevant to answering legal problems that arise in practice. The results of this study are expected to provide clear recommendations or solutions related to the issues being analyzed. An approach is necessary to address the legal issues under study, serving as a foundation for constructing a compelling argument. This research uses two types of approaches, namely the conceptual approach and the legislative approach. The research compiles two types of legal materials: primary legal materials, which comprise laws and regulations or judicial decisions aligned with the studied legal issues, and secondary legal materials, which provide instructions

or explanations to bolster the primary legal materials. The collection of legal materials in compiling this research is collected and inventoried using several techniques, namely collecting primary legal materials by searching for, understanding, and describing primary legal materials, which are generally in the form of laws and regulations, treaties, and court decisions that have permanent legal force. The next technique is collecting secondary legal materials with the method of collecting library materials, which are used as instructions in understanding the process of resolving a legal problem in order to build legal arguments. The legal materials collected and inventoried are analysed using deductive logic with a method of drawing conclusions from general premises to more specific ones. In this normative legal research, the analysis techniques used are prescriptive through the methods of interpretation, harmonisation, systematisation, and legal discovery. The goal is to arrive at logical and coherent conclusions about the legal issues under study.

Discussion and Findings

Mechanism for Filling the Position of Constitutional Court Judges

In fact, MK judges are an important pillar in the sustainability of the legal system in Indonesia. The Constitutional Court acts as a representative of the guardian of the constitution and enforcer of justice in a state of law. The quality and integrity of MK judges are crucial factors in maintaining the legitimacy and public trust in the judicial institution. Therefore, MK judges who are credible, qualified, and not influenced by any political intervention are basic needs in practicing the principles of a state of law. (Fiqih, Widodo, and Firdaus 2024)

The Constitutional Court established to serve as a protector of the constitution, safeguarding human rights and the constitutional rights of citizens. It acts as the ultimate interpreter

of the constitution and a defender of democratic principles. In more detail, the four functions of the Constitutional Court are reflected in the 4 (four) authorities and 1 (one) obligation that it has, namely:

1. Reviewing legislation to ensure compliance with the 1945 Constitution;
2. Resolving disputes regarding the authority of state institutions as outlined in the 1945 Constitution;
3. Determining the fate of political parties, including their dissolution;
4. Addressing controversies related to the outcomes of elections;
5. Delivering judgements on the DPR's assessments of alleged misconduct by the President and/or Vice President, in accordance with the 1945 Constitution. (F. Wantu et al. 2021)

Highlighting the functions and authorities of the Constitutional Court, which have a strategic and fundamental role in maintaining the supremacy of the constitution, then of course the filling of the position of Constitutional Court judge must be carried out with high selectivity. Ideally, this strategic position needs to be held by an individual who has in-depth expertise in the field of constitutional and constitutional law and demonstrates a good track record and integrity.

Legally, the recruitment process for Constitutional Court judges has been clearly stated in Law Number 7 of 2020. Article 4 explains that MK judges consist of 9 (nine) MK judges who are determined by Presidential Decree. The procedure for appointing the nine judges of the MK is outlined in Article 18. This article specifies that judges are nominated by three representatives from the Supreme Court (MA), three from the DPR, and three from the President. This nomination process, involving contributions from the MA, DPR, and the President, is designed to represent the three

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branches of government as established by the theory of trias politica (the separation of powers). (Pulungan and A.L.W 2022)

Indeed, if we look closely at the provisions of Law Number 7 of 2020, especially regarding the norms on the appointment of MK judges, there are "flexible" norms, meaning norms that provide flexibility to the authorised bodies (President, DPR, and MA) to determine for themselves the mechanism for submitting MK judges. This is demonstrated by Article 20, which stipulates that the procedures for selecting, electing, and submitting candidates for Constitutional Court judges are governed by each authorised institution. This article suggests a flexible approach to the selection process for judges, emphasising the principles of transparency and accountability. While Law Number 7 of 2020 asserts that the selection of Constitutional Court judges should be conducted transparently and accountably, this wording allows for varying interpretations by each proposing institution. (Farabi and Tanaya 2023)

Continuing with this, it finally gave rise to various diversities in the implementation of the selection of MK judges by the three authorised state institutions. This condition is what gave rise to different selection mechanisms from each proposing institution. Sometimes the selection process is carried out internally and absolutely directly by the proposing institution, but sometimes the selection is carried out by a selection committee team with various models. The concept of the selection committee is an integral part of the proposing institution; for example, there are also institutions that form selection teams consisting of external parties, both academics, practitioners, and former MK judges themselves.

Strengthening the concept of filling the position of MK judges, the regulation regarding the selection of MK judges is also regulated in Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as Law Number 48 of 2009) that the

elements of submitting MK judges consist of a nomination concept that is carried out transparently and participatively, as well as an election concept that is carried out objectively and accountably. Then, in Article 35 of Law Number 48 of 2009, it is emphasised that further provisions regarding the requirements and procedures for appointing MK judges are regulated by law. The mandate of Law Number 48 of 2009 is inseparable from the derivative of Article 24C paragraph 6 of the 1945 Constitution, which states that the appointment of MK judges and their requirements are regulated by law. On that basis, Law Number 7 of 2020 should emphasise the norms governing the selection of MK judges.

The selection of MK judges in this way creates a trifurcation (branching) of the selection mechanism in three (three) state institutions as the proposing institutions. The structure of the selection mechanism for Constitutional Court judges is closely linked to the norms established in Law Number 7 of 2020, which governs the selection of constitutional judges. This law offers a significant degree of flexibility, allowing for interpretations that can vary according to the preferences of each proposing institution and the prevailing regime. This trifurcation condition gives rise to three concepts of the constitutional judge selection mechanism, including:

1. The selection process is conducted internally and is not open to the public.

This internal and closed mechanism is typically managed by the Supreme Court. During the recruitment of MK judges, there is no involvement of public participation, which means there is a lack of social control in the process. In fact, the mechanism for recruiting MK judges by the Supreme Court comes entirely from a judge, both career and non-career judges, and does not open up space for registration of prospective MK judges for the general

public. The selection process that is carried out internally and closed makes the selection process for MK judges at the Supreme Court potentially subject to a conflict of interest, and the objectivity and accountability of the judicial institution are at stake. This is what then gives a bad impression that the selection process for MK judges at the Supreme Court does not reflect the principles of transparency, participation, objectivity, and accountability. (A. R. Rohmatillah, Moh. Sa'diyin, and Ahmad Afan Zaini 2023)

2. The selection process for Constitutional Court judges involves appointing judges and extending their terms of office.

This mechanism is typically carried out by two state institutions, the President and the DPR. In this procedure, the President holds the authority to appoint MK judges from the list of candidates put forward by the DPR. Before the appointment process, the DPR selects prospective judges through mechanisms such as a fit and proper test, namely a comprehensive assessment process to test the suitability and propriety of prospective MK judges. Furthermore, after the term of office of the MK judge ends, through the process of extending the term of office, it is possible for the MK judge to return to office. However, with the note that the MK judge has good performance or may have a good relationship with the proposing team, in this case the President and the DPR. This process, although aimed at maintaining the quality of judges, also has the potential to threaten the independence of judges and give rise to political intervention. (Agustian, Setiawati, and Alexander 2023)

3. The selection process is conducted by establishing a team of experts.

Like the mechanism for appointing judges and extending their terms, this approach is typically managed by both the DPR and the President. In this process, a team consisting of academics, legal practitioners, and constitutional experts is formed to provide input on prospective MK judges. The expert team is tasked with conducting evaluations and providing recommendations to the President, with the hope of improving the quality of selection through diverse perspectives. Although involving a team of experts can increase transparency and accountability, this process also faces challenges, such as subjective assessments and potential pressure from certain parties. Overall, these two mechanisms aim to ensure that the selected MK judges have high integrity and competence, but still require attention to maintain independence and objectivity in the selection process in order to maintain public trust in the judicial institution.

If the trifurcation conditions above are allowed to continue, they will lead to a tendency for chaotic conditions in the recruitment of constitutional judges, which will ultimately produce constitutional judges with low qualifications. This is because overall, the mechanism for filling the position of MK judge is a complex and multidimensional process.

Dynamics of Legal Politics Regulating the Term of Office of Constitutional Court Judges

Discussing Law No. 7 of 2020 reminds us that this legal regulation is a controversial legal regulation that often triggers debate in the community. It has become a common discussion that the draughting process was carried out secretly and did not involve public participation. Law No. 7 of 2020 has undergone several changes, where each revision always seems to only tinker with the technical realm and the periodisation of the term of office

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of MK judges. Explicitly, it has become a public concern that at that time the revision process of Law No. 7 of 2020 was carried out secretly and in the midst of the Covid-19 pandemic that was hitting Indonesia. (Putra and Setiadi 2024)

This condition is getting worse because the amendment to Law No. 7 of 2020 was not included in the 2020 priority Prolegnas, so it is not an urgency that must be implemented. However, the DPR and the government continue to perpetuate the process of violating the constitution and ratifying Law No. 7 of 2020 in a hurry. The changes caused controversy because the contents of the material only focused on the age requirements for prospective constitutional judges, retirement, and the term of office of the chairman and deputy chairman, which were considered not to meet the needs of the MK. This situation can continuously erode the principle of the independence of the judicial power.

Examining the changes to Law No. 7 of 2020, there have been three changes that have been agreed upon and ratified. The first change occurred in 2011, namely through Law No. 8 of 2011. In 2013, it was again amended through the Government Regulation in Lieu of Law (Perppu), namely Perppu No. 1 of 2013, which was then stipulated as law in 2014 through Law No. 4 of 2014. Furthermore, it underwent another change in 2020, which was amended and agreed upon to become Law No. 7 of 2020.

The political dynamics surrounding the regulation of MK judges terms in Indonesia reveal significant complexity, particularly regarding the relationship between the judiciary and political authority. Changes in the term of office of MK judges from each revision always revolve around its periodisation, starting from a maximum term of office of 5 (five) years to 10 (ten) years, then changed again to 15 (fifteen) years or a maximum age of 70 (seventy) years. (Anwar and Saputro 2022) Although this provision is touted as aiming to provide independence, in reality the term of office of judges often becomes the object of political

debate that only leads to efforts to influence the decisions of MK judges. This has the potential to weaken the integrity of the institution because MK judges may feel pressured to consider political interests when making decisions.

More deeply, the revision of Law No. 7 of 2020 is often trapped in technical discussions that ignore deeper aspects related to independence and accountability. The debate often focusses on the periodisation of the term of office of judges without considering the long-term impact on the justice system. For example, proposals to shorten or extend the term of office of judges may be motivated more by momentary political interests than by substantial considerations about how it will affect the integrity and credibility of MK judges. Thus, the revisions made tend to repeat the same pattern, namely reducing policy issues to purely technical matters without in-depth analysis of their impact on the legal system and society.

Furthermore, the regulation of the term of office in Law No. 7 of 2020 not only impacts the institution itself but also on public perception of justice and legal independence. If MK judges are selected based on political considerations, this can raise scepticism among the public about the decisions taken. A selection and appointment process for judges that is transparent and based on competency should be a priority to ensure public confidence that the decisions of the MK are free from political influence. In other words, reforms regarding judges' terms of office should extend beyond technical aspects and be rooted in the principles of justice and transparency.

It is important to encourage a more comprehensive discussion regarding Law No. 7 of 2020, which does not only focus on the term of office but also on the mechanisms for monitoring and accountability of judges. The establishment of an independent institution to oversee the performance of judges and ensure that they carry out their duties in accordance with applicable legal

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principles can be a positive step. (Koswara and Megawati 2023) In addition, dialogue between the government, the legislature, and civil society needs to be strengthened to create a better legal framework where the regulation of the term of office of MK judges can support a fair judicial function free from political intervention. In this way, it is hoped that the Constitutional Court can carry out its role as a guardian of the constitution more effectively and credibly in accordance with the practice of the principles of the rule of law.

Review of the Principles of the Rule of Law in Regulating Terms of Office

The idea of the rule of law is interpreted as a real form of the creation of the supremacy of law, justice, and protection of human rights. This is in line with the thoughts of legal philosophers such as John Locke and Montesquieu, who agree to emphasise that the concept of the rule of law needs to include the importance of limiting power and protecting individual freedom. (Rachmadika, Zarkasi, and Syamsir 2024) In this perspective, the rule of law is not just a normative regulation but also guarantees the existence of a checks and balances mechanism that plays a role in preventing abuse of power. This concept is the main key to creating justice in society. (Ahirullah and Said 2023)

Indonesia, as a nation founded on Pancasila and the 1945 Constitution, strongly upholds the principles of the rule of law. The rule of law in Indonesia embodies a commitment to governing the nation and the state in a fair, transparent, and responsible manner, adhering to existing legal provisions. This encompasses the protection of human rights, the pursuit of social justice, and ensuring legal certainty for all citizens. To achieve these goals, it is essential for all segments of society and state institutions to actively collaborate.

In writing, ¹² the principle of the rule of law in Indonesia is strengthened in Article 1 paragraph (3) of the 1945 Constitution, which declares that Indonesia is a state of law. The realisation of the principle of the rule of law in Indonesia does not only apply to society but must also be reflected in the implementation of government, which includes three important instruments, namely the legislative, executive, and judiciary. This statement is further strengthened by the narrative in the General Explanation of the 1945 Constitution regarding the state government system, which states that:

1. Indonesia is a state based on law (rechtsstaat) and not only on power (machtstaat).
2. The government is based on a constitutional system and is not absolute. ¹⁶

Thus, the principle of the rule of law stated in the constitution functions as a strong foundation for building a just, open, and responsible government, as has been dreamed of so far to be able to improve welfare and justice for all elements of society.

A key manifestation of the rule of law is the presence of a robust and independent judicial institution. The Constitutional Court, as a part of the judiciary, plays a crucial role in upholding the constitution and overseeing the supervisory process. (Zahra, Sinaga, and Firdausi 2023) To ensure that the performance of the Constitutional Court can run effectively and based on law, a legal product was formed in the form of Law No. 7 of 2020 as a written guideline for a MK judge in carrying out his duties and authorities. This legal regulation was formed as a representation of the implementation of a state law.

Highlighting Law No. 7 of 2020, it is always inseparable from the bad image that the revision process was carried out in secret. The public and legal experts believe that the dynamics regarding the terms of office for Constitutional Court judges outlined in Law No. 7 of 2020 do not demonstrate the

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independence of the judiciary. In this context, the regulation of judges' terms is closely tied to the independence of judicial power, which is a fundamental principle in the concept of a rule of law. This independence includes the freedom of judges to make decisions without influence from outside parties, including political pressure or certain interests.

However, this is a major challenge because the rules regarding the term of office of MK judges are still being draughted inconsistently and non-transparently. This condition is the biggest threat to the realisation of the independence of the judicial power, which is one of the factors in creating the concept of a state of law. Unclear and non-transparent term of office regulations can cause judges to feel threatened and try to do arbitrary things in order to maintain their term of office. Moreover, the phrase flexibility in the process of filling the term of office of MK judges contained in Law No. 7 of 2020 is one of the crucial factors for political intervention in the performance of MK judges.

Continuous changes made to Law No. 7 of 2020 without involving the urgency and priority of legal regulations can increase the risk of politicisation of power and weaken public trust. Such a situation can lead to injustice and undermine the principle of the rule of law. To guarantee the judiciary's independence and its effectiveness in overseeing government actions, the regulation of Constitutional Court judges' terms must be conducted in a clear and transparent manner. This will strengthen the position of judges in making fair decisions, as well as strengthen public trust in the judicial system, which is essential for the sustainability of democracy.

Conclusion

The regulations contained in Law Number 7 of 2020 still face significant concerns. These regulations are often ambiguous and non-transparent, which can threaten the independence of MK judges. Uncertainty in the term of office can trigger political

intervention, disrupt the objectivity of decision-making, and damage public trust in the justice system. The process of forming this law, which is closed and rushed without involving public participation, also has the potential to create injustice. This shows that the principles of justice and transparency, which should be the foundation of a state of law, have not been fully implemented. For this reason, it is necessary to ensure that all stakeholders, including legal experts, academics, and civil society, are actively involved in the legislative process. This process must be carried out by opening public discussion forums and consultations that allow the public to provide input and criticism of the contents of the bill. In this way, lawmakers can ensure that the proposed changes truly reflect the needs and aspirations of the community as a manifestation of the ideals of a state of law.

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