

STRENGTHENING AUTOCRATIC LEGALISM IN INDONESIA: THE IMPACT OF JUDICIAL POLITICIZATION ON THE CONSTITUTIONAL COURT'S INDEPENDENCE

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Abstract The phenomenon of judicial politicization in Indonesia, especially in the context of the Constitutional Court (MK), has become an increasingly crucial concern amidst the continuing deterioration of democracy. This study aims to explore various phenomena that reflect political intervention in the judicial process at the Constitutional Court, as well as its impact on the independence of the institution. Through qualitative analysis of several cases involving allegations of corruption and conflicts of interest among constitutional judges, this study finds that judicial politicization has the potential to undermine the integrity and public trust in the judicial system. This study also focuses on aspects of the judicial process that operate in the Constitutional Court without the integrity and authority of the judges. Based on these findings, we recommend systemic reforms that include improving the selection process of judges, increasing transparency in decision-making, and stricter enforcement of the code of ethics to restore the independence of the Constitutional Court and strengthen democracy in Indonesia.

Keywords: Autocratic Legalism; Constitutional Court; Independency; Indonesia; Politicization

I. INTRODUCTION

The reform era in 1998 was a milestone for the Indonesian people that paved the way for the transformation of the state administration from autocracy to a more inclusive and accountable democracy. In its development, the achievement of reform that succeeded in overthrowing autocracy experienced various dynamics. However, current constitutional practice in Indonesia shows signs of a return to autocracy in a more modern form, namely through autocratic actions carried out in the name of democracy, which is referred to as autocratic legalism (Scheppelle, 2018).

There are three examples of Indonesian government policies that exhibit autocratic legalism: the passing of the Job Creation Law (Omnibus Law), the weakening of the Corruption Eradication Commission (KPK), and the relocation of the capital city from Jakarta to East Kalimantan.

Law Number 11 of 2020 on Job Creation is the first law in Indonesia to use the omnibus method. The purpose of its enactment was to facilitate investment and simplify regulations. However, the drafting process lacked public participation and deliberation between the DPR and the President, thus not comply the standard of meaningful

participation as mandated in Constitutional Court Decision Number 91/PUU-XVIII/2020.

The Job Creation Law also sees the centralization of local government authority to the President which allows the President to overturn local policies if deemed inappropriate. This reduces regional autonomy and reflects autocratic legalism. This takeover of local government authority is a way to increase the President's power, similar to the example of autocratic legalism in Russia described by Scheppelle. In Russia, the constitution was changed so that regional heads were not directly elected, but appointed by the President from among his confidants, in order to consolidate his power (Scheppelle, 2018). Although the situation in Russia is more extreme, similar principles can be found in the Job Creation Law which aims to strengthen the power of the central government at the local level.

The next practice of autocratic legalism can be seen in the weakening of the KPK through the Revision of the KPK Law. Although in the process of its formation, the KPK Law Revision was rejected by various elements of civil society, the DPR together with the President passed it on 17 September 2019. It is not surprising that an academic from the Indonesia

Jentera School of Law, Bivitri Susanti, argued that the current condition of the KPK has become a tool for the authorities (DA, 2021).

Institutionally, the weakening of the KPK can be seen in the form of the KPK as the fourth branch of power and part of the executive, as stated in Article 3 of Law No. 19/2019, which states that 'The Corruption Eradication Commission is a state institution within the executive power, which in carrying out its duties and authorities is independent and free from the influence of any power'.

The inclusion of KPK in the executive power not only disrupts its institutional independence, but also undermines its functional independence. In the concept of an independent state institution, functional duties are led by the chairman or commissioner collegially and collectively as the highest Decision-makers. Now, these functional duties must also go through a supervisory board, which authorizes wiretaps, searches and seizures against corruption offenders.

In addition, KPK employees are now State Civil Servants, which means they are subject to the provisions set out in Law No. 5/2014 on the State Civil Apparatus. This places them under regulations and hierarchies that apply to all civil servants, which may affect the way they perform their duties at the KPK, including in terms of independence and decision-making.

The changes to the KPK's position were all made within the framework of the law, but they effectively stripped away all of the KPK's previous privileges. This appears to be a form of autocratic legalism aimed at manipulating the fundamental principles of anti-corruption efforts to serve specific personal or group interests.

The practice of forming laws to legalize autocratic policies is also evident in the relocation of the national capital. The main reasons for moving the national capital, according to President Joko Widodo, are economic, population and development equity (Humas Kemensetneg, 2023).

In essence, the meaning of the national capital is not only as the administrative center of a country's government. It is also a representation of the values, culture, and history of a nation's identity. This essence should be the main consideration in relocating the national capital. In addition, the relocation of the state capital must also consider geographical, social, economic, legal and security aspects. Without a holistic approach, the relocation of the national capital is at risk of failure (Perwira et al., 2024).

With the complexity of relocating the state capital, instead of the government conducting comprehensive planning, the government is in a hurry to move the state capital from Jakarta to the archipelago in East Kalimantan. This rush is evident in the hasty ratification of Law Number 3 of 2022 concerning the National Capital, which technically took only 43 days to draft. Indra Perwira, Susi Dwi Harijanti, and Mei Susanto - Constitutional Law Experts of Padjadjaran University assessed that this duration is inadequate for creating a major legal framework for relocating the state capital (Perwira et al., 2024).

The drafting of the IKN Law in a short period of time clearly shows the absence of deliberative public participation. The public was not only ignored in the drafting of regulations,

but also received repressive actions from the IKN Authority against indigenous peoples through Letter Number 179/DPP/OIKN/III/2024 under the pretext of controlling unlicensed buildings and not in accordance with the IKN spatial plan. Furthermore, the IKN Authority also issued a warning letter Number 019/ST I-Tantrib-DPP/OIKN/III/2024 asking indigenous peoples to dismantle unlicensed buildings and not in accordance with the IKN spatial layout with a deadline of 7 days (Putri, 2024).

The three examples of autocratic legalism practices above at least fulfil the two main characteristics of autocratic legalism according to Constitutional Law Expert of Universitas Gadjah Mada - Zainal Arifin Mochtar, namely the co-optation of the ruling party in parliament, and the use of law to legitimize one-sided interests. In addition to these two main characteristics, Zainal Arifin Mochtar also mentioned that one of the strong indications of autocratic legalism is the effort to undermine the authority and independence of the judiciary (Mochtar & Rishan, 2022).

Interference with the authority and independence of the judiciary typically arises from the other branches of power, namely the legislature and the executive, or what is known as judicial politicization. Law academic from Universiteit Utrecht - Tom Snijders explained that judicial politicization occurs due to the involvement of the judiciary in the policy-making process (Snijders, 2023). In this context, the judiciary is actively involved by examining and deciding cases that have political overtones. This causes policy-making institutions to take political steps to limit the active role of the judiciary (Bisariyadi, 2015).

Judicial politicization has occurred in many countries. For example, in Poland in 2007, the Polish Constitutional Court clashed with the Kaczynski government. The Kaczynski government, wanting to move away from the communist system, tried to purge communist elements from the public sector through a lustration law. When this law was tested, Chief Justice Jerzy Stepien warned that 'a state based on the rule of law should not fulfil a craving for revenge instead of fulfilling justice.' Later, the Kaczynski government threatened to reveal all secret police files if the law was overturned by the Court.

In the same year, Ukraine faced a political crisis over the dissolution of parliament. President Viktor Yushchenko ordered the dissolution of parliament and the early scheduling of elections. This order was submitted to the Constitutional Court for a review of its constitutionality. The court faced heavy political pressure, and the chairman resigned. One of the police chiefs who supported the president stated that the police would remain neutral and not pressure the court, but there were constitutional judges under investigation on corruption charges. As a result, three judges were removed from office and four others applied for leave. The president then decided that the court would not convene for an indefinite period.

The Hungarian Constitutional Court also faced a similar situation in 2012. Judicial politicization was very intensive, especially through constitutional changes. In the new constitution, the Constitutional Court's powers were restricted

and the procedure for selecting constitutional judges was changed to favor the ruling regime.

Given the existence of judicial politicization in various countries as described above, it is interesting to examine the extent to which judicial politicization is manifested in Indonesia. This research needs to be conducted to understand how judicial politicization affects the independence of the Constitutional Court in Indonesia and its contribution to strengthening autocratic legalism.

In addition, this research can also be used as further research by Miftah Faried Hadinatha in the Constitutional Journal Vol. 19, No. 4 of 2022, which states that the Constitutional Court plays a role in preventing autocratic legalism in Indonesia (Hadinatha, 2022). If the Constitutional Court experiences judicial politicization, then how can the Constitutional Court prevent autocratic legalism. The last sentence of reflection needs further research beyond this article, because this article only focuses on proving the existence of judicial politicization of the Constitutional Court in Indonesia so that autocratic legalism is strengthened.

II. RESEARCH METHOD

This research utilizes a doctrinal approach and focuses on a casuistic evaluation of the independence of the Constitutional Court considering political intervention from the executive and legislature. This research uses secondary data as the main source, which is complemented by primary data.

III. RESULT AND DISCUSSION

A. Autocratic Legalism and Judicial Politicization

1. What is Autocratic Legalism?

Autocratic legalism is a new form of authoritarianism that takes refuge in the name of democracy. Professor Rosalind Dixon from the University of New South Wales and Professor David Lau from Florida State University College of Law expressed their concern over the threat of this new form of authoritarianism, as even constitutionalism has not been able to stop the abuse of power by authoritarian regimes that utilizes democracy to their advantage (Dixon & Lau, 2021).

Professor of Political Science at Amherst College, Javier Corrales mentioned three indicators of autocratic legalism, namely: 1) co-optation of the ruling party in parliament, (2) violation of the law, and (3) electoral irregularities (Corrales, 2015). These indicators have been evident in the Indonesian constitutional landscape over the past decade.

During his two terms in office, President Joko Widodo successfully controlled the majority party in parliament. This situation occurred due to the fragmented multiparty system, making the president prefer to form unequal coalitions to ensure the stability of his policies. In the first term, the only opposition parties in the legislature were the Prosperous Justice Party (PKS) and Gerindra, while the Democratic Party did not assert a position in either the coalition or the opposition (Rishan, 2020). The same thing happened in Jokowi's second term. Together with Ma'ruf Amin, Jokowi again formed an unequal coalition in the DPR.

In his second term, Jokowi succeeded in getting Gerindra to join the governing coalition. PKS remained in the opposition, while the Democrats again showed no clear stance on coalition or opposition (Pahlevi, 2022). This shows that Jokowi once again gained majority support in the DPR, indicating that after the era of democratic consolidation, the relationship between the President and the DPR became closer and more unified. This phenomenon resembles a parliamentary system, where the relationship between the president and parliament becomes interdependent (Rishan, 2020).

The next indicator is the violation of the law or disregard for the law by politicians to achieve their benefits. One example is the neglect of law enforcement against officers who commit violence against civilians. Law enforcement that has been carried out so far has not humanized the victims, because of the many forms of violence committed by the police, very few cases are processed through criminal liability, most of which are only processed as disciplinary violations of violations of the Police Professional Code of Ethics (KEPP). As a result, victims do not receive restitution, compensation, and rehabilitation (Ismail et al., 2023).

Another example is the process of replacing a Constitutional Judge based on political reasons. The Chairman of Commission III of the House of Representatives, in his explanation, mentioned that the reason behind replacing Aswanto with Guntur Hamzah as a Constitutional Judge was because Aswanto often cancelled laws made by the DPR. This is ironic given that Aswanto was a judge previously nominated by the DPR itself. This action raises concerns about the independence of the judiciary, given that decisions that conflict with legislative interests can lead to the replacement of judges without transparent procedures and in accordance with the rule of law. It also reflects the potential for political intervention in the legal process, where law enforcers are expected to prioritize political interests over carrying out their duties independently and objectively (Hapsoro, 2023).

The final indicator is irregularities in the electoral process. This can be seen through President Jokowi's structural use of state resources and tools to support the victory of Prabowo and his son in the 2024 presidential and vice-presidential elections. This indication is evident in a number of strategic actions taken by Jokowi.

Firstly, the appointment of Acting (PJ) Governors who are loyal to him was a crucial step in ensuring political allegiance and consolidating the government's influence in key regions. These appointments not only guaranteed strategic positions for Jokowi's political agenda but also paved the way for his son, Gibran, to run as a vice-presidential candidate.

Secondly, the path for Gibran to run for vice president was paved through the Constitutional Court (MK) Decision. This ruling sparked controversial because the Chief Justice of the Constitutional Court was Jokowi's brother-in-law, which raised suspicions about conflicts of interest and potential interference in the legal process. This decision facilitated Gibran's participation in the election as Prabowo's running mate, despite his relative youth and newness to the national political scene.

Third, the integrity of the election was questioned due to the omission of cabinet ministers who openly conducted campaign activities in support of Prabowo and Gibran. Worse, these campaigns were conducted using state facilities, such as official vehicles and government budgets, which should be neutral and not used for partisan political interests. This creates inequality in political competition and blurs the line between government power and the supposedly free and fair democratic process.

Taken together, these measures demonstrate how state power is being used to support a particular political agenda, compromising democratic principles and electoral integrity, and reinforcing concerns that the 2024 elections will not be fair and free from political interference.

2. The Rise of Judicial Politicization: A Challenge in Preventing Autocratic Legalism

Jiunn-rong Yeh - a legal expert from National Taiwan University mentions three ways in which the judiciary can be politicized. First, politicization means that the design of the court reflects the allocation of power. Second, politicization means that the court's jurisdiction is expanded to cover 'matters that are directly and most significantly political in nature'. Third, politicization requires that judges, instead of being neutral and independent, tend to rely on political interests or ideologies in making decisions (Yeh, 2016).

According to Law No. 24/2003 on the Constitutional Court, a judge's term of office is five years and can only be reappointed for one subsequent term. After the revision of the law, judges are honorably discharged at the age of 70 (See Article 23 letter [c] of Law No. 7 of 2020 on the Third Amendment to Law No. 24 of 2003 on the Constitutional Court). However, this provision applies retroactively. In other words, current Constitutional Court judges must retire at the age of 70.

In summary, the government is attempting to secure the support of the judiciary for their strategic policies through legislation. Ginsburg and Mustofa state that authoritarian regimes often exploit the judiciary to their advantage. The judiciary helps to enforce social control, attract capital, maintain bureaucratic discipline, implement unpopular policies, and legitimize the regime (Ginsburg & Moustafa, 2012).

B. Weakening of the Independence of the Constitutional Court

Judicial independence means that judges are free to make decisions fairly and impartially, relying solely on facts and law. This means that judges are protected from political pressure, legislative pressure, special interest pressure, media pressure, public pressure, financial pressure, or even personal pressure (Chandonnet, 2003).

In the thesis "Public Examination of Judicial Decisions in Corruption Cases: Perspectives on Accountability and Independence of the Judiciary," the author cites the opinions of legal experts from the University of Indonesia - Bambang Sutyoso and Sri Hastuti, who differentiate the independence of the judiciary into three types: institutional independence,

independency of judicial process, and independency of judges (Hapsoro, 2021).

1. Institutional Independence of the Constitutional Court

One of the most evident forms of intervention by another branch of power occurred when the Government and the House of Representatives successfully passed Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 on the Constitutional Court. (UU MK). Previously, the Constitutional Court Law has undergone two revision processes, starting in 2011 with Law No. 8 of 2011, and then continuing in 2013 through a Government Regulation in Lieu of Law (Perppu), namely Perppu No. 1 of 2013 (later enacted into law through Law No. 4 of 2014).

The process of revising legislation is actually a normal part of a rule of law state, as this constitutional concept requires a government that is based on law (Jimly, 2004). Furthermore, in the paradigm of progressive law proposed by Satjipto Rahardjo, various methods must be formulated to address the decline of the law, in this case with an agenda for faster changes, fundamental reversals, liberation, breakthroughs, and so on (Aulia, 2018). Thus, revising a regulation is a necessity in line with the evolving situation in society, solely to provide legal certainty.

Changes in legislation also have their own rules that must be adhered to by lawmakers. Furthermore, the laws regulating institutions such as Law Number 14 of 1985 concerning the Supreme Court, Law Number 22 of 2004 concerning the Judicial Commission, and Law Number 24 of 2003 concerning the Constitutional Court. The substantial changes made to the institutional legal instruments should focus on essential matters. Ideally, revisions are held to strengthen certain concepts, such as institutional strengthening, adjustments of authority, or in aspects of supervision. In the context of the Constitutional Court, referring to Zainal Arifin Mochtar, revisions could, for example, focus on strengthening certain concepts within the constitutional authority of the Constitutional Court, one of which is the judicial review of laws (Argawati, 2021).

However, the agenda for revising the Constitutional Court Law in 2020 actually showed a very strong element of conflict of interest. In addition to being approved at a time when COVID-19 numbers were high, making it impossible to involve public participation to the fullest, the substance itself is also considered problematic by various groups. The Center for Law and Policy Studies (PSHK) assesses that the revision of the Constitutional Court Law, particularly regarding the minimum age requirement, will benefit the judges currently in office, thus it can be considered a 'gift' for the constitutional judges (Kuwado & Ramadhan, 2020). In line with this, Indonesia Corruption Watch (ICW) stated in its press release that the substantive change regarding the term of office for judges is not a significant issue for the Constitutional Court institution (Koalisi Save Mahkamah Konstitusi, 2020).

One of the crucial provisions in the revision is Article 1, number 6 of Law No. 7 of 2020, which removes the five-year term limit for constitutional judges. Since the enactment of Article 1, number 6 of Law No. 7 of 2020, the term of constitutional judges is now based on retirement age. Based

on Article 15 paragraph (2) letter d of Law No. 7 of 2020, constitutional judges may begin their term at the age of 55, and according to the provisions of Article 23 paragraph (1) letter c of Law No. 7 of 2020, they will be dismissed at the age of 70. Thus, constitutional judges can serve for a maximum of 15 years without any limitations on periods (Yusup, 2022).

This provision is quite beneficial for the judges currently in office. The most concrete substance is Article 87 paragraph b of Law No. 7 of 2020, which states that constitutional judges currently in office at the time this Law is enacted are considered to meet the requirements according to this Law and will serve until the age of 70 (seventy) years, provided that their total term does not exceed 15 (fifteen) years.

The substance related to the age limit is considered controversial, as at the same time, the Constitutional Court is hearing two legislative products proposed by the House of Representatives and the President, namely the formal test of the Law on the Corruption Eradication Commission and the material test of Government Regulation in Lieu of Law (Perppu) Number 1 of 2020 concerning State Financial Policies and Financial System Stability for Handling the Coronavirus Disease 2019 (COVID-19) pandemic and/or in the context of facing threats that endanger the national economy and/or financial system stability. Thus, the agenda is indeed suspected to be part of a 'swap' or political barter between the Parliament, the President, and the Constitutional Court. The Parliament and the President certainly have significant interests in ensuring that the products that have been ratified are declared constitutional and can remain in effect through the Constitutional Court's decision.

The presence of conflicting interests in the agenda for the revision of the Constitutional Court Law is clearly an inseparable part of the weakening of the institutional independence of the Constitutional Court. According to Mulki Shader's opinion, the revision of the Constitutional Court Law is quite similar to what happened in Hungary in 2010 and Poland in 2015, and can be referred to as illiberal democracy. The phenomenon in both countries is marked by efforts to control the Constitutional Court by limiting its authority, altering and replacing the composition of judges, removing senior judges by lowering the retirement age, and changing internal regulations (Pusat Studi Hukum & Kebijakan Indonesia, 2021).

The phenomenon of illiberal democracy indeed emphasizes the disruption of power over the practice of the rule of law and the independence of the courts (Plattner, 2019). The attempts to control the institutions of the Constitutional Court have implications for the disruption of judicial independence, which falls into the elements of autocratic legalism where there is an abuse of law, meaning the application of laws and regulations that is inconsistent and biased (Corrales, 2015). In addition, quoting the views of Herlambang Wiratraman, the disruption and weakening of judicial institutions, as explained by Ginsburg and Moustafa, increasingly approach the phenomenon of 'judicialization of authoritarian politics' (Wiratraman, 2022).

2. Independence of Judicial Process in the Constitutional Court

Normatively, as mandated by the constitution, the Constitutional Court is entrusted with four (4) authorities, namely: 1. To review laws against the Constitution; 2. To resolve disputes over the authority of state institutions whose powers are granted by the Constitution; 3. To decide on the dissolution of political parties; and 4. To adjudicate disputes regarding the results of general elections. The judicial process taking place in the Constitutional Court should ideally be conducted independently in order to provide substantial justice for the parties involved. To avoid any power intervention, Article 24 C paragraph (5) of the constitution explicitly states that constitutional judges must possess integrity and an unblemished character, be fair, statesmanlike, knowledgeable in the constitution and state governance, and must not hold concurrent positions as state officials. However, gradually, the dignity of the Constitutional Court has faded due to the tarnishing of its independence in handling and deciding a case through the judicial mechanism (judicial process).

The disruption of the independence of the Constitutional Court can be reflected in the marriage between President Joko Widodo's younger sibling and the then Chairman of the Constitutional Court, Anwar Usman. The marriage that took place in 2022 automatically implies the establishment of a familial relationship, namely that of brother-in-law and sister-in-law. Referring to the ontological aspects of power according to Foucault, where power must be understood as a strategy or tool used to reinforce relationships, clarify, or separate parties from other power relations, it becomes increasingly evident that the marriage of Anwar Usman and Idayati has political motives. This marriage is suspected to have been conducted with the aim of maintaining Jokowi's stability as president, as the check and balance function that should be carried out by judicial institutions like the Constitutional Court may not be implemented (Rizky, 2022).

Following the marriage, various pressures emerged for Anwar Usman to resign from his position, as it is considered to have destructive implications for the independence and authority of the Constitutional Court institution. One of the democracy advocacy organizations, the Association for Elections and Democracy (Perludem), stated that Anwar Usman should resign from his position, based on at least three essential reasons: the Constitutional Court (MK) is an institution that plays a significant role in the electoral justice system; a system that has the potential to become ineffective when judges are filled by individuals who lack a sense of statesmanship, even if the system has been well established; and Anwar Usman should be self-aware that his relationship with President Joko Widodo is not merely a personal one, but a political relationship because President Joko Widodo is a politician and has many supporters (Perludem, 2022).

Instead of resigning from his position after marrying President Joko Widodo's sister, Anwar Usman continues in his role, even handling cases that have a very high conflict of interest. Anwar Usman, along with eight other constitutional judges, is hearing the case of a legal review petition filed by a student named Almas Tsaqibbirru. One of the arguments presented by the petitioner is that Gibran Rakabuming Raka, who serves as the Mayor of Surakarta for the 2020-2025 term,

has inspired governance in the current era. One piece of evidence is that economic growth in Solo has risen to 6.25 percent, whereas at the beginning of his tenure as mayor, economic growth in Solo was at minus 1.74 percent (Mahkamah Konstitusi, 2023).

As a result, the petition for judicial review to amend the nomination requirements for presidential and vice-presidential candidates in the Election Law was successfully changed through Constitutional Court Decision Number 90/PUU-XXI/2023. Based on that decision, it is essentially stated that the minimum age limit for Indonesian citizens to register as presidential candidates or vice-presidential candidates remains 40 years, unless the individual has previously served as a regional head.

After the ruling was issued, several parties noted various irregularities, especially with Anwar Usman's involvement in deciding a case that concerns the interests of Gibran Rakabuming Raka, who is his nephew. The Constitutional Court Decision Number 90/PUU-XXI/2023 is strongly suspected to have arisen from a conflict of interest, as Gibran is related to Anwar Usman. Ideally, a judge who is aware of a conflict of interest in handling a case should be able to recuse themselves and not be involved at all in deciding the case. This stems from the sense of ethics that should automatically be possessed by a judge, especially one who is a statesman.

Based on the irregularities in the Constitutional Court's decision 90/PUU-XXI/2023, which provided a 'shortcut' for Gibran Rakabuming Raka to run for Vice President, Anwar Usman has been reported and is being processed through the Constitutional Court's Honorary Council session. (MKMK). Through this ethics trial process, after undergoing an examination, the ruling No. 2/MKMK/L/XI/2023 states that Anwar Usman has been proven to have committed a serious violation of the code of ethics and conduct of constitutional judges. It is recorded that there are 5 principles of the code of ethics and behavior of constitutional judges that have been violated, namely the principles of impartiality, integrity, competence and equality, independence, and propriety and decorum (DA, 2023). In addition, Anwar Usman faces sanctions of dismissal from the position of Chief Justice of the Constitutional Court.

Through the Constitutional Court's decision, political moves behind the judicial review of the electoral law have become evidently clear. A conflict of is undeniably present, as the ruling has created political advantages for Gibran Rakabuming Raka, who is the nephew of Chief Justice Anwar Usman. The raises serious concerns about the independence of the Constitutional Court, as Anwar's involvement in the deliberation process – where judicial neutrality is paramount – has been tainted by personal and political affiliations.

The Constitutional Court's Honorary Council (MKMK), in Decision No. 2/MKMK/L/XI/2023, confirmed that the ruling created political advantages for the Chief Justice's relative, thereby compromising judicial neutrality. It is also noted that Chief Justice Anwar Usman did not attend the Judges' Deliberation Meeting on September 19, 2023, for Cases No. 29, 51, and 55, as the issue directly affected his nephew/s potential candidacy in the 2024 election – thus signaling awareness of a possible conflict of interest.

However, in Case Number 90/PUU-XXI/2023 and Case Number 91/PUU-XXI/2023, which share the same constitutional issue regarding the minimum age requirements for presidential and vice-presidential candidates, the Chief Justice actually participated in discussing and deciding both cases, and specifically for Case Number 90/PUU-XXI/2023, it was decided with the ruling "partially granted." After confirmation at the RPH hearing on Thursday, September 21, 2023, the Chief Justice of the Constitutional Court stated that his absence from the discussions and decision-making forum regarding Case Number 29/PUU-XXI/2023, Case Number 51/PUU-XXI/2023, and Case Number 55/PUU-XXI/2023 was primarily due to health reasons and not to avoid a conflict of interest."

The issuance of Constitutional Court Decision Number 90/PUU-XXI/2023, which benefits the family of constitutional judge Anwar Usman, has undermined the authority of the Constitutional Court in adjudicating a case, particularly regarding the independence of the judicial process conducted by the Constitutional Court. The ruling 90 can be portrayed as part of the phenomenon of autocratic legalism related to the independence and impartiality in adjudicating cases connected to the interests of President Joko Widodo's children.

The symptoms of autocratic legalism in the tarnishing of the independence of the judicial process in the Constitutional Court are part of the use of law in the service of the executive branch. (the use of the law in service of the executive branch). MK seems to have lost its dignity in making independent and impartial decisions according to its own will to provide a sense of justice for the public. Through this decision, the Constitutional Court appears to be 'compliant' with the requests of the House of Representatives and the President to adjust the changes in the age requirements for presidential and vice-presidential candidates (Pusat Studi Hukum dan Kebijakan Indonesia, 2023).

Through its authority, the institution within the judicial branch has failed to perform its check and balance function as an essential pillar in a democratic state. Furthermore, the Constitutional Court in this ruling has created a new norm in the nomination of the President and Vice President, which is not in line with the principle of open legal policy as seen in previous rulings. For example, in the testing process of the Election Administration Law, the consideration of open legal policy is always consistently applied, as seen in the Constitutional Court's decision Number 102/PUU-XIV/2016 regarding the age limit for the nomination of an official. In addition, there is the Constitutional Court ruling 101/PUU-XIII/2015 regarding the establishment of the KPU, Bawaslu, and DKPP as a further regulation within the law (Sukma, 2020).

The inconsistency in the application of the law by the Constitutional Court in producing a ruling as part of its authority can be categorized as abusive legalism, as stated by Alvin Y.H. Cheung. In electoral authoritarian regimes, manipulation is carried out for the benefit of those in power to maintain their authority and the need to uphold legitimacy by retaining the formal attributes of periodic elections (Cheung, 2014). This is quite contextual when looking at the

political incentives that emerged as a result of Constitutional Court Decision Number 90/PUU-XXI/2023, which allows Gibran Rakabuming Raka, who is also the son of President Joko Widodo, to participate in the 2024 Presidential and Vice Presidential elections.

In addition to producing rulings that reek of nepotism by benefiting a family member of a constitutional judge, the Constitutional Court can be declared a tool of political power. The institution that should be the guardian of the constitution, especially as a product of reform, has experienced the politicization of the judiciary/court (Yeh, 2016). The Constitutional Court has failed to uphold judicial independence (Chandonnet, 2003), as it ultimately submits to other powers.

3. Interdependency of Constitutional Court Judges

Actions that clearly undermine the independence of individual judges began to emerge with the bribery case involving former Chief Justice of the Constitutional Court, Akil Mochtar, who was entangled in a bribery case related to the handling of regional head election disputes (Pilkada) and was sentenced to life imprisonment through the Central Jakarta District Court Decision Number 10/Pid.Sus/TPK/2014/PN.JKT.PST, which was upheld by the Jakarta High Court Decision Number 63/Pid/TPK/2014/PT.DKI, and his cassation request was rejected in the Supreme Court Decision Number 336K/Pid.Sus/2015.

Based on those rulings, Akil has been proven to have received bribes as stated in the first charge, which relates to the handling of election disputes in Gunung Mas Regency amounting to IDR 3 billion, Central Kalimantan amounting to IDR 3 billion, Lebak Regency in Banten amounting to IDR 1 billion, Empat Lawang Regency amounting to IDR 10 billion and 500,000 US dollars, and Palembang City amounting to around IDR 3 billion. The judge also stated that Akil has been proven to have received bribes as stated in the second charge, which relates to the election dispute in Buton Regency amounting to IDR 1 billion, Morotai Island Regency amounting to IDR 2.989 billion, Central Tapanuli Regency amounting to IDR 1.8 billion, and receiving a promise of payment related to objections to the election results in East Java Province amounting to IDR 10 billion. Akil was also proven in the third indictment, which stated that he received Rp125 million from the Deputy Governor of Papua for the period of 2006-2011, Alex Hesegem. The provision of money is related to the dispute over the regional elections in Merauke Regency, Asmat Regency, Boven Digoel Regency, Jayapura City, and Nduga Regency. This case is a major scandal for the Constitutional Court that has caused its legitimacy to begin to decline.

The bribery case that was repeated by a Constitutional Court judge. In 2017, Patrialis Akbar was sentenced to eight years in prison by the Jakarta Corruption Court. Patrialis has been proven to have accepted bribes from meat import entrepreneurs in order to win the ruling on case Number 129/PUU-XIII/2015 concerning the judicial review of Law Number 41 of 2014 on Animal Husbandry and Animal Health.

Furthermore, the structural weakening was carried out by the DPR by dismissing Constitutional Judge Aswanto from his position and replacing him with the Secretary General of the Constitutional Court (at that time), Guntur Hamzah. The reason for his dismissal is considered very political, as stated by the Chairman of Commission III of the DPR, Bambang Pacul, who expressed that Commission III is disappointed with Aswanto's performance, which often annulled the legislative products created by the DPR. The dismissal was followed up by the Indonesian Presidential Decree Number 114/P/Year 2022 concerning the Dismissal and Appointment of Constitutional Judges proposed by the DPR. Based on this, a question arises: is the dismissal justified by law, and does the Constitutional Court still maintain its impartiality if a constitutional judge can be easily replaced for political reasons?

The independence of the Constitutional Court is increasingly being questioned after the Chairman of the Court, Anwar Usman, married the biological sister of the President of the Republic of Indonesia, Joko Widodo, in 2022. Indeed, marriage is a matter of privacy. However, in his position as a state official, in this case as the Chairman of the Constitutional Court, Anwar should act as a statesman who is able to understand the potential for a conflict of interest by resigning as Chairman of the Constitutional Court or even as a Judge of the Constitutional Court. The concern over this potential conflict of interest is logically founded, as all the powers and responsibilities of the Constitutional Court clearly intersect with the President, ranging from the examination of laws against the 1945 Constitution of the Republic of Indonesia, resolving disputes over the authority of state institutions, deciding on the dissolution of political parties, to adjudicating disputes over election results.

IV. CONCLUSIONS

Based Based on the description of the research above, it is clear that the phenomenon of judicial politicization in Indonesia, particularly in the Constitutional Court, is a serious and ongoing issue. This politicization is evident from various decisions involving conflicts of interest, a lack of transparency, and political influence that undermines judicial independence. Cases such as the bribery involving Constitutional Judges Akil Mochtar and Patrialis Akbar, as well as the controversial rulings regarding the age of presidential and vice-presidential candidates, demonstrate that the integrity of the judicial institution is often sacrificed for political interests. In addition, the revisions to the Constitutional Court Law, which are rife with conflicts of interest, further strengthen the argument that there is a systematic effort to undermine the independence of the Constitutional Court. To uphold the dignity and legitimacy of the Constitutional Court as the guardian of the constitution, deep and participatory reforms are necessary. This reform must involve improvements in the selection process of judges, increased transparency in decision-making, and the implementation of strict sanctions for any violations of the code of ethics and conduct. Without these steps, the

independence and impartiality of the judicial institution will continue to be under threat, ultimately undermining public trust in the justice system and democracy in Indonesia.

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