

# THE CONSTITUTIONALITY OF THE DPR'S SUPERVISORY FUNCTION OVER CONSTITUTIONAL COURT JUSTICE AND INDEPENDENT INSTITUTION

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## Abstract

*The constitutionality of the DPR's supervisory authority over Constitutional Court judges and independent state institutions raises serious problems in the Indonesian constitutional system, especially after the ratification of Article 228A of DPR Regulation Number 1 of 2025 concerning Amendments to DPR RI Regulation Number 1 of 2020 concerning Rules of Procedure. This provision grants the DPR the authority to evaluate officials it previously nominated, with evaluations deemed binding. However, such authority lacks a legal foundation in either the 1945 Constitution or the MD3 Law, rendering it potentially ultra vires and contrary to the principle of Separation of Powers and judicial independence. The removal of Constitutional Court Justice Aswanto illustrates a clear example of legislative interference and politicization of the judiciary. Similar threats extend to independent institutions such as the Corruption Eradication Commission (KPK) and the Judicial Commission (KY), both of which require functional and institutional autonomy. This study employs a normative legal method. Findings confirm that Article 228A poses a constitutional threat and should be repealed to restore institutional equilibrium. Legal reform and regulatory safeguards are urgently needed to protect the integrity and independence of judicial and independent bodies within Indonesia's democratic rule of law framework.*

**Keywords:** Checks and Balances; DPR; Judiciary; Independent Institutions;

## Abstrak

Konstitusionalitas kewenangan pengawasan DPR terhadap Hakim Mahkamah Konstitusi dan lembaga negara independen menimbulkan persoalan serius dalam sistem ketatanegaraan Indonesia, terutama pasca disahkannya Pasal 228A Peraturan DPR Nomor 1 Tahun 2025 tentang Perubahan Atas Peraturan DPR RI Nomor 1 Tahun 2020 tentang Tata Tertib. Pasal ini memberikan kewenangan evaluatif terhadap pejabat negara yang diangkat atas usul DPR, dengan hasil yang bersifat mengikat. Ketentuan tersebut tidak memiliki dasar konstitusional dalam UUD 1945 maupun dasar legal dalam Undang-Undang tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah (UU MD3), sehingga berpotensi melampaui kewenangan yang sah (*ultra vires*) dan mencederai prinsip pemisahan kekuasaan serta independensi kekuasaan kehakiman. Kasus pemanggilan dan pemberhentian Hakim Konstitusi Aswanto menunjukkan bukti konkret politisasi dan intervensi legislatif terhadap lembaga yudikatif. Evaluasi yang bersifat mengikat ini juga berpotensi diterapkan terhadap lembaga independen seperti KPK dan KY, yang semestinya bebas dari tekanan politik. Penelitian ini menggunakan pendekatan hukum normatif. Hasil analisis menunjukkan bahwa Pasal 228A harus ditinjau ulang dan dihapus, karena berpotensi merusak sistem *checks and balances* dan menggeser hubungan antarlembaga negara menjadi subordinatif. Reformasi peraturan dan penguatan jaminan independensi lembaga yudikatif dan lembaga negara independen menjadi langkah penting menjaga prinsip negara hukum yang demokratis

**Kata Kunci:** *Checks and Balances*; DPR; Kekuasaan Kehakiman; Lembaga Independen;

## A. INTRODUCTION

The controversy regarding the limits of legislative authority over judicial power and independent institutions has once again come under scrutiny in Indonesia's constitutional dynamics following the summoning and dismissal of Constitutional Court (MK) Justice Aswanto by the Indonesian House of Representatives (DPR RI) in 2022.<sup>1</sup> The DPR's actions raise serious questions about the constitutionality of the legislature's evaluative authority over constitutional court justices, who should fall within the domain of an independent judicial power free from intervention. This controversy is exacerbated by the emergence of provisions in Article 228A of DPR Regulation No. 1 of 2020 on DPR Standing Orders, which grant periodic and binding evaluation authority over state officials, including MK justices appointed based on DPR proposals.<sup>2</sup> This situation raises concerns about a possible overreach of authority (*ultra vires*) by the DPR, which would be inconsistent with the principles of separation of powers and the independence of the judiciary as stipulated in the 1945 Constitution of the Republic of Indonesia (UUD 1945). A similar context can also be found in the regulatory framework and institutional dynamics of the Corruption Eradication Commission (KPK), which is normatively constructed as an independent institution. In practice, however, the KPK has instead become an object of political intervention through amendments to the KPK Law, performance evaluations of its leadership, and strategic policies controlled by the legislative and executive branches.<sup>3</sup> Institutional dependence on legislative policies highlights a serious

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<sup>1</sup> Durohim Amnan, "Legalitas Pemecatan Hakim Aswanto Di Tengah Masa Jabatan Oleh Dewan Perwakilan Rakyat," *Jatiswara* 38, no. 1 (2023): 42–51, <https://doi.org/10.29303/jtsw.v38i1.461>.

<sup>2</sup> Tarmizi, Yulia Pradiba, and Karmila Usman, "Analisis Revisi Pasal 228 A Peraturan DPR No.1 Tahun 2020 Tentang Tata Tertib DPR," *Jurnal Ilmu Hukum Pengayoman* 1, no. April (2023): 1–8.

<sup>3</sup> Transparency International Indonesia, "Evaluasi Komisi Pemberantas Korupsi 2019-2023," 2023.

issue in limiting the DPR's oversight scope to prevent violations of the principle of state institutional independence.

Both of these illustrations underscore an urgent constitutional issue that requires in-depth examination, namely the limits and scope of the DPR's supervisory function over independent state institutions, both in the context of judicial power and in relation to independent state bodies.

DPR granted a supervisory function as affirmed in Article 20A paragraph (1) of the 1945 Constitution, but it must be emphasized that this supervisory function is not absolute.<sup>4</sup> This supervisory function must be exercised within the framework of checks and balances principles, while respecting the independence and impartiality of other institutions. Under statutory regulations, provisions on the DPR's supervisory function are governed by Law No. 17 of 2014 on the MPR, DPR, DPD, and DPRD (MD3 Law). Nevertheless, in its implementation, legislative oversight often generates horizontal tensions between state institutions, particularly when the DPR adopts a broad interpretation of its oversight scope. This is vividly reflected in the application of Article 228A of the DPR Standing Orders Regulation, which empowers the DPR to periodically and bindingly evaluate state officials nominated by it.<sup>5</sup> This provision raises juridical problems, given that the DPR Standing Orders Regulation constitutes merely an internal norm that cannot engender new authority not derived from statutory or constitutional mandates.<sup>6</sup> The DPR's granting of binding evaluative authority over Constitutional Court justices substantively conflicts with Articles 24 and 24C of the 1945 Constitution, which affirm that judicial power constitutes an independent authority free from interference by other branches of power. The

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<sup>4</sup> Jimly Asshiddiqie, *PENGANTAR ILMU HUKUM TATA NEGARA*, vol. 2 (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006), [www.mahkamahkonstitusi.go.id](http://www.mahkamahkonstitusi.go.id).

<sup>5</sup> Tarmizi, Pradiba, and Usman, "Analisis Revisi Pasal 228 A Peraturan DPR No.1 Tahun 2020 Tentang Tata Tertib DPR."

<sup>6</sup> Fuad Abdul Azis and Irham Ramur, "Analisis Kewenangan DPR Terhadap Polemik Penggantian Hakim Mahkamah Konstitusi," *Lisyabab : Jurnal Studi Islam Dan Sosial* 4, no. 1 (2023): 71–83, <https://doi.org/10.58326/jurnallisyabab.v4i1.153>.

Constitutional Court serves as a judicial institution with its own constitutional standing, and its justices must have their independence guaranteed in carrying out constitutional duties, including adjudicating judicial reviews of legislation and disputes over authority among state institutions. Thus, DPR intervention in the form of periodic and binding evaluations constitutes a violation of the principle of judicial independence.<sup>7</sup>

The emergence of the provision in Article 228A of the DPR Standing Orders Regulation is not accompanied by explicit and comprehensive regulations in legislation at the level of statutes, either in the MD3 Law or in the Constitutional Court Law. The absence of such explicit regulations creates a legal vacuum that risks opening opportunities for legislative overreach against institutions that should remain independent. In the context of constitutional law, this vacuum fosters vulnerabilities to the politicization of judicial power, potentially undermining the judiciary's oversight function and eroding the legitimacy of judicial institutions in the eyes of the public.<sup>8</sup> This issue is further reinforced by the lack of an independent and accountable judicial evaluation mechanism in Indonesia.<sup>9</sup> Currently, oversight of constitutional court justices is conducted solely by the Constitutional Court Honor Council (MKMK), which operates internally.<sup>10</sup> The absence of an independent external oversight body results in the evaluation process for MK justices lacking optimal objectivity. Conversely, when the evaluation function is instead entrusted to the DPR a political institution the outcome is a threat to the principles of impartiality and neutrality of judicial power. Several previous

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<sup>7</sup> Windy Rizky Putri and M Sadam Husin, "Implikasi Yuridis Kewenangan DPR Dalam Mencopot Hakim Mahkamah Konstitusi Dan Mahkamah Agung Terhadap Independensi Kekuasaan Kehakiman" 4, no. 3 (2025): 2502–12.

<sup>8</sup> Dri Utari Christina R and Ismail Hasani, eds., *Masa Depan Mahkamah Konstitusi RI*, 2023.

<sup>9</sup> Alya Dwi Ananta et al., "Evaluasi Mekanisme Pengawasan Hakim Mahkamah Konstitusi Terhadap Kekuasaan Kehakiman: Tinjauan Dari Perspektif Hukum Tata Negara," *Jurnal Multidisiplin Ilmu Akademik* 1, no. 3 (2024): 435–46.

<sup>10</sup> Mahkamah Konstitusi et al., "Kewenangan Majelis Kehormatan Mahkamah Konstitusi Mengadili Hakim Mahkamah Konstitusi ( Dalam Pelanggaran Kode Etik Hakim," no. 4 (2024).

studies have attempted to examine the relationship between the DPR and judicial or independent institutions. First, research by Hanif Fudin. (2022)<sup>11</sup> which highlights the checks and balances among state institutions, namely between the deliberative assembly and the Constitutional Court, but does not specifically address Article 228A as a problematic norm. Second, the study by Zainal Arifin Mochtar (2021).<sup>12</sup> which discusses revisions to the KPK Law and their implications for weakening independent institutions, but with a focus more on the institutional aspects of executive authority. Third, the article by Dian Kurniawati and Elva Imeldatur Rohmah (2024).<sup>13</sup> which discusses the principles of checks and balances in the context of strengthening the Constitutional Court, but has not yet examined the DPR's evaluative practices from the normative perspective of internal standing orders. In contrast to these three studies, this paper specifically analyzes Article 228A normatively and constitutionally as a form of legislative overreach, as well as its impacts on judicial institutions and independent state bodies.

This research aims to critically analyze the constitutionality of the DPR's supervisory function over independent state institutions, particularly the Constitutional Court and the Corruption Eradication Commission, and to normatively evaluate the potential for legislative overreach through the provisions of Article 228A of DPR Regulation No. 1 of 2020. It employs a normative approach by examining relevant positive legal norms, encompassing constitutional provisions, statutes, and internal state institution regulations. Additionally, a case study approach is utilized to assess the summoning and dismissal of Constitutional Court Justice Aswanto by the DPR,

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<sup>11</sup> Hanif Fudin, "Checks and Balances Actualization of State Institutions: Between The People's Consultative Assembly and The Constitutional Court," *Jurnal Konstitusi* 19, no. 1 (2022): 202–24, <https://doi.org/10.31078/jk1919>.

<sup>12</sup> Zainal Arifin Mochtar, "Independensi Komisi Pemberantasan Korupsi Pasca Undang-Undang Nomor 19 Tahun 2019," *Jurnal Konstitusi* 18, no. 2 (2021): 345, <https://doi.org/10.31078/jk1824>.

<sup>13</sup> Dian Kurniawati and Elva Imeldatur Rohmah, "PERAN MAHKAMAH KONSTITUSI DALAM PENGUATAN PRINSIP CHECKS AND BALANCES DALAM SISTEM KETATANEGARAAN INDONESIA," 2024, 183–207.

while a conceptual approach draws on the doctrine of ultra vires, the principle of separation of powers, and checks and balances as foundational elements of democratic systems. Through this framework, the study seeks to provide a comprehensive understanding of the constitutional boundaries in implementing the DPR's supervisory function over judicial power and independent institutions. The findings are directed toward formulating recommendations for institutional and legislative reforms consistent with the rule of law, democracy, and guarantees of state institutional independence. Thus, Indonesia's constitutional system can avoid potential abuses of authority and be more effectively oriented toward transparent, balanced, and law-based governance (*rechtmatig*).

## **B. FINDING AND DISCUSSION**

### **1. Characteristics of Judicial Power and Independent State Institutions**

#### **a. Characteristics of Judicial Power**

In Indonesia's constitutional structure, judicial power possesses a robust constitutional foundation and is recognized as one of the autonomous pillars of power (independent branch of power), whose existence must be protected from interference or intervention by legislative and executive powers.<sup>14</sup> Article 24 paragraph (1) of the 1945 Constitution states that "Judicial power is an independent authority to administer justice for the enforcement of law and justice." The exercise of judicial power in Indonesia is entrusted to two primary institutions, namely the Supreme Court (MA) and the Constitutional Court (MK), each possessing constitutional authority to uphold law and justice in accordance with their designated duties and functions.<sup>15</sup> Both institutions do not merely perform judicial functions through case

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<sup>14</sup> Amnan, "Legalitas Pemecatan Hakim Aswanto Di Tengah Masa Jabatan Oleh Dewan Perwakilan Rakyat."

<sup>15</sup> Ahmad Syaifudin Anwar and Lilik Agus Saputro, "Kemandirian Kekuasaan Kehakiman Dalam Mekanisme Pengangkatan Dan Pemberhentian Hakim Konstitusi," *Staatsrecht: Jurnal Hukum Kenegaraan Dan Politik Islam* 2, no. 2 (2022), <https://doi.org/10.14421/staatsrecht.v2i2.2877>.

resolution, but also play a strategic role in ensuring balance among branches of state power, including through the authority to review legislation and oversee the conformity of government actions with principles of constitutionality.

In addition to the aforementioned characteristics of independent judicial institutions, judicial bodies must also be free (independent), impartial (impartial), and autonomous.<sup>16</sup> In principle, judicial freedom is closely linked to the expectation of obtaining the fairest possible decisions, grounded in objective considerations and judicial independence without interference from any party. Judicial independence in decision-making is intended to ensure that the judicial process proceeds fairly, thereby protecting seekers of justice from potential negative impacts.<sup>17</sup> Independence pertains to substantive aspects of law enforcement, whereas impartiality refers to procedural principles that ensure the judicial process proceeds fairly and without bias. Independence and impartiality are guaranteed under Article 3 paragraph (1) of Law No. 48 of 2009 on Judicial Power, which explicitly states that *“In carrying out their duties and functions, judges and constitutional justices are obliged to uphold judicial independence,”* and in paragraph (2), *“Judicial power is exercised by judicial bodies free from any influence of power.”*

#### **b. Characteristics of Independent State Institutions**

Independent state institutions (independent state institutions) constitute institutional entities established by the constitution or statutes with the purpose of carrying out specific public functions autonomously and free from intervention by other state powers, particularly from the executive,

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<sup>16</sup> Anisa Dwi Rachmadika, A Zarkasi, and Syamsir Syamsir, “Kemandirian Kekuasaan Kehakiman Dalam Menegakkan Negara Hukum Yang Demokratis,” *Innovative: Journal Of Social Science Research* 4, no. 3 (2024): 11234–45, <https://doi.org/10.31004/innovative.v4i3.11592>.

<sup>17</sup> Anwar and Saputro, “Kemandirian Kekuasaan Kehakiman Dalam Mekanisme Pengangkatan Dan Pemberhentian Hakim Konstitusi.”

legislative, or judicial branches.<sup>18</sup> The concept of independent institutions emerged from the reform spirit demanding counterbalancing entities (counterweights) against the dominance of state power that could lead to authoritarianism and abuse of authority. In the reality of Indonesia's constitutional system, the existence of independent institutions such as the Corruption Eradication Commission (KPK), the Indonesian Ombudsman, the General Elections Commission (KPU), the National Human Rights Commission (Komnas HAM), and the Judicial Commission (KY) plays a strategic role in ensuring neutral, transparent, and accountable governance. Institutions categorized as independent commissions generally fulfill certain specific characteristics, which serve as indicators of their institutional independence, as follows:<sup>19</sup>

1. The legal basis for establishing independent state commissions explicitly stipulates the principle of independence in carrying out their duties and functions (normative requirement).
2. Independent, defined as freedom from intervention, will, or control by executive power.
3. The appointment and dismissal process for commission members is conducted through special mechanisms regulated separately, thus not solely under the President's authority as a political appointee.

With the fulfillment of these three elements, an institution can be qualified as truly independent. Conversely, if even one of these characteristics is not met for instance, if the dismissal mechanism allows unilateral action by a political body its independence becomes weakened and susceptible to misuse for specific political interests. Independence cannot be interpreted as immunity from oversight, but rather as institutional protection enabling the

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<sup>18</sup> Muhammad Jufri Dewa et al., "Implementasi Teori The New Separation of Power Dalam Sistem Kelembagaan Negara Di Indonesia Implementation of The New Separation Theory of Power in the State Institutional System in Indonesia" 6, no. 2 (2024): 432–48.

<sup>19</sup> Gunawan Tauda, "Kedudukan Komisi Negara Independen Dalam Struktur Republik Indonesia" (Pranata Hukum, 2011).

body to operate objectively, impartially, and professionally.<sup>20</sup> Therefore, within the framework of a rule-of-law state, oversight of independent institutions must be conducted through constitutional legal mechanisms that are non-political in nature.

## **2. DPR Supervisory Function in Checks and Balances**

As a representative institution in the governmental system, the DPR occupies a constitutionally strategic position within Indonesia's constitutional architecture. Referring to Article 20A paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the DPR carries out three primary functions: legislation, budgeting, and supervision. In the context of the supervisory function (control function), the DPR is granted authority to monitor the implementation of laws and government policies, aimed at ensuring accountability in the exercise of executive power and other state institutions. DPR's supervisory function inherently forms part of the constitutional principle known as checks and balances, namely a system of power regulation that mutually oversees and counterbalances to prevent dominance by any particular branch of power.<sup>21</sup> This concept evolved from the separation of powers theory (Separation of Powers) proposed by Montesquieu in *De l'Esprit des Lois*, where he asserted that legislative, executive, and judicial powers must be differentiated and exercised by distinct institutions to prevent tyranny and abuse of power.<sup>22</sup>

Nevertheless, the principle of checks and balances also entails strict limitations: each branch of power may oversee the others, but must not exceed the boundaries prescribed by the constitution. Accordingly, the DPR's supervisory function is not absolute, but rather constrained by constitutional

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<sup>20</sup> Aidul Fitriadi Azhari, *Paradigma Kekuasaan Kehakiman Sebelum Dan Sesudah Reformasi, Meluruskan Arah Manajemen Kekuasaan Kehakiman*, 2018.

<sup>21</sup> Refo Rifaldo Pangaribuan, Toar Neman Palilingan, and Feiby Wewengkang, "Pembagian Kekuasaan Dalam Sistem Pemerintahan Di Indonesia," *Lex Administratum* 12, no. 5 (2023): 1-11.

<sup>22</sup> Annisa Zahra Adrian et al., "Teori Pemisahan Kekuasaan Trias Politica Dalam Pemikiran Filsafat Hukum Montesquieu," *Praxis: Jurnal Filsafat Terapan*, no. 2022 (2024): 1-12, <https://doi.org/10.11111/praxis.xxxxxxx>.

norms and fundamental principles of the rule of law, such as the independence of judicial power, the impartiality of judicial institutions, and the neutrality of independent state bodies.

In the context of judicial power and independent state institutions, the DPR's supervisory function may only be exercised within the framework of transparent administrative and budgetary accountability, not concerning the substance of judicial authority or the individual integrity of independent institution officials, which are subject to internal ethical mechanisms. Oversight of institutions such as the Constitutional Court (MK) and the Corruption Eradication Commission (KPK) must be aligned with the inherent institutional independence characteristics of each entity.<sup>23</sup>

The case of the summoning and dismissal of Constitutional Court Justice Aswanto by the DPR in 2022 serves as a precedent demonstrating the potential for exceeding the boundaries of the supervisory function.<sup>24</sup> The DPR employed the argument that Constitutional Court justices originating from DPR nominations must remain "loyal" to the proposing institution's political aspirations. This logic fundamentally conflicts with the principle of judicial independence, as it blurs the position of justices as guardians of the constitution (guardian of the constitution), who should not be subject to any proposing entity's political interests.<sup>25</sup>

The DPR's supervisory function over the Constitutional Court cannot encompass evaluations of the substance of rulings or the judicial performance of justices.<sup>26</sup> Substantive evaluations of constitutional justices constitute the internal ethical domain of the Constitutional Court, conducted by the

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<sup>23</sup> Mei Susanto, "Hak Angket DPR, KPK Dan Pemberantasan Korupsi," *Jurnal Integritas*, Volume 4 Nomor 2, Desember 2018 4 (2018): 99–127, <https://jurnal.kpk.go.id/index.php/integritas/article/download/294/64>.

<sup>24</sup> Amnan, "Legalitas Pemecatan Hakim Aswanto Di Tengah Masa Jabatan Oleh Dewan Perwakilan Rakyat."

<sup>25</sup> John Sampe, Rosa Ristawati, and Be Hakyou, "The Guardian of Constitution: A Comparative Perspective of Indonesia and Cambodia," *Hasanuddin Law Review* 9, no. 2 (2023): 211–32, <https://doi.org/10.20956/halrev.v9i2.4627>.

<sup>26</sup> Amnan, "Legalitas Pemecatan Hakim Aswanto Di Tengah Masa Jabatan Oleh Dewan Perwakilan Rakyat."

Constitutional Court Honor Council (MKMK), not the domain of the DPR as a political institution.<sup>27</sup> If the DPR is granted authority to evaluate and even dismiss Constitutional Court justices, a functional shift occurs that tends toward legislative dominance over the judiciary, a condition contrary to the principle of separation of powers.

Another relevant fact is legislative intervention against the Corruption Eradication Commission (KPK), particularly through the revision of the KPK Law in 2019 and the tendency for DPR evaluations of KPK leadership in political forums.<sup>28</sup> In this regard, although the KPK is not a judicial institution, its status as an independent body in law enforcement necessitates limited oversight. Legislative intervention in the form of political assessments of KPK performance risks undermining the quality of the anti-corruption institution and eroding public trust in the independence of law enforcement.<sup>29</sup>

From the two cases the summoning of Justice Aswanto and interventions against the KPK it can be concluded that the DPR's supervisory function tends toward an expansive interpretation inconsistent with checks and balances principles. DPR oversight should aim to maintain governmental accountability and transparency, not serve as a political control instrument over constitutionally guaranteed independent institutions.<sup>30</sup> Oversight exceeding these boundaries can result in overreach of authority (*ultra vires*), creating imbalances among branches of power and undermining the democratic and just state governance system.

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<sup>27</sup> Al Amin and Syayidin Ali, "Pelaksanaan Sistem Pengawasan Hakim Konstitusi Di Indonesia," *Jurnal Konstitusi Dan Demokrasi* 2, no. 2 (2022), <https://doi.org/10.7454/jkd.v2i2.1209>.

<sup>28</sup> Josua Victor Manalu and Adriana G Firdausy, "Analisis Terhadap Pengawasan Kewenangan Komisi Pemberantasan Korupsi (Kpk) Oleh Dewan Perwakilan Rakyat Republik Indonesia (Dpr Ri) Sebagai Perwujudan Prinsip Checks and Balances," *Res Publica* 2, no. 2 (2020): 133–59, <https://jurnal.uns.ac.id/respublica/article/view/45510/0>.

<sup>29</sup> Manalu and Firdausy.

<sup>30</sup> Sunarto Sunarto, "Prinsip Checks and Balances Dalam Sistem Ketatanegaraan Indonesia," *Masalah-Masalah Hukum* 45, no. 2 (2016): 157, <https://doi.org/10.14710/mmh.45.2.2016.157-163>.

### **3. Regulation of DPR Supervisory Function in MD3 Law and Internal Rules**

#### **a. Regulation of DPR Supervisory Function in MD3 Law**

The MD3 Law explicitly includes provisions on the supervisory function inherent to the DPR. Article 98 paragraph (1) of the MD3 Law states: "The DPR's supervisory function is carried out to oversee the implementation of laws, the State Budget (APBN), and government policies." From the wording of this norm, it can be concluded that the DPR's supervisory function focuses on control over policy implementation by executive institutions and other government implementers, as well as the execution of laws enacted by the DPR together with the President.<sup>31</sup> The intended supervisory function does not encompass evaluative actions toward independent state institutions, let alone judicial institutions such as the Constitutional Court (MK) or the Supreme Court (MA).

Article 11 paragraph (1) letter (c) of the MD3 Law indeed grants the House of Representatives (DPR) the authority to propose candidates for Constitutional Court justices. However, it does not confer any subsequent authority in the form of supervision, evaluation, or dismissal after such justices have been appointed. The nomination process constitutes only one stage in the recruitment for public office and does not establish an ongoing institutional relationship. Accordingly, the MD3 Law does not provide a legal basis for the DPR to regulate supervisory functions of a personal and substantive nature over individual Constitutional Court justices after their appointment.

From a systemic perspective, the supervisory function of the DPR under the MD3 Law is general and administrative in character and is grounded in the principle of horizontal accountability of executive institutions. There are no provisions in the MD3 Law that regulate:

- a. evaluative authority over judges;

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<sup>31</sup> Muhammad Jovi Maulana, "Efektivitas Fungsi Pengawasan DPR Terhadap Pemerintah," 2017.

- b. the binding nature of the DPR's supervisory outcomes on non-executive state institutions; or
- c. mechanisms for the dismissal of judges nominated by the DPR.

Therefore, should the DPR interpret itself as possessing the authority to periodically evaluate Constitutional Court justices, such an interpretation lacks a legal basis under the MD3 Law and has the potential to conflict with the principle of legality governing the powers of state institutions.

#### **b. Expansion of Supervision through DPR Rules of Procedure**

The main problem arises when the DPR enacts DPR Regulation No. 1 of 2020 concerning Rules of Procedure, particularly Article 228A, which states: "The DPR may evaluate state officials appointed based on DPR's proposal, and the results of such evaluation are binding." This normative formulation represents a significant expansion of authority, as it transforms the DPR's supervisory function from one that was originally general and administrative into personal supervision that is substantive and binding. Legal implication in the context of Constitutional Court (MK) justices proposed by the DPR, this norm opens the door for the legislature not only to evaluate but also to determine the continuation of a justice's tenure, even though it is not regulated by law. This condition raises serious legal issues, as it is inconsistent with the legality principle in granting authority and contradicts the hierarchy of norms in the legal system. From the perspective of modern constitutional law, state institutions lack legitimacy to establish or expand their authority through internal regulations, unless explicitly mandated or permitted by higher-level regulations.<sup>32</sup>

Furthermore, from the perspective of the hierarchy of legislation, the existence of Article 228A raises significant legal issues because it is considered to exceed the authority limits as stipulated in Article 8 paragraph (2) of Law Number 12 of 2011 concerning the Formation of Legislation, which states: "Types of legislation other than those referred to in Article 8 paragraph (1) are

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<sup>32</sup> Asshiddiqie, *PENGANTAR ILMU HUKUM TATA NEGARA*.

recognized in their existence and have binding legal force as long as they are mandated by higher legislation.” From this provision, it can be understood that rules of procedure may only regulate internal institutional and administrative matters, and their applicability is limited. In other words, rules of procedure cannot create legal consequences for external entities outside the issuing institution, let alone if such legal consequences are binding and impact public positions protected by the constitution.<sup>33</sup>

In the framework of modern constitutional law, the DPR's action of establishing new authorities through internal regulations not mandated by the MD3 Law or the 1945 Constitution constitutes a clear case of abuse of normative authority sources and violates the *ultra vires* doctrine, or acting beyond powers. The *ultra vires* doctrine states that “Every state institution may only act within the limits of authority lawfully granted to it by the constitution or statute. If the institution acts without a legal basis or exceeds the limits of authority, its action is invalid and may be declared null and void by law.” Thus, the DPR, as a legislative institution with significant power in a democratic system, remains subject to this principle. There is no norm in the 1945 Constitution or the MD3 Law that authorizes the DPR to periodically evaluate Constitutional Court judges and establish legally binding evaluation results. Thus, when Article 228A grants “binding evaluative authority,” the DPR has substantively acted *ultra vires*.<sup>34</sup>

#### **4. Constitutional and Institutional Implications of Implementing Article 228A of DPR Regulations**

Article 228A of DPR Regulation No. 1 of 2020 stipulates that the DPR holds authority to evaluate state officials appointed based on DPR proposals, with the condition that such evaluation results carry binding legal force. Although contained solely within internal institutional regulations, this provision harbors serious constitutional consequences and directly impacts

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<sup>33</sup> Tarmizi, Pradiba, and Usman, “Analisis Revisi Pasal 228 A Peraturan DPR No.1 Tahun 2020 Tentang Tata Tertib DPR.”

<sup>34</sup> Tarmizi, Pradiba, and Usman.

Indonesia's state governance system, particularly the balance of powers, judicial independence, and integrity of independent state institutions.

#### **a. Decreasing Separation of Powers Principle**

The principle of separation of powers constitutes one of the fundamental pillars in the concept of a rule-of-law state, requiring the division of state authority into three main branches legislative, executive and judicial each exercised by independent institutions free from mutual intervention.<sup>35</sup> In contemporary constitutional practice, the separation of powers is not merely understood in a structural dimension namely, the separation among state institutions but also encompasses functional and substantive aspects. This means that each branch of state power must respect the boundaries of authority and not interfere with the core functions of other branches. In Indonesia, this principle is explicitly regulated in Chapter IX of the 1945 Constitution concerning judicial power. Article 24 paragraph (1) of the 1945 Constitution states: "Judicial power is an independent power to administer justice to enforce law and justice." This provision clarifies that judicial power holds an independent position, separate from the legislative and executive branches, both structurally and in the execution of its duties. The independence of the judiciary constitutes a key element in upholding the rule of law principle, as only an independent and impartial judiciary can realize true justice.<sup>36</sup>

However, the enactment of Article 228A in DPR Regulation No. 1 of 2020 has opened the door for the DPR to conduct evaluations of state officials appointed based on its proposals, with binding results, leading to a substantial shift in inter-institutional power relations. Through its internal regulation, the DPR positions itself superior to the officials it proposed, including

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<sup>35</sup> Adrian et al., "Teori Pemisahan Kekuasaan Trias Politica Dalam Pemikiran Filsafat Hukum Montesquieu."

<sup>36</sup> Nor Fadillah, "Prinsip Peradilan Bebas Dan Tidak Memihak Dalam Negara Hukum: Studi Putusan Mahkamah Konstitusi Nomor 53/PUU-XIV/2017 Mengenai Verifikasi Partai Politik," *Jurnal Lex Renaissance* 8, no. 1 (2023): 1-19, <https://doi.org/10.20885/jlr.vol8.iss1.art1>.

Constitutional Court judges, who legally belong to the independent judicial branch. This creates a subordinative relationship that deviates from the constitutional design, as if constitutional judges remain subject to the legislative body's will that once proposed them. This condition undermines the separation of powers framework, as the judiciary meant to be independent becomes an object of legislative political evaluation and control, despite the DPR not being an ethical, administrative, or disciplinary body within the judicial structure.

Furthermore, the existence of binding evaluative authority over Constitutional Court (MK) judges also raises principal problems in the design of inter-institutional relations. The DPR, as a law-making body, has direct interests in many cases adjudicated by the Constitutional Court, such as the mechanism of judicial review of statutory norms against the 1945 Constitution, as well as handling constitutional authority disputes among state institutions in the state governance system.<sup>37</sup> In a healthy checks and balances system, the relationship between the DPR and MK should be horizontal and mutually corrective.<sup>38</sup> However, with this evaluative authority, the DPR instead positions itself to control the MK on a personal level, transforming what should be a corrective oversight mechanism into an instrument of political domination.

#### **b. Yudikatif Intervention and Politicization of the Judiciary**

One of the most concerning implications of the enactment of Article 228A of DPR Regulation No. 1 of 2020 is the emergence of a legitimacy gap for the legislative body to conduct direct political intervention in judicial power, particularly against the Constitutional Court (MK).<sup>39</sup> This intervention is not speculative but has been factually and politically proven, as seen in the DPR's

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<sup>37</sup> Jimly Asshiddiqie, "Mahkamah Konstitusi Dan Pengujian Undang-Undang," *Jurnal Hukum IUS QUIA IUSTUM* 11, no. 27 (2004): 1–6, <https://doi.org/10.20885/iustum.vol11.iss27.art1>.

<sup>38</sup> Pangaribuan, Palilingan, and Wewengkang, "Pembagian Kekuasaan Dalam Sistem Pemerintahan Di Indonesia."

<sup>39</sup> Tarmizi, Pradiba, and Usman, "Analisis Revisi Pasal 228 A Peraturan DPR No.1 Tahun 2020 Tentang Tata Tertib DPR."

summoning and dismissal of Constitutional Court Justice Aswanto in 2022.<sup>40</sup> In that case, the DPR stated that Justice Aswanto had deviated from "DPR aspirations" because in several Constitutional Court decisions, he was deemed to have annulled DPR legislative products, including strategic laws such as the Minerba Law and the Omnibus Law on Job Creation. Therefore, the DPR assessed that he no longer represented the proposing institution's interests and must be replaced. This justification then served as the basis for conducting political evaluation of a judicial position that constitutionally should be free from political pressure. The assertion that judges must be loyal to the proposing institution fundamentally contradicts the principle of judicial independence as enshrined in Article 24 paragraph (1) of the 1945 Constitution, which states: "*Judicial power is an independent power to administer justice to enforce law and justice.*" Impartiality is an absolute requirement for judges to enforce law and the constitution objectively. The United Nations Basic Principles on the Independence of the Judiciary (1985) emphasize that "*Judges shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences.*"<sup>41</sup>

Theoretically, the Constitutional Court serves as the guardian of the constitution, established precisely to act as a balancer against political power dominance.<sup>42</sup> When the balancer itself faces political pressure, the corrective mechanism against unconstitutional legal products becomes paralyzed. The Constitutional Court loses its position as a neutral actor and may transform into a "hand extension of the proposer" if oversight models like Article 228A continue to be enforced. In this context, political intervention through

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<sup>40</sup> Amnan, "Legalitas Pemecatan Hakim Aswanto Di Tengah Masa Jabatan Oleh Dewan Perwakilan Rakyat."

<sup>41</sup> Mochammad Arief Agus and Andi Muhammad Irvan A., "An Analytical Study on the Intervention of the Legislature To the Constitutional Court in Indonesia Compared To Developed Countries," *Indonesia Law Review* 12, no. 3 (2022): 20–41, <https://doi.org/10.15742/ilrev.v12n3.2>.

<sup>42</sup> Sampe, Ristawati, and Hakyou, "The Guardian of Constitution: A Comparative Perspective of Indonesia and Cambodia."

personal evaluation mechanisms against judges can no longer be considered part of checks and balances, but rather constitutes a form of seizing another institution's functions (*institutional capture*). Institutional capture theory states that when one institution controls the direction and behavior of another institution beyond constitutional limits, paralysis occurs in that institution's autonomy and core functions.<sup>43</sup>

### **c. Politics of Evaluation and Threats to Independent State Institutions**

The application of Article 228A of DPR Regulation No. 1 of 2020 not only generates controversy in the context of judicial power but also harbors broader constitutional dangers for independent state institutions. When the norm states that the DPR may evaluate state officials appointed based on its proposals, with binding results, the logical implication is the opening of possibilities for the DPR to extend this oversight function not only to Constitutional Court judges but also to leaders of independent institutions such as the Corruption Eradication Commission (KPK) and the Judicial Commission (KY), whose appointment mechanisms also involve DPR selection processes.

The Corruption Eradication Commission (KPK) and Judicial Commission (KY) are institutionally designed to operate outside the control of the executive, legislative, or judicial branches, on the grounds that their functions namely, law enforcement and corruption prevention for the KPK, and ethical oversight of judges for the KY requires institutional autonomy and freedom from political intervention. In the post-reformasi framework, the presence of these institutions reflects the spirit of power decentralization within modern checks and balances, where certain state functions are managed by technocratic, neutral, and professional entities.<sup>44</sup> The

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<sup>43</sup> Mohamad Mova; Bisariyadi Al'afghani, "Konsep Regulasi Berbasis Risiko: Telaah Kritis Dalam Penerapannya Pada Undang-Undang Cipta Kerja Risk Based Regulation: Critique to Its Adoption in the Job Creation Law," *Jurnal Konstitusi* 18, no. Permits (2021): 68–69.

<sup>44</sup> Rizki Ramadani, "Lembaga Negara Independen Di Indonesia Dalam Perspektif Konsep Independent Regulatory Agencies," *Jurnal Hukum Ius Quia Iustum* 27, no. 1 (2020), <https://doi.org/10.20885/iustum.vol27.iss1.art9>.

independence of the KPK, for instance, is affirmed in Law No. 30 of 2002, which states that the KPK is independent and free from any power's influence. The same applies to the Judicial Commission, which under Article 24B paragraph (1) of the 1945 Constitution is positioned as an independent institution with the primary duty to safeguard and uphold the integrity, dignity, and ethical conduct of judges.

However, the existence of Article 228A blurs the boundary between proposal authority and oversight. Under the pretext that the DPR holds political legitimacy as a people's representative institution, this provision creates space for the legislature to evaluate the performance of individuals occupying public positions in independent institutions. This evaluation is no longer administrative or coordinative in nature, but substantive and binding, thus possessing real potential to influence the continuity of tenure or even the dismissal of someone from an independent institution. If applied to the KPK or KY, Article 228A effectively transforms the horizontal inter-institutional relations into vertical, subordinative ones, where officials of independent institutions become subject to political pressure from their proposing institution.

The aforementioned risks are not mere hypotheses. In practice, the KPK has faced political pressure multiple times, particularly following the 2019 revision of the KPK Law, which altered the KPK's legal status by placing it under the executive branch through the establishment of a Supervisory Board. This revision drew widespread criticism for weakening the anti-corruption institution's independence. If the principle of periodic binding evaluations is legitimized through Article 228A, the DPR would likely gain formal grounds to directly assess and even influence KPK leadership. This situation becomes increasingly problematic considering that the DPR, as a political institution, has itself been the subject of KPK investigations in various corruption cases. Consequently, legislative control over the KPK via evaluation mechanisms

would create acute conflicts of interest, while simultaneously undermining the KPK's primary function as an impartial law enforcement body.

The same applies to the Judicial Commission. Although the KY has the authority to propose candidates for Supreme Court justices and oversee judges' conduct, the KY itself remains vulnerable if evaluative mechanisms by the DPR are legitimized. Most KY members are selected through DPR fitness and propriety assessments, so if this relationship is followed by binding evaluation authority, the KY can easily be ensnared by political considerations. Consequently, the KY would lose its maneuverability in conducting objective ethical oversight, particularly when the oversight targets are judges politically close to legislative actors. This would paralyze the KY's corrective function and create conditions of loyalty conflicts that contradict the principle of institutional independence.

In this context, the term "*evaluation politics*" constitutes a new form of political intervention that utilizes administrative tools to pressure independent institutions. This mechanism is highly dangerous because it operates formally and is legitimized through internal regulations such as DPR Rules of Procedure, even though substantively it contradicts the hierarchy of legal norms and constitutional principles. If this logic continues to be developed, a state model centered on legislative power will emerge, where other state institutions including those that should be independent become entities that can be regulated, overseen, and even controlled based on the political will of the parliamentary majority. This condition not only deviates from the separation of powers principle but also has the potential to destroy the overall checks and balances system.<sup>45</sup>

Therefore, Article 228A cannot be viewed merely as a technical procedural norm within the DPR's rules of procedure. It is an instrument carrying significant constitutional consequences, as it opens the door to

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<sup>45</sup> Pangaribuan, Palilingan, and Wewengkang, "Pembagian Kekuasaan Dalam Sistem Pemerintahan Di Indonesia."

establishing subordinative relationships toward officials of independent institutions while creating an oversight structure rife with conflicts of interest. In a democratic rule-of-law state, independent institutions must be protected to operate based on law and professional expertise, not political pressure or loyalty. Thus, the elimination or strict limitation of evaluative norms like Article 228A constitutes a constitutional imperative that must be urgently implemented to safeguard the integrity and sustainability of independent state institutions in Indonesia.

### **C. CONCLUSION**

This research demonstrates that the existence of Article 228A of DPR Regulation Number 1 of 2025 concerning Amendments to DPR RI Regulation Number 1 of 2020 on Rules of Procedure raises constitutional issues, particularly regarding relations between the legislative institution and judicial power as well as independent state institutions. Beyond that, Article 228A potentially threatens the sustainability of other independent state institutions such as the KPK and KY. If this norm is widely practiced, constitutional relations among institutions will shift from horizontal relations of mutual oversight to hierarchical relations of mutual domination. Political evaluation of institutions designed to be free from power influences will create structural conflicts of interest, leading to institutional delegitimization, decline in public officials' integrity, and weakening of public trust in state institutions. This problem becomes even more complex because no provisions exist in the 1945 Constitution or the MD3 Law granting the DPR authority to conduct personal evaluations of constitutional judges or officials in independent institutions. Therefore, the provision of Article 228A can be considered an *ultra vires* norm, namely exceeding the limits of authority established by higher legislation, and thus deserves to be annulled to ensure the enforcement of constitutional supremacy.

Based on the findings and analysis outlined previously, one recommendation to strengthen the constitutional system grounded in democratic principles, separation of powers, and the rule of law is the annulment or deletion of Article 228A of DPR Regulation Number 1 of 2025 concerning Amendments to DPR RI Regulation Number 1 of 2020 on Rules of Procedure, which represents an urgent step given that this norm violates the principle of legality of authority, the hierarchy of legislation, and the separation of powers principle. The DPR, as a legislative institution, should not create norms that generate external legal consequences for public officials beyond its scope of authority.

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