

**PELIBATAN DEWAN PERWAKILAN RAKYAT
DALAM PENGISIAN JABATAN HAKIM AGUNG DAN HAKIM KONSTITUSI
MENURUT SISTEM KETATANEGARAAN INDONESIA
PASCA PERUBAHAN UNDANG-UNDANG DASAR TAHUN 1945**

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Intisari

Pelibatan DPR dalam pengisian jabatan Hakim Agung dan Hakim Konstitusi merupakan proses politik yang hasilnya sangat menentukan lolos atau tidaknya seorang calon Hakim Agung dan Hakim Konstitusi. Pelibatan DPR itu perlu ditelaah secara ilmiah melalui penelitian karena pada hakikatnya DPR merupakan lembaga yang mempunyai fungsi legislasi, anggaran dan pengawasan, namun UUD hasil perubahan justru memberi atribusi kewenangan dalam pengisian jabatan Hakim Agung dan Hakim Konstitusi. Rumusan masalah dalam disertasi ini, 1) Mengapa DPR dilibatkan dalam pengisian jabatan Hakim Agung dan Hakim Konstitusi?; 2) Apakah pelibatan tersebut sesuai dengan konsep fungsi lembaga legislatif? Tujuan penelitian yaitu: 1) Mengidentifikasi dan mengelaborasi dasar-dasar pertimbangan keterlibatan DPR dalam pengisian jabatan Hakim Agung dan Hakim Konstitusi RI menurut UUD 1945; 2) Mengidentifikasi dan mengelaborasi pelibatan DPR dalam pengisian jabatan Hakim Agung dan Hakim Konstitusi dari konsep fungsi *legislative power*. Jenis penelitian disertasi ini adalah hukum normatif dengan teknik pengambilan data yaitu studi pustaka dan dilengkapi wawancara terhadap beberapa narasumber untuk melengkapi data sekunder. Pendekatan yang digunakan yaitu pendekatan perundang-undangan (*statute approach*), konseptual (*conceptual approach*), dan pendekatan kasus (*case approach*). Hasil penelitian yang dapat disimpulkan yaitu, 1) Kewenangan konstitusional DPR dalam pelibatan pengisian Hakim Agung dan Hakim Konstitusi sebagai upaya pemberdayaan dan penguatan lembaga legislatif merupakan bagian dari *the circle of democratization* pasca Orde Baru, wujud dari model protektif demokrasi dan sebagai bagian dari konsolidasi demokrasi melalui perubahan konstitusi; 2) Pelibatan DPR dalam pengisian jabatan Hakim Agung dan Hakim Konstitusi sesungguhnya merupakan bentuk *excessive authority of legislative basic functions*, suatu bentuk kekuasaan yang meluas dan melebihi kekuasaan dasar dari DPR sebagai lembaga legislatif. Bentuk *excessive authority of legislative basic functions* dari DPR dalam pengisian jabatan Hakim Agung dan Hakim Konstitusi karena DPR terlibat dari hulu hingga ke hilir. Di bagian hulu, DPR sebagai bagian dari MPR mendesain kelembagaan dan kewenangan hingga pengisian jabatan Hakim Agung dan Hakim Konstitusi melalui perubahan UUD Tahun 1945. DPR kemudian mengatur lebih lanjut melalui fungsi legislasi dalam Undang-Undang kekuasaan Kehakiman, Undang-Undang MA, Undang-Undang MK, Undang-Undang KY, dan Undang-Undang MPR, DPR, DPD, dan DPRD. Di bagian hilir, DPR terlibat untuk menentukan cara melakukan seleksi dan terlibat menentukan pejabat Hakim Agung dan Hakim Konstitusi sesuai mekanisme yang ditentukannya.

Kata Kunci: Dewan Perwakilan Rakyat, Hakim Agung, dan Hakim Konstitusi, Demokrasi, Konsolidasi Demokrasi, *Basic Legislative Functions*

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INVOLVEMENT OF THE HOUSE OF REPRESENTATIVES IN FILLING THE POSITION OF SUPREME COURT JUSTICES AND CONSTITUTIONAL COURT JUSTICES OF THE REPUBLIC OF INDONESIA ACCORDING TO THE INDONESIAN CONSTITUTIONAL SYSTEM POST-THE 1945 CONSTITUTION AMENDMENT

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Abstract

The involvement of House of Representative in filling of the supreme court justice and constitutional court justice position is a political process resulting a very determined whether or not a candidate passed in being a supreme court justice or a constitutional court justice. This involvement is needed to be analyzed scientifically since originally, the House of Representative is an institute functioned as legislature, budgetary, and supervisory. However, the Constitution amendment gives an attributive authority in filling of the supreme court justice and constitutional court justice position. The problems of this study as follows: 1. Why is The House of Representative involved in filling of The Supreme Court Justice and The Constitutional Court Justice Position? 2. Is the House of Representative's involvement in line with the concept of the function of the legislature? The objectives of this study as follows: 1. Identifying and elaborating the basic consideration of the involvement of the House of Representative in filling of the supreme court justice and constitutional court justice position based on the 1945 Constitution; 2. Identifying and elaborating the involvement of the House of Representative in filling of the supreme court justice and constitutional court justice position based on the legislative power function. The type of this study is normative legal research while the data collecting technique are by literature review and interview some sources in completion of secondary data. The approaches used are the statute approach, conceptual approach, and case approach. The results of the research as follows: 1) The constitutional authority of the House of Representatives in the involvement of Supreme Court Justices and Constitutional Justices as an effort to empower and strengthen legislative institutions is part of the circle of democratization after the New Order a manifestation of the democratic protective model and as part of democratic consolidation through changes to the constitution; 2) Involvement of the DPR in filling the positions of Supreme Court Justice and Constitutional Court Justice is actually a form of excessive authority of legislative basic functions, a form of power which extends and exceeds the basic power of the House of Representative as a legislative body. The excessive authority of the basic legislative functions of The House of Representative in filling the positions of Supreme Court Justices and Constitutional Court Justices because the House of Representative was involved from upstream to downstream. In the upstream part, the House of Representative designed the institutions and authorities to fill the positions of Supreme Court Justices and Constitutional Court Justices through amendments to the 1945 Constitution. In the downstream part, the House of Representative is involved in determining the method of selection and is involved in determining the officials of the Supreme Court Justices and Constitutional Justices in accordance with the mechanism determined by them.

Key words: The House of Representative, *DPR*, Supreme Court Justice, Constitutional Court Justice, Basic Legislative Functions.

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