

The Basis for a Constitutional Court Review of the Judicial Power of the 1945 Constitution of the Republic of Indonesia

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This study aims to determine the basis for consideration of the Constitutional Court (CC) in deciding the review of Law No. 22 of 2004 concerning the Judicial Commission and Law No. 4 of 2004 concerning Judicial Power of the 1945 Constitution, and the legal implications of the decision on the Supreme Court (SC) Law, the Judicial Commission Law, and the Constitutional Court Law. This research is normative legal research with a theoretical, juridical, political and historical approach. Sources of research data were obtained from primary materials, namely the 1945 Constitution both before and after the amendment, People's Consultative Assembly (PCA) stipulations, Supreme Court Acts, Judicial Commission Laws and the Constitutional Court Laws. Data were collected by the method of literature and documentation, which analysis are qualitatively presented in the form of descriptive. The results of the study concluded that the basis for the Constitutional Court's consideration in deciding the judicial review of Law No. 22 of 2004 concerning the Judicial Commission (JC) and the review of Law no. 4 of 2004 concerning Judicial Power against the 1945 Constitution after the amendment is because the articles in the Judicial Commission Law that regulate the oversight function are proven to cause legal uncertainty. Constitution Judiciary Commission has not a detailed set of surveillance procedures, subjects who were watching, what the object of supervision, the instruments used, and how the supervision is carried out. Imply law verdict CC that results in non-synchronisation between the law on the Supreme Court, the Judicial Commission Law and the Law on the Constitutional Court, especially about who has the authority to supervise Judge, Supreme Court and Constitutional Court.

Keywords: *Constitution, CC, JC, SC, 1945 Constitution*

Introduction

The Unitary State of the Republic of Indonesia is a constitutional state based on *Pancasila* and the 1945 Constitution which aims to realise an orderly, clean, prosperous and just national life system. Law will be good for the legality of government action and its people, so as not arbitrary own volition. The main agenda of the Indonesian state in its efforts to develop a stable legal state is to build a world of justice that is free and impartial (Abas & Yuniasanti, 2019). This is like what was outlined in the general explanation of the 1945 Constitution prior to the amendment which states that "Indonesia is a state based on law (*rechtstaat*) that is not based on mere power (*machstaat*) Article 1 paragraph 3.

K Brazilian Constitution contains the substance of constitutionalism that is limiting the power of government by law, so its use does not violate the rights Human. It does not exceed the limits of the authority granted. Therefore, the constitution must be carried out responsibly in accordance with the will of the people and democracy in Indonesia, so the Constitutional Court (CC) was formed. CC institute is as well to keep the administration continues stable and correction on the experience of the state administration in the past often interpreted the right constitution is ambiguous or based on its version.

According to Harun:

"The existence of the Constitutional Court (CC) which was adopted through the Third Amendment of the 1945 Constitution (2001) is not merely as a guardian of the constitution or the sole interpreter of the constitution, but further than that the Court is also burdened with the obligation to protect human rights (the protection of human rights) and guarding democracy (the rule of law) (Harun, 2016).

The Constitutional Court is the executor of judicial power in addition to the Supreme Court as referred to in Article 24 paragraph 1 and paragraph 2 of the Constitution of the Republic of Indonesia, which reads:

- a. Judicial power is an independent power to administer justice to uphold law and justice.
- b. Judicial power is exercised by a Supreme Court and judicial bodies below it in the general court, religious court, military court, state administrative court and by a Constitutional Court.

This means that the Constitutional Court is bound to the general principles of the implementation of independent judicial power, free from the influence of other institutions' powers in enforcing law and justice.

According to Article 24 C paragraph 1 and paragraph 2 of the 1945 Constitution of the State of Indonesia, the Constitutional Court has the authority to:

1. Test the Law on the 1945 Constitution of the Republic of Indonesia;
2. Decide on the dispute over the authority of state institutions whose authority is granted by the 1945 Constitution of the Republic of Indonesia;
3. Decide upon dissolution of political parties;
4. Deciding disputes on the results of general elections; and
5. Give a decision on the opinion of the DPR that the President and Vice President are suspected of violating the law in the form of betrayal of the state, corruption, bribery, other serious criminal acts, or despicable acts and/or no longer comply with the conditions as president and/or vice president as referred to in The 1945 Constitution of the Republic of Indonesia.

The explanation above shows the expectations of the justice sables of the Constitutional Court. In its development, there were pros and cons (supporting and disappointed) on the decision of the Constitutional Court of the Republic of Indonesia. This is common because it is open to the public so that the court's decision belongs to the public. The people have the right to express their disappointment as they can show support for a Constitutional Court ruling.

Research methods

This research includes normative legal research, namely legal research that has an object or target of legislation and other legal materials (Soemitro, 1994). In conducting this research, a juridical approach is used, namely research on the laws and regulations set out in the 1945 Constitution relating to judicial review by the Constitutional Court. The main study source in this research is the library data, namely research on secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials (Soekanto, 1984).

Research Problem

Based on this background, the central issue of the research is about, first, how is the basis of the Constitutional Court judgment in deciding judicial review of Law No. 22 of 2004 concerning the Judicial Commission (JC) and Law No. 4 of 2004 concerning Judicial Power over the 1945 Constitution after the amendment. Second, how the legal implications of the Constitutional Court of the judicial-constitution No. 22 of 2004 are concerning the Judicial Commission (JC) and Law No. 4 of 2004 concerning judicial power over other laws and regulations?

Result and Discussion

The decision of the Constitutional Court against Law No. 22 of 2004 Concerning the Judicial Commission and Law No. 4 of 2004 on Order late Justice

In the Judicial Review Decision Law No. 22 of 2004 concerning the Judicial Commission and Law No. 4 of 2004 concerning Judicial Power, which was submitted by 31 Supreme Court Justices, the Constitutional Court removed the provisions governing the oversight function of the Judicial Commission. The Constitutional Court is of the opinion that the original Article-P in the Judicial Commission Law regulating the oversight function is proven to cause legal uncertainty.

The Judicial Commission Law is also considered not detailed in regulating the monitoring procedures. It is not clear and does not explicitly determine who the subjects are supervising, what objects are monitored, what instruments are used and how the monitoring process is carried out. It is not clear and not detailed arrangements regarding the supervision of the Judicial Commission Law, as well as differences in the formulation of the Law on the Judicial Commission led to the Law on Judicial Commission of supervision become blurred (*obscur*) and legal uncertainty (*rechtsonzekerheid*) in its implementation (Yudisial, 2006).

The result that was felt to be quite surprising was when the constitutional judge was declared not as an object of oversight by the Judicial Commission. The Constitutional Court stated P origin 1 number 5 of the Judicial Commission Law as long as it concerns the word of the constitutional judge is no longer valid because it is contrary to the 1945 Constitution (Manan, 1995). The Constitutional Court Justice even emphasised that the supervision of the implementation of the constitutional judge's code of ethics was carried out by a separate Honorary Council and formed by the Constitutional Court in accordance with Article 23 of Law No. 24 of 2003.

Responding to that, Laksono said:

"The Constitutional Court's decision has clearly demonstrated the tendency of the Constitutional Court to become a judicial tyranny. There are at least three reasons to come to the statement, i.e. a) The Constitutional Court made a decision *ultra petita* (decision more than requested); b) violates the universal prohibition for judges to try cases that claim themselves; c) The decision of the Court K Brazilian Constitution discriminatory because only a constitutional judge who declared not to be the object of supervision of the Judicial Commission while not for justices " (Laksono, 2007).

As for the details, there are at least four arguments that need to be raised related to the interest in criticising the decision. First, the Constitutional Court's ruling was beyond the people's expectations, more precisely it was not in line with the opinion and spirit that was developing in the community because it annulled strategic articles in an effort to create a clean judiciary. Second, the Constitutional Court was judged to have acted beyond its authority when annulling several articles related to the supervisory authority of the Judicial Commission. Third, the Constitutional Court's decision, in this case, seemed odd and forced. The provisions which are considered by the Constitutional Court to conflict with the 1945 Constitution are precisely the provisions that explain in more detail the questions which have not been regulated by P origin 24B of the 1945 Constitution. Fourth, with that decision, the Constitutional Court tends to become an institution that has the potential to threaten the balance of separation concept, and the principle of check s and balances the basic idea advent of the Constitutional Court in 1945.

In this study, the flow will be systematised into two things which include discussion of the authority of the Constitutional Court, the subject of the case, which becomes the focus of the critical review.

About the Authority of the Constitutional Court

In principle, the Constitutional Court has the authority to examine the constitutionality of an Act against the 1945 Constitution as mandated by Article 24C Paragraph 1 of the 1945 Constitution.

However, in this case, there is a principle of *impartiality* which needs to be questioned and even debated related to petitions concerning the interests of constitutional judges. In this case, there are certain principles that have been distorted by the Constitutional Court, namely the principle of *nemo iudex in propria causa* (*niemand is geschikt om als rechter in zijn*

eigen zaak opte treden, that no one can be a judge in his own case). This was stated on the pretext that the Constitutional Court had a constitutional responsibility to oversee the Constitution so that it could override the principle of impartiality (Azhari, 1995).

The overriding of these principles by the CC if examined did not find a basis for strong legal arguments because these obligations must not be carried out in violation of the principle of universality of *due process* which requires the judge to uphold the principles of justice and impartiality. Is not the principle passed universally, even it has been regulated in Article 29 paragraph 5 of Law no. 4 of 2004 on the authority of the judiciary. The article states:

"A judge or clerk is required to resign for the trial if he has a direct or indirect interest in the case that has been examined, both of his own volition and at the request of the litigant".

Deviations from a principle can only be done if explicitly regulated in the Act, for example, the court must be conducted openly to the public unless the law determines otherwise (Article 19 (1) of Law No. 4 of 2004). In reality, the UCC and CC Regulation No. 006 / PCC / 2005 concerning procedural law testing the law does not specifically regulate deviations from the intended principle. For this reason, the Constitutional Court has no reason to deviate from this principle, except to rely solely on the power it has. One thing needs to be noted, and such power arguments have the potential to cause abuse of power. Further implications, the examination of this case is full of conflict of interest. Shouldn't the principle of constitutional justice impunity have to be free from conflict of interest in making decisions?

This means that the Constitutional Court's decision must subsequently be said to violate Article 29 of Law No. 4 of 2004 on judicial power. In that article, it was explained, there was a prohibition for judges to hear cases involving him. Article 29 paragraph 6 of Law No. 4 of 2004 states:

"In the event of a violation of the provisions in paragraph (5) the verdict is declared invalid and the judge or clerk concerned is subject to administrative sanctions or being convicted based on statutory regulations" (Law Constitution No. 4).

Therefore the Constitutional Court's decision can be declared invalid according to the Act. The Constitutional Court should not be able to conduct a judicial review of the provisions of the Law as long as the provisions regulate themselves. As is the case with judges in general cases, civil/criminal norms that have to resign if the case to be handled is related to or related to him. This is by no means meant to doubt the impartiality and personal

integrity of judges making universally recognised decisions. In other words, there has been a violation of the principle of the law that the judge may not decide a case that has a direct interest in him when the Constitutional Court who decides the constitutional judge is not part of the object of supervision.

Based on this, because of the addition of the principle of *nemo judex idoneus in propria causa*, the constitutional judge has conducted judicial misconduct. The constitutional judges should not have decided on the petition as long as it concerns them.

Principal Case

In a critical review of the subject matter, there are several points of emphasis, *ultra petita* decisions, supervision of constitutional judges, supervision of Supreme Court justices, related to state institutions, the authority of the Judicial Commission, and related to the principle of checks and balances.

Ultra Petita's Verdict

In its decision, judicial review of Law of the Judicial Commission, the Constitutional Court has made a ruling *ultra petita* (decision more than requested or not requested the judicial applicant review) (Thaib, 1999).

Observing the petitioners, it was found that the petitioner only requested the Constitutional Court to declare Article 1 number 5, P origin 20; P Origin 21; Article 22 paragraph 1 letter e and paragraph 5, Article 23 paragraph 2 and paragraph 3 and paragraph 5; P origin 24 paragraph 1 and Article 25 paragraph 3 and paragraph 4 of Law Number 22 the Year 2004, and Article 34 paragraph 3 of Law No. 4 of 2004, insofar as it concerns the Justices and Constitutional Court Justices, it contradicts Article 24B and Article 25 of the 1945 Constitution and states that these articles do not have binding power for the Supreme Court Justices and the Supreme Court and Constitutional Court Justices

Outside the conjecture, the Constitutional Court stated that it is reasonable to assert all, the provisions in so far as the provisions of Article 1 paragraph 5 and the other articles in the Law on the Judicial Commission in respect of the Constitutional Court against the 1945 Constitution. This clearly shows that the Court The Constitution has decided more than requested by the supreme judges as petitioners. Though every court decision must be adjusted to the demands, it may be less or the same, but it cannot be more. By deciding something that is not filed by the applicant, especially concerning his decision appeared that the

Constitutional Court was in an effort to the *interest* of protecting yourself from any form of external scrutiny (Assidique, 2004).

Supervision of Constitutional Justices

The supervision of this Constitutional Justice starts from an opinion whether the definition of a judge in the phrase "... .. has other authority in the context of maintaining and upholding the honour, complaint of dignity, and behaviour of the judge", listed in Article 24B paragraph 1 of the 1945 Constitution, including Constitutional Justices and Supreme Court Justices. In its decision, the Constitutional Court gave a different understanding of constitutional justices and justices. According to the Constitutional Court, Constitutional Justices are different from ordinary judges. Constitutional Justice is not a judge as a permanent profession but a judge because of his position. Constitutional Justices are only appointed for five years, and after no longer occupying the position of Constitutional Justices, each concerned returns to their original professional status (Abas & Yuniasanti, 2019).

On that basis, the Constitutional Court rejected all forms of supervision of constitutional judges. The first reason is that in the overall mechanism for selecting and appointing Constitutional Justices regulated in the 1945 Constitution, there is also no involvement of the Judicial Commission's role at all. Second is the systematic arrangement of Articles 24A, 24B and 24C that addresses MA, JC and CC. Such an arrangement (which places the Judicial Commission under the Supreme Court, but above the Constitutional Court) means that what is monitored by the Judicial Commission are only the Supreme Court, and not the Constitutional Court.

Third, by making the behaviour of the Constitutional Court as an object of supervision by the Judicial Commission, the authority of the Constitutional Court as an institution for resolving disputes of the constitutional authority of state institutions becomes disrupted and trapped into the notion as a party that cannot be impartial, especially if in practice a dispute arises between the Judicial Commission with other institutions. Fourth, the provisions that broaden the understanding of the behaviour of judges in Article 24B paragraph 1 of the 1945 Constitution including the behaviour of Constitutional Justices can castrate authority and prevent the fulfilment of the responsibilities of the Constitutional Court in maintaining the constitutionality of the mechanism of relations between state institutions whose authority is granted by the 1945 Constitution.

Regarding the understanding of judges according to Article 24B paragraph (1) of the 1945 Constitution, the Court is of the opinion:

..... As far as the provisions of Article 1 number 5 and other articles in the UUCJ insofar as they pertain to Constitutional Justices, are reasonable enough to be declared contrary to the 1945 Constitution.

This argument is arguably inaccurate for reasons of constitutional interpretation. It must be realised that the interpretation of the constitution through the original intent approach itself. In such a case, the understanding of judges should be seen from the consensus that existed when discussing changes to the Constitution. Or if it is indeed difficult to find, it is better to use a general understanding (*genus*) about the meaning of the judge itself. Here the Constitutional Court should not simply pick an opinion in the discussion of the 1945 Constitution and make it a reference as an original intent.

Regarding the issue of the meaning of the judge's *genus*, it should be noted that the constitution expressly states that judicial power is exercised by the Supreme Court and the Constitutional Court. If so, as the executor of judicial power, constitutional judges certainly cannot be excluded from the definition of judges according to Article 24B paragraph (1) of the 1945 Constitution. Article 24 paragraph (2) of the 1945 Constitution states:

Judicial power is exercised by a Supreme Court and the judiciary below it within the general court, religious court, military court, state administrative court, and by a Constitutional Court.

Because judges in all judicial environments exercise judicial power, it is indeed incorrect to say that constitutional judges are not included in the definition of judges. Even if it is explored further in the minutes of the amendment to the 1945 Constitution, it has never been mentioned that constitutional judges are not included in the definition of judges. Moreover, the statutory provisions do not separate the definition of judges based on their scope, so that all judges in the realm of state power (including constitutional judges) must be intended as judges' understanding according to Article 24B paragraph 1 of the 1945 Constitution.

Another principle is the argument that the constitutional judge is not supervised by JC because his term is only five years, and after that, he returns to his original profession. Prodjodikoro (1980) is also not a valid argument. Such an argument is the same as an opinion that implies anti-accountability. Even though all state institutions and state officials are required to be accountable, moreover, what is monitored by JC is the behaviour of a judge, which means that if he later returns to another profession or the original profession after

becoming a constitutional judge, then the appropriate behaviour will no longer be the object of JC supervision.

The Constitutional Court's argument that the constitutional judge is not supervised by JC because in the overall mechanism for selecting and appointing Constitutional Justices there is no involvement of the JC's role at all. Kelsen (1973) is also a point that should be criticised. If the recruitment process by the Judicial Commission alone is supervised by the Judicial Commission, why are the District Court and High Court judges supervised by the Judicial Commission, even though they were not recruited by the Judicial Commission?

Next, with regard to the authority of the Constitutional Court to decide on disputes over the authority of state institutions, the Constitutional Court is of the opinion that the law is not permitted for infertility. The Constitutional Court stated that the effort to spay the authority of the Constitutional Court was, first, reflected in the provisions of Article 65 of the UUC which reads, "The Supreme Court cannot be a party to a dispute over the authority of a state institution whose authority is granted by the 1945 Constitution of the Republic of Indonesia to the Constitutional Court"; secondly, infertility is also reflected in the provisions of the UUJC articles which broaden the understanding of the behaviour of judges to include Constitutional Justices as the object of supervision by JC.

The argument that constitutional judges are not supervised by JC because if monitored has the potential to interfere with the impartiality of constitutional judges in cases of authority disputes between state institutions is an argument that is inconsistent with the attitude of the Constitutional Court itself which always confirms that they are independent and impartial. For example, in exercising the authority of judicial review, the Constitutional Court always said that they remained independent and impartial even though they had to test the products of the President and the Parliament. They chose six of the nine constitutional judges. The concern that constitutional judges cannot be impartial if supervised by the Judicial Commission reinforces that there is a conflict on the interest of constitutional judges when answering the constitutionality issue of the supervision of the Judicial Commission.

Judicial supervision of the Chief Justice

The Constitutional Court's decision to include the Chief Justice in the realm of JC supervision was right. Therefore, denying the supervision of JC as external oversight is tantamount to letting an institution that is not touched (untouchable). Based on the court hierarchy, because

the Supreme Court is the culmination of the entire judicial environment under it, the appellate and first-level judges are also under the supervision of the Supreme Court.

Thus, when rejecting JC supervision, the opinion of the applicant becomes unreasonable. Logically, because the supervision of judges in the lower court environment can also be carried out by the Supreme Court, the supervision of Supreme Court justices is carried out by JC. Objections to the supervision of the Judicial Commission will increasingly lose their juridical footing if they are placed in the process of appointing Supreme Court Justices. The result of the 1945 changes asserts that the authority to propose the appointment of justices is JC. Because of this authority, the Judicial Commission has a solid legal basis for overseeing the Supreme Court justices. For this reason, the actions of the petitioner who refuse to be monitored by JC are unconstitutional.

Linkages with State Institutions

The Constitutional Court's argument that classifies state institutions into supporting organs and machine organs is not in accordance with the amendment to the 1945 Constitution, which eliminates the classification of the Highest and Higher State Institutions. After the amendment to the Constitution there is no longer a relationship between hierarchical state institutions. The existence of state institutions is very dependent on the function and authority of each without distinguishing which one institution is more important, while other institutions are only supporting. Moreover, the position of the SC, CC, and JC is the same as a state institution because it has attribution authority according to the 1945 Constitution.

Furthermore, the legal reasoning of the Constitutional Court that the relationship between the Commission as a supporting organ and the Supreme Court as the main organ in the field of supervision of the conduct of judges should be better understood as a partnership clearly shows an inconsistent way of thinking because the Constitutional Court believes that JC is an auxiliary organ or supporting organ against SC (Mahfud, 2006). Another important thing that must be underlined is that the determination of the position of state institutions is not the domain and authority of the Constitutional Court. This will be more precisely the domain and authority of the MPR as a constitution-forming institution.

Relation to the Principle of Checks And Balances

The Court stated that the conception of supervision contained in the UUJC was based on an incorrect conceptual paradigm, namely as if the relationship between the Supreme Court and the Judicial Commission was in a pattern of " checks and balances " between branches of power in the context of the teaching of separation of power, so lead to interpretations that are also not right, especially in the implementation. If this is left without resolution, the tension and confusion in the pattern of relations between the Judicial Commission and the Supreme Court will continue, and confusion in the justice-seeking community will continue to increase, which in turn can also delegitimise the powers of the judicial powers which will make it increasingly distrustful (Kansil, 1993).

The legal opinion of the Constitutional Court, that branches of state power are separated based on the principle of checks and balances, especially in the relationship between the legislature and the executive, then the separation of judicial power from the influence of other branches of power increasingly emphasised is an argument that contains the problematic serious as it says, that the mutual control and mutual balance is there between the legislative and the executive. At the same time, the judiciary further implements the separation of power. Such arguments tend to create judicial tyranny increasingly (Laksono, 2007).

When formulating the JC supervision dimension, which should have been a supporting element by using checks and balances, the constitutional judges seemed to forget the doctrine of this theory suddenly. The constitutional judges confused the concept of separation of powers and checks and balances. In the separation of powers, the rigid division of the three branches becomes true, while in checks and balances this is not an absolute thing. The question then is, where do the judges conclude that our constitution adheres to checks and balances? Even if using checks and balances, the position of JC does not necessarily become wrong, because the doctrine of checks and balances does not mean to confirm the possibility of another branch of power.

JC Complementary Authority

Saying that the JC's authority to oversee the behaviour of judges is complementary which is not the executive authority of the Judicial Commission is contrary to the rules in Article 24B paragraph 1 of the 1945 Constitution itself which confirms that Judicial Commission has the authority to maintain and enforce the behaviour of judges. Likewise, the Constitutional

Court's legal opinion that what is meant by other authorities in Article 24B paragraph 1 of the 1945 Constitution is closely related to the primary authority of JC to propose the appointment of justices is not appropriate. The two JC authorities in the recruitment of Supreme Court justices and other authorities in the context of maintaining and upholding the honour, dignity, and behaviour of judges are two non-hierarchical authorities. That is, one authority is not more important than another (Moh Kusnardi & Ibrahim, 1987).

In connection with the Constitutional Court's argument that the assessment of a judge's decision intended as an oversight outside the available procedural law mechanism is contrary to the principle of *ress judicata pro veritate habetur* which means what has been decided by the judge must be considered as true (*de inhoud van het vonnis geld als waard*) is correct. JC really should not impose sanctions on judges based on judgment on decisions alone. Decisions can indeed be analysed only for *entry points* in order to assess the possibility of irregularities in the behaviour of judges in deciding a case (Sissahadi, 2006).

The CC's argument that states that the UUJC regulates oversight are incomplete because the UUJC complements the judicial supervision rules discussed in the previous Act: the Judicial Power Act, the Supreme Court Law and the Constitutional Court Law. Therefore, it is valid to be questioned, if the Constitutional Court is of the opinion that there is an overlap in the supervision of judges why the supervision rules in the UUJC are being cut down? Constitutional judges should be able to see that all laws in the realm of judicial power are complementary.

Uncertainty versus Legal Emptiness

Regarding the monitoring procedures, the Constitutional Court was of the opinion that the UUJC was proven not to have detailed regulations regarding the supervision procedures, it was not clear and not firmly determined who the subjects were overseeing, what objects were monitored, what instruments were used, and how the supervision process was carried out. It is unclear, and the detailed regulation regarding supervision in the UUJC and differences in the formulation of the sentence as mentioned above causes all the provisions of the UUJC to be obscured (*obscuur*) and cause legal uncertainty (*rechtsonzekerheid*) in its implementation.

CC argument which says that there are uncertainty JC supervisory functions as something *obscur* and *rechtsonzekerheid* flexible. Furthermore, even if there is a lack of clarity in the supervisory function, UUJC states that further provisions can be regulated

by JC Regulation (P origin 22 verse (8) UUJC). Even though all articles of supervision in the UUJC have no binding legal force which has caused a legal vacuum in the implementation of the JC supervisory function, the CC's decision to elect a legal vacuum aside from being questionable must also be regretted because it is a backward step in the legal reform agenda in Indonesia.

Conclusion

Basic considerations of the Constitutional Court in deciding the judicial review of Law No. 22 of 2004 concerning the Judicial Commission (JC) and Judicial Review of Law No. 4 of 2004 concerning Judicial Power Against the 1945 Constitution after the Amendment is because the articles in the Judicial Commission Law that regulate the oversight function are proven to cause legal uncertainty. After all, the Judicial Commission Law is considered not to regulate in detail the procedures for supervision, who is the subject who oversees, what objects are monitored, what instruments are used, and how the monitoring process is carried out.

The legal implications of the Constitutional Court's decision on the review of Law No. 22 of 2004 concerning the Judicial Commission (JC) and Judicial Review of Law No. 4 of 2004 concerning Judicial Power of the 1945 Constitution after the Amendment has resulted in the asymmetry between the Supreme Court Law, the Judicial Commission Law and the Constitutional Court Law, especially regarding who has the authority to supervise Judges, Supreme Judges and Constitutional Justices.

Suggestion

Constitutional Justices should abide by the principles of procedural law that apply universally in the judicial process so as not to become judicial tyranny. Deviations from the principles of law can only be done as long as allowed by law.

In revising the Judicial Commission Law, it is better if the supervisory authority that will be carried out by the Judicial Commission is revitalised. For example, the Judicial Commission is given the authority to sanction dismissals to judges without having to go through the leadership of the Supreme Court and the Honorary Council of Judges.



All state institutions and state officials, including judicial authorities, must realise that there is no power that is free from the principle of accountability or supervision by other parties outside themselves.

Amendments to the 1945 Law were immediately realised by emphasising the authority of the Judicial Commission to supervise judges, Supreme Court Judges and Constitutional Court Judges, as well as having the authority to dismiss them.

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