



ACADEMIC ARTICLE

Organizational Improvement of the Indonesian Constitutional Court: Reflections on Appointment, Supervision, and Dismissal of Justices

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Since its establishment in 2003, the Constitutional Court of Indonesia (the CCI) has been playing an important role in securing basic democratic order, the rule of law and fundamental rights protection in Indonesia. Despite its achievements, however, the Indonesian constitutional adjudication system also has raised public comments and criticisms, due to deficiencies in the organizational system, including appointment, supervision, and dismissal of constitutional justices. The aim of this article is to evaluate the Court's organizational system by finding the problems and challenges faced by the Court. To give maximum protection to the fundamental rights of citizens in Indonesia, it is imperative that the CCI should improve its role and performance, while the current organizational problems can be solved using a comparative study with constitutional courts in other countries. The article proceeds to offer proposals for improving the CCI's organizational system, such as improving the justices' appointment system and strengthening the ethics supervisory system of justices.

Keywords: Organization; Appointment; Supervision; Dismissal; Constitutional Justice; Constitutional Court; Indonesia

1. Introduction

The constitutional reform in Indonesia started in 1998 with a regime change from an authoritarian to a democratic state,¹ and one of the developments resulting from the constitutional reform is that Indonesia created a new constitutional court. The Constitutional Court of Indonesia (the CCI) was established under the third amendment of the 1945 Constitution

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¹ After the Suharto's fall in 1998, the People Consultative Assembly (*Majelis Permusyawaratan Rakyat*, MPR) amended the constitution four times in 1999, 2000, 2001 and 2002.

in 2001,² and it was officially established on 13 August 2003 along with the enactment of the Law Number 24/2003 regarding the Constitutional Court. Since its establishment fifteen years ago, many awards and achievements have been accomplished,³ which showed that the CCI has been playing an important role in the securing of basic democratic order, the rule of law and fundamental rights protection in Indonesia.

According to Article 24 of the 1945 Constitution, the judicial power is an independent power for administering the judiciary aimed at enforcing the law and upholding justice. The CCI is one of the implementers of judicial power as intended in the Constitution. By virtue of Article 24C (1) and (2) of the 1945 Constitution,⁴ the CCI holds jurisdiction to review laws against the Constitution;⁵ disputes concerning the authorities of state institutions whose authorities are granted under the Constitution; dissolution of political parties; disputes concerning the results of general elections; and impeachment of the President and/or the Vice President.

In exercising these jurisdictions, the CCI has a heavy workload. Since its establishment on 13 August 2003 until 2018, the CCI has registered 2.481 cases and decided 2.432 cases. The CCI decisions are divided into 1,085 decisions concerning constitutional review, 25 decisions concerning cases on disputes between state institutions, 412 decisions on general elections and 910 decisions on regional head elections.⁶ Through its decisions, the CCI maintains harmony in the legal system, thus ensuring that it stays within the appropriate boundaries as mandated by the Constitution at all times.

Despite its achievements, however, the Indonesian constitutional adjudication system also has raised public comments and criticisms that influenced and impacted the Indonesian legal order, while some problems can be found in the organizational system of the CCI. For instance, the current problems concern the supporting system of justices, given that justices have a very heavy workload, but the number of staff especially constitutional researchers is still very small, as there are only 19 researchers and there are also 7 newly recruited researcher candidates,⁷ which makes it difficult to give adequate support to justices.

Further criticisms are related to the justices' appointment system, because the current CCI Law does not regulate the selection procedures in detail,⁸ but only emphasizes that the selection shall be conducted objectively and accountably without giving any clear mechanisms and procedures to each institution (President, House of Representative, and Supreme Court). Consequently, in practice, there is no consistency in the selection procedures conducted by each branch. It didn't stop there: after a constitutional justice is elected, further problems

² The third constitutional amendment in 2001 established two new institutions: the Constitutional Court and Judicial Commission. The Judicial Commission is one of the judicial institutions which has the authority to propose candidates for appointment as justices of the Supreme Court and shall possess further authority to maintain and ensure the honor, dignity, and behavior of judges. See Article 24B 1945 Constitution.

³ Constitutional Court of Indonesia, "awards and achievements", <<https://mkri.id/index.php?page=web.Penghargaan&id=1&pages=4&menu=8&status=1>> [accessed 30 October 2019].

⁴ The Indonesian Constitutional Court doesn't have the constitutional complaint jurisdiction.

⁵ There are two models of judicial review: (1) Decentralized judicial review, commonly known as the American Model, such as in the USA, Australia, Canada and the Philippines; this model involves concrete review and the decision is only *inter partes*, rather than *erga omnes*. (2) Centralized judicial review, commonly known as the European model or the Kelsenian model, such as in Austria, Germany, South Africa, and Turkey; constitutional review via this model can include concrete review and abstract review and the decision of the Constitutional Court is *erga omnes*.

⁶ Constitutional Court of Indonesia, "AACC Member Fact File: Constitutional Court of Indonesia," in *The Jurisdictions and Organization of AACC members*, ed. AACC SRD (Seoul: AACC SRD, 2018), 54–87.

⁷ *Ibid.*, 61–62.

⁸ Art 19–20 of the Constitutional Court Law.

arise concerning the supervision system, where the corruption cases that ensnared two justices (Akil Mochtar and Patrialis Akbar) show weaknesses in the supervision of justices.

Problems in the appointment and supervision of justices will automatically have a significant influence on the dismissal system. That is, if the “upstream” process has a challenge, it can be ascertained that the “downstream” is also problematic. This aspect of the dismissal of justices is an issue that should be examined in order to find the solution. Various scandals involving constitutional justices have reopened the debate about the independence of justices.⁹

For further development of the Indonesian constitutional adjudication system, these problems must be corrected not only by constitutional and statutory interpretation but also by revision of the relevant provisions of the Constitution and the Constitutional Court Law. This article aims evaluate the performance of the CCI organization by finding the problems and challenges facing by the CCI. The weaknesses of the CCI organization are critically analyzed in order to improve the constitutional adjudication system. The study is conducted through a comparative study with constitutional courts in other countries, such as South Korea and Germany. The article then offers proposals for improving the CCI’s organizational system.

2. The Court Organization: The Necessity to Increase Number of Researchers

Most of constitutional adjudication systems allow for the organizational autonomy of the empowered body on the basis of the Constitution or on the basis of the Constitutional Court Law. This means they authorize the Constitutional Court to follow their own rules regarding their internal organization. Special services of the Constitutional Courts in many countries are organized similarly, they consist of clerks and researchers, whereby the head of the supporting services generally, holds the status of a secretary-general.¹⁰

In the context of the CCI organizational structure, it has nine constitutional justices, including the Chief Justice who is concurrently acting as a member, a Deputy Chief Justice, and seven other justices. To provide assistance in the implementation of the CCI’s tasks and authorities, the CCI Justices require general and judicial administrative support from government apparatuses, a registrar’s office and general secretariat.¹¹ The CCI would not be able to function properly without their support, because the substance, methods, and the direction of the CCI’s work are determined by nine justices along with the support of the CCI’s Secretariat and Registrar’s Office.

The Registrar’s Office has the main task of providing support in the field of judicial administration. The organizational structure of the Registrar’s Office consists of a number of functional positions of the Registrar, which is led by 1 registrar, 3 deputy registrars, 9 senior substitute registrars, and 27 substitute registrars.¹² The Registrar’s Office in charge of handling various affairs, such as the registration of petitions filed by Petitioners, examination of the completeness of petitions, the recording of complete petitions in Book of Constitutional Cases Registration, as well as preparing and assisting with the implementation of the Court’s hearings.¹³

⁹ Idul Rishan, “Redesain Sistem Pengangkatan Dan Pemberhentian Hakim Di Indonesia (Redesign of Appointment and Dismissal Systems Judges in Indonesia),” *Ius Quia Iustum Law Journal* 23, no. 2 (2016): 165–185.

¹⁰ Constitutional Court of Armenia. “The Independence and the Autonomy of the Organization of the Constitutional Court,” <<http://www.concourt.am/Books/harutunyan/monogr3/ch3p2.htm>> [accessed 18 August 2019].

¹¹ Art. 7 of the Constitutional Court Law.

¹² Constitutional Court of Indonesia, “AACC Member Fact File: Constitutional Court of Indonesia,” in *The Jurisdictions and Organization of AACC members*, ed. AACC SRD (Seoul: AACC SRD, 2018), 54–87.

¹³ Art. 7A of the Constitutional Court Law.

The Secretary General is carrying out technical administrative tasks: (1) coordination of administrative implementation within the general secretariat and the registrars' office; (2) formulation of the plan and program for administrative technical support; (3) implementation of cooperation with the community and inter-institutional relations; (4) implementation of supporting facilities for court hearing activities; and (5) the implementation of other tasks assigned by the Chief Justice of the Constitutional Court in accordance with its field of tasks.¹⁴

Another important system for supporting the justices under the Secretary General is the Center for Research and Case Analysis and Library Management (the Research Center), which is headed by a Head of Research Center and is divided into two divisions which are Division of Research and Case Analysis and Library Management Division. The Research Center is also supported by an Administrative Subdivision.¹⁵

When comparing size and importance of the CCI and the number of staff, it appears that the number of staff, especially constitutional researchers, is still very small, which makes it difficult to provide maximum support to justices. At the time of writing this paper, the CCI consisted of 291 staff. There were 106 staff who had a legal background (34%) and those with a non-legal background numbered 185 (64%), while there were only 19 researchers and 7 newly recruited researcher candidates. The 19 abovementioned researchers at all levels are respectively assigned to the nine justices, where each justice is supported by 2 researchers.¹⁶

The number of constitutional researchers as mentioned above is still very small when compared to the Korean and German Constitutional Courts, where the Korean Constitutional Court has 64 rapporteur judges,¹⁷ and German Constitutional Court has 65 rapporteur judges.¹⁸ This is one of the organizational problem faced by the CCI, and it's difficult to run the effective function if the CCI doesn't have enough supporting system from the staff, especially researchers. Therefore, increasing the supporting system of justices is one of the solutions in dealing with large constitutional cases. In addition, the CCI also must create an effective and efficient procedural law as well as provide suitable information technology (IT) support, so that a large increase in the number of constitutional cases will not become problematic.

3. Improving the Justices Appointment System: Searching for a Legitimacy

The constitutional justices appointment system is one of the important factors for maintaining judicial independence of the Court. Various models of justices appointment have been applied in many countries, and it shows the diversity of constitutional adjudication systems. When taking a closer look at the justices' appointment system in Asia, they have similarities and differences. Examples from the sixteen members of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) can be found as follows:¹⁹ the AACC members apply the representation model of judicial appointments in which different branches of the state have the right to nominate a certain number of candidates. This model can be found in seven members: Indonesia, Kazakhstan, Korea, Mongolia, Myanmar, Thailand, and Turkey. Then, the cooperation model of judicial appointments can be found

¹⁴ Art. 7B the Law on the Constitutional Court.

¹⁵ The President Regulation no. 65/2017 concerning Registrar's Office and General Secretariat of the Constitutional Court.

¹⁶ Constitutional Court of Indonesia, "AACC Member Fact File: Constitutional Court of Indonesia," 54–87.

¹⁷ Constitutional Court of Korea, "AACC Member Fact File: Constitutional Court of Korea," ed. AACC SRD (Seoul: AACC SRD, 2018), 107–135.

¹⁸ The German Federal Constitutional Court, "Profile of the German Federal Constitutional Court," 2017, <www.bundesverfassungsgericht.de> [Accessed 16 April 2019].

¹⁹ The Association of Asian Constitutional Courts and Equivalent Institutions (AACC) is an autonomous, independent, and non-political international organization founded in 2010, <<http://aacc-asia.org/>> [accessed 1 November 2019].

in five members: Afghanistan, Azerbaijan, Russia, Tajikistan, Uzbekistan, where one branch of government enjoys the sole right to propose candidates for appointment, while another branch of government is tasked with providing or withholding consent. Other models of judicial appointment such as with the involvement of the major role of a judicial commission or council, for example in three AACC members, is found in the Kyrgyz Republic, Pakistan and the Philippines. In contrast, a system where judicial appointments are conducted by a single institution (e.g. executive), in consultation with other institutions, is found only in Malaysia.²⁰

In the context of Indonesia, one of the most important institutional elements of the Indonesian Constitutional Court's autonomy has been its multitrack appointment system. The Indonesian Constitution and the Constitutional Court Law introduce a mixed system for the appointment of nine justices, which includes a combination of an election and appointment system with the proportionate participation and influence of all three branches of power, where from the nine justices to be stipulated by a Presidential Decree, three are nominated by the President, three are nominated by the House of Representatives and the remaining three are nominated by the Supreme Court.²¹ The Chief Justice and the Deputy Chief Justice are elected from and by the nine Member Justices.²² These three branches of power have produced not only a very diverse bench but also loosened the ties between justices and their nominating institutions. With justices able to explore several opportunities to seek reappointment, they are not bound to the interests of a single political actor.²³

In addition, the main requirement for becoming a constitutional justice in Indonesia is possessing impeccable integrity and personality, being fair, and being a statesman with a good mastery of the constitution and state administration.²⁴ In this case, being a good statesman is a very important and essential prerequisite, because the only public official in Indonesia requiring statesmanship is the position of constitutional justice. The other requirement is the minimum age is forty-seven years, that the justice candidate is mentally and physically capable to perform as a justice, that they have never been sentenced for a crime punishable by imprisonment, have not been bankrupt, and have had work experience in the field of law for at least fifteen years.²⁵

Basically, this model of justices appointment can be regarded as a proportional system, representing three essential state institutions, with justices coming from different backgrounds, which is deemed advantageous in deciding various constitutional cases. However, political influence is inevitable in the selection process, and it can be seen throughout history, two justices had been involved in criminal cases such as corruption and bribery.²⁶

Some Indonesian legal scholars have argued that one of the reasons for judicial corruption is because there is a problem with the justices' selection process.²⁷ This argument can be justified because the CCI Act only regulates some general provisions relating to the nomination and selection procedure of justices: Article 19, "the nomination of constitutional justices is conducted in transparent and participatory manners." Article 20 "(1) The procedure for

²⁰ AACC SRD, *The Jurisdictions and Organization of AACC members*, (Seoul: AACC SRD, 2018), 8–9.

²¹ Art. 18 of the Constitutional Court Law.

²² Art. 4 of the Constitutional Court Law.

²³ Marcus Mietzner, 'Political Conflict Resolution and Democratic Consolidation in Indonesia: The Role of the Constitutional Court', *Journal of East Asian Studies* 10, no. 3 (2010): 415.

²⁴ Art. 24 (5) of the Indonesian Constitution.

²⁵ Art. 15 (2) of the Constitutional Court Law.

²⁶ At the end of 2013, the former chief justice (Akil Mochtar) was arrested by the Indonesian Commission Eradication Corruption (the KPK) because of corruption issue, and in 2017, again the KPK arrested the CCI Justice (Patrialis Akbar) because of accepting a bribe.

²⁷ Simon Butt and Sofie Arjon Schütte, 'Assessing Judicial Performance in Indonesia: The Court for Corruption Crimes', *Crime, Law and Social Change* 62, no. 5 (2014): 603–19.

selection, election and submission of constitutional justices is regulated by the respective authorized institutions as referred in Article 18(1)", and "(2) Selection of constitutional justices referred in paragraph (1) shall be conducted objectively and accountably."

These provisions do not specifically regulate the detail of the procedures for the justices selection process, but only emphasize that the selection shall be conducted objectively and accountably without giving any clear mechanisms and procedures to each institution (President, House of Representative, and Supreme Court). Consequently, so far there is no consistency where the change of President also has a different selection mechanism.²⁸

It is, therefore, necessary to improve the CCI Justices appointment system, in this regard, the Constitutional Court of Korea model of justices appointment can be a reference for Indonesia. Even though the constitutional justice appointment systems in Indonesia and Korea are normatively similar, in Korea, each branch applies high standards and qualifications. Another important mechanism is that a justice candidate from the President and the chief justice of the Supreme Court must be assessed by the National Assembly of Korea through the confirmation hearing.²⁹ In this mechanism, the Legislation and Judiciary Committee of the National Assembly hold confirmation hearings for the candidates before their official appointment and nomination.³⁰ The confirmation hearing for the candidate is conducted in public for a period not exceeding three days, and in general in the order of the chair's declaration of commencement. The candidate's oath and opening statement, answers to queries and closing statement are followed by witness interviews.³¹

The confirmation hearing held by the parliament is an important mechanism to assess the profile and knowledge of the candidates. Therefore, this mechanism is necessary to be adopted in Indonesia in order to find qualified constitutional justices, even though nine justices are selected by three different branches of power, justices must work independently in order to remain free from the influence or intervention by any branch of power. The CCI will only be progressive when all of its justices have demonstrated the ability to apply the Constitution.³²

Another important institutional element of the CCI Justices is the term of office. Justices are appointed for five years term of office, with the possibility of being re-elected or re-appointed only once.³³ For the Chief Justice and the Deputy Chief Justice, they have two years six months term of office as from the date on which they are appointed.³⁴

This becomes an important challenge, particularly when the incumbent justice expresses the desire to apply for the second term, and is required to follow all selection processes along with the new candidates.³⁵ Instead of focusing the CCI duty, this makes the incumbent

²⁸ Indramayu, Jayus, and Rosita Indrayati, 'Rekonseptualisasi Seleksi Hakim Konstitusi Sebagai Upaya Mewujudkan Hakim Konstitusi Yang Berkualifikasi [Reconceptualization of the Selection of Constitutional Justices as an Effort to Create Qualified Constitutional Justices]', *Lentera Hukum* 4, no. 1 (2017): 1–18.

²⁹ Art. 65–2 of the National Assembly of Korea Act.

³⁰ Constitutional Court of Korea, *Thirty Years of the Constitutional Court of Korea*, Seoul: the Constitutional Court of Korea, 2018, 111.

³¹ *Ibid.*, 112–113.

³² Keith E. Whittington, *Constitutional Interpretation: Textual Meaning, Original Intent, and Judicial Review* (Kansas: University Press of Kansas, 1999): 218. See also Adnan Buyung Nasution, *Towards Constitutional Democracy in Indonesia*, Inaugural Professor Lecture, Papers on Southeast Asian Constitutionalism, Asian Law Centre, University of Melbourne, 2011, 25.

³³ Art. 22 of the Constitutional Court Law.

³⁴ Art. 4 of the Constitutional Court Law.

³⁵ In 2008, President Yudhoyono, formed an independent Selection Committee to appoint the justices. Nevertheless, in 2013, when selecting Patrialis Akbar as a justice, President Yudhoyono did not form an independent Selection Committee. See Pan Faiz, 'A Critical Analysis of Judicial Appointment Process and Tenure of Constitutional Justice in Indonesia', *Hasanuddin Law Review* 1(2016): 160–161.

justice more focused on the next selection process, and in order to get himself re-elected. Furthermore, there are potential internal conflicts of interest, and the system is vulnerable to intervention from the political issue.

To solve the term of office problem, the author recommends revising the term of office from five years to six or seven years without the possibility of re-election. This option will give justices' more independence because justices will focus on their functions without thinking about the selection for the second term.

This non-renewable term office applies in the German Federal Constitutional Court, where the term of office is 12 years, though it shall not extend beyond retirement age, and the retirement age is 68. To ensure their independence, justices may not be re-elected.³⁶ This choice represents an alternative method of achieving judicial independence: even though the Constitutional Court judges have limited terms, they cannot be reappointed and therefore the theory goes they would be unlikely to trim their decisions to achieve any sort of political favor with executive or legislative officials. The result of these shorter judicial terms is that there is a reduced chance for the exercise of influence by the Constitutional Court President over a very long period of time.³⁷

4. The Supervisory System of Justices: Strengthening the Role of the Board of Ethics

This part aims to evaluate the supervisory system of constitutional justices, the results of which will provide input to the CCI, whether the monitoring system of ethics against justices applied so far has been able to maintain the honour and integrity of justices, and whether the current ethics supervisory system has provided legal certainty in its enforcement against violations of the Code of Ethics and Conduct of Constitutional Justice (the Code of Ethics).

Under the CCI Law, it is regulated that for the purpose of maintaining and enforcing integrity and an impeccable personality, justice, and statesmanship; justices shall be required to adhere to the Code of Ethics,³⁸ The Code of Ethics basically adopts the Bangalore Principles, which are intended to establish standards for ethical conduct of justices.³⁹ They are designed to provide guidance to justices and to offer the judiciary a framework for regulating judicial conduct. Seven core values are recognized: Independence, impartiality, integrity, propriety, equality and finally competence and diligence. The Principles define their meaning and elaborate in detail on what kind of conduct is to be expected in concrete terms of the persons concerned in order to put the respective value into practice.⁴⁰

To enforce the Code of Ethics, the Honorary Council of the Constitutional Court (*Majelis Kehormatan Mahkamah Konstitusi, MKMK*) is established, which has the function of monitoring, examining and recommending measures to be taken against Constitutional Court Justices who are alleged of having violated the Code of Ethics for Justices.⁴¹ The MKMK members consists of: a. one person of a Constitutional Court Justice; b. one person of a Judicial Commission member; c. one person from the House of Representative element; d. one person

³⁶ Art. 4 of the Federal Constitutional Court Act.

³⁷ Quint, Peter E. "Leading a constitutional court: Perspectives from the Federal Republic of Germany." *U. Pa. L. Rev.* 154 (2005): 1857.

³⁸ Art. 27B of the Constitutional Court Law.

³⁹ The Indonesian Constitutional Court has the Code of Ethics of Constitutional Justices which regulated in the Constitutional Court Regulation no. 09/PMK/2006 on the Declaration of the Enactment of the Code of Ethics and Conduct of Constitutional Justice (*Sapta Karsa Hutama*).

⁴⁰ The Bangalore Principles of Judicial Conduct, <<https://www.judicialintegritygroup.org/jig-principles>> [accessed 30 October 2019].

⁴¹ Art. 1 point 4 of the Constitutional Court Law.

from the Government element exercising government affairs in law; and e. one person of a Supreme Court Justice.⁴²

However, the MKMK is a temporary institution, it will only be established when a constitutional justice is found violating the Code of Ethics. The role of the MKMK contained in the CCI Law was considered insufficient for maintaining the honour and integrity of justices, so that in 2013, the CCI also established the Board of Ethics of Constitutional Justice (*Dewan Etik Hakim Konstitusi, DEHK*) as a permanent institution, which cannot be separated from the effort to uphold a code of ethics and maintain of the dignity of the constitutional justices.⁴³ Nevertheless, this institution doesn't have the power of dismissal when a justice commits a severe violation of the Code of Ethics; it can only provide recommendations to the Chief Justice of the CCI.⁴⁴

Therefore, the strengthening role of the Board of Ethics as guardians of constitutional justices should be continuously improved, and this can be done by repositioning the organizational structure of the Board of Ethics, which is no longer under and responsible for the Chief Justice of the CCI, but becomes an independent institution outside the organizational structure of the CCI. To improve its power, the Board of Ethics can receive complaints from the public against allegations of ethical violations committed by constitutional justices and giving a punishment when it's found the Code of Ethics violation.

5. Dismissal of Constitutional Justices

The idea of the CCI establishment was to uphold constitutional values, strengthen checks and balances, promote good government and protect the fundamental rights of citizens. Because of this vital position, in deciding the case, the constitutional justices are required to obey the seven core values as contained in the Code of Ethics.⁴⁵ However, if a justice violates these principles, he/she may be dismissed from the position as a constitutional justice.

The dismissal of the constitutional justice is divided into three types: honorable dismissal, dishonorable dismissal, and temporary dismissal.⁴⁶ A constitutional justice will be honorably dismissed if he/she passes away, submits resignation to the Chief Justice of the Constitutional Court, has reached seventy years of age; reaches the end of term of office, suffers from a permanent physical or mental illness for three months.⁴⁷ A constitutional justice is dishonorably dismissed if he/she had a criminal sanction imposed, for having committed a criminal act which is punishable by the sanction of imprisonment, commits an act of misconduct, does not attend hearings for five times in succession without valid reasons, violates the official oath or of office, intentionally delays the Constitutional Court from passing a decision within the time prescribed by Article 7B paragraph (4) of the 1945 Constitution, violates the prohibition of holding concurrent positions, no longer meets the requirements for being a Constitutional Court justice, and violates the Code of Ethics.⁴⁸ Lastly, constitutional justices are temporarily dismissed from their position under conditions where justices are suspended

⁴² Art. 27A(2) of the Constitutional Court Law.

⁴³ The Constitutional Court Regulation no. 2/2013 on the Board of Ethics of Constitutional Justice.

⁴⁴ Art. 12 of the Constitutional Court Regulation no. 2/2013 on the Board of Ethics.

⁴⁵ Seven core values are recognized: Independence, impartiality, integrity, propriety, equality and finally competence and diligence. See the Constitutional Court Regulation no. 09/PMK/2006 the Declaration of the Enactment of the Code of Ethics and Conduct of Constitutional Justice.

⁴⁶ Art. 2 of the Constitutional Court Regulation no. 4/2012 on the Procedure of the Dismissal of Constitutional Justices.

⁴⁷ Art. 23 (1) of the Constitutional Court Law.

⁴⁸ Art. 23 (2) of the Constitutional Court Law.

to defend themselves before the MKMK, and investigated or detained on suspicion of committing a crime.⁴⁹

The criteria for dismissal of justices as mentioned above are basically clear, however, judicial corruption has tarnished the image of the judiciary and undermines the honour and integrity of justices. This has occurred two times, at the end of 2013, when the former chief justice (Akil Mochtar) was arrested by the Indonesian Commission of Eradication Corruption (the KPK) because of corruption issue, and the Supreme Court sentenced him to a life sentence.⁵⁰ When Akil Mochtar was arrested by the KPK, the President was asked to issue the Emergency Law that regulated the justice selection mechanisms and the supervision of justices. Nevertheless, the CCI declared that the Emergency Law was unconstitutional, and reapplied the previous Constitutional Court Law.⁵¹

It didn't stop there, in 2017, again the KPK arrested a CCI Justice (Patrialis Akbar) because of accepting a bribe in dealing with a constitutional review case. Then, the Supreme Court sentenced him to seven years in prison.⁵²

The corruption cases that ensnared the two justices show the weak supervision of the constitutional justice. It is, therefore, necessary to take concrete measures to restore the image of the judiciary and maintaining the honour and integrity of justices as the main pillars of the judiciary in enforcing law and justice. This can be done by improving the justice's selection system and strengthening the ethics supervisory system of justices.

6. Conclusion

The establishment of the Indonesian Constitutional Court was intended to resolve some constitutional issues in Indonesia. Since its establishment on 13 August 2003, many landmark decisions have been issued, and it shows that the CCI has played an important role in the fundamental rights protection in Indonesia. Despite its achievements, however, the CCI performance also has raised public comments and criticisms, while many problems can be found in the organizational system of the CCI, including appointment, supervision, and dismissal of justices.

The problems are related to the justice selection system, where there are no clear standards set by each institution in the current selection system, and there is no consistency since the change of President involves a different selection mechanism. In this regard, the Korean Constitutional Court model of justices appointment can be a reference for Indonesia, where justice candidate from the President and the chief justice of the Supreme Court are assessed by the National Assembly of Korea through the confirmation hearing. This is a very important mechanism to assess the profile and knowledge of justices' candidate. Another important organizational issue is the term of office and this author recommends revising the term of office from five years to six or seven years without the possibility of re-election. This option would make justices more independent and allow them to focus on their functions rather than the next selection period.

⁴⁹ The detail procedures on the dismissal of constitutional justices are regulated in the Art. 24 (1) and (2) of the Constitutional Court Law, "Prior to the dishonorable dismissal, a constitutional justice shall be temporarily suspended from his/her position by Presidential Decree upon the request of the Chief Justice of the Constitutional Court, except for the reasons for the criminal sanction of imprisonment. The temporary suspension shall be for a period of no longer than sixty working days and may be extended for a further period of no longer than 30 thirty working days."

⁵⁰ The Supreme Court Decision No: 336 K/Pid.Sus/2015 (23 February 2015) concerning Akil Mochtar case.

⁵¹ Constitutional Court Decision No.1-2/PUU-XII/2014 concerning constitutional review of regulations in Lieu of Law on the Constitutional Court.

⁵² The Supreme Court Decision No: 156 PK/Pid.Sus/2019 concerning Patrialis Akbar case.

After a constitutional justice is elected, further problems arise within the supervision system, since the corruption cases that ensnared two justices (Akil Mochtar and Patrialis Akbar) demonstrated the weak supervision of justices. This article recommends the strengthening the role of the Board of Ethics as a guardian of constitutional justices. This can be done by repositioning the organizational structure of the Board of Ethics, which should no longer be under the responsibility of the Chief Justice of the CCI, but should instead become an independent institution outside the organizational structure of the CCI.

Moreover, the supporting system of justices is also important, where the number of researchers of the CCI is still inadequate when compared to the Korean or German Constitutional Court, which makes it difficult condition to provide legal support to justices. Therefore, increasing the supporting system especially constitutional researchers is one of the solutions in dealing with the effects of the large number of constitutional cases.

Competing Interests

I declare that I have no significant competing financial, professional, or personal interests that might have influenced the performance or presentation of the work described in this manuscript.

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