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Constitutionality of Recall Regulations for Officials Elected by the House of Representatives

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Abstract
Efforts to disrupt the independence of state officials elected by the DPR did not stop at the time of the removal of the Constitutional Judge some time ago, rather the practice was again carried out undemocratically and then legitimized by law, commonly known as autocratic legalism, through the issuance of a revision of the DPR Regulation on Rules of Procedure. Therefore, the purpose of this study is to examine and analyze supervision from the perspective of administrative law and the constitutionality of DPR RI Regulation No. 1 of 2025. This research is a legal research using a statutory, conceptual, and case approach. This research is important to be carried out so that the implementation of judicial power, especially the Constitutional Court, remains an independent power and can uphold law and justice without intervention from any party. The results of this study indicate that the regulation of recall of state officials elected by the DPR from the perspective of administrative law supervision cannot be justified. In addition, DPR RI Regulation No. 1 of 2025 has the potential to violate the provisions of higher laws and regulations, the theory of the hierarchy of laws and regulations, the theory of independence, the theory of authority, the theory of separation of power, and the Constitutional Court Decision Number 103/PUU-XX/2022.

Introduction

The People's Representative Council (hereinafter referred to as the DPR) is one of the state institutions explicitly mentioned in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the UUD NRI 1945).[1] This is then often referred to as a constitutional state organ in the development of State Administrative Law.[2] As one of the state institutions explicitly mentioned in the UUD NRI 1945, the DPR has three

[1] Baharuddin Riqiey and Syofyan Hadi, 'Constitutional Imperatives: Examining the Urgency of Term Limits for Members of the House of Representatives' (2023) 17 Mimbar Keadilan 1-16. https://doi.org/10.30996/mk.v17i2.9635.

[2] Ahmad Zaini and Moh Zainor Ridho, 'The Auxiliary State Organ Authorities in Indonesia: The Constitutional Implications of Law No. 19 of 2019 Concerning KPK' (2023) 27 Potret Pemikiran 185, https://doi.org/10.30984/pp.v27i2.2784; Iwan Satriawan and Khairil Azmin Mokhtar, 'The Role of Indonesian Constitutional Court in Resolving Disputes among the State Organs' (2019) 5 Hasanuddin Law Review 159, https://doi.org/10.20956/halrev.v5i2.1669.

functions as stated in Article 20A paragraph (1) of the UUD NRI 1945.[3] One of these is the supervisory function. This article is historically the fruit of the second amendment to the UUD NRI 1945.[4] The changes made to these provisions are aimed at further clarifying the function of the DPR. Therefore, the provisions of Article 20A paragraph (1) of the 1945 Constitution of the Republic of Indonesia specifically explain that the DPR has legislative, budgetary and supervisory functions.

By being given the supervisory function, the DPR can implement this function in various matters. For example, the DPR can provide an opinion in the form of an impeachment proposal against the President and/or Vice President if it is deemed to violate the provisions of Article 7A of the UUD NRI 1945.[5] Then, the DPR can carry out its supervisory function over the implementation of laws as stated rigidly in Article 22D paragraph (3) of the UUD NRI 1945. Moreover, it is only right and proper that the DPR should not use the excuse of its supervisory function to benefit itself, either institutionally or personally.

For example, dismissing Constitutional Justice Aswanto before his term of office ends according to the law on political grounds.[6] Such a practice certainly cannot be justified rationally and normatively.[7] There is even a Constitutional Court Decision,

[3] Baharuddin Riqiey and Muhammad Ahsanul Huda, 'Interpreting Article 22(2) of the 1945 Constitution of the Republic of Indonesia Post Constitutional Court Decision 54/PUU-XXI/2023' (2024) 4 Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal 24, https://doi.org/10.15294/ipmhi.v4i1.76687.

[4] Sugiman, 'Fungsi Legislasi DPR Pasca Amandemen UUD NKRI 1945' (2020) 10 Jurnal Ilmiah Hukum Dirgantara, https://doi.org/10.35968/jh.v10i2.468.

[5] H. Muhamad Rezky Pahlawan Mp, 'Legal Certainty on Impeachment of the President and/or Vice President Judging from the 1945 Constitution' (2022) 1 East Asian Journal of Multidisciplinary Research 1611, https://doi.org/10.55927/eajmr.v1i8.1296; Syofina Dwi Putri Aritonang, Muchamad Ali Safa'at and Riana Susmayanti, 'Human Rights and Democracy: Can the President's Constitutional Disobedience Be Used as Grounds for Impeachment?' (2024) 3 Human Rights in the Global South (HRGS) 1 <https://journal.sepaham.or.id/index.php/HRGS/article/view/80>; H Muhamad Rezky Pahlawan Mp, 'The Constitutional Court Function of the Indonesian State Concerning System for the Implementation Impeachment of the President and/or Vice President' (2020) 4 Jurnal Hukum Volkgeist 118, https://doi.org/10.35326/volkgeist.v4i2.496.

[6] Ardhito Ramadhan and Sabrina Asril, 'Aswanto Dicopot DPR Gara-gara Batalkan UU, Jimly: Hakim MK Bukan Orang DPR' (*Kompas.com*, 2022) <https://nasional.kompas.com/read/2022/10/01/20330441/aswanto-dicopot-dpr-gara-gara-batalkan-uu-jimly-hakim-mk-bukan-orang-dpr>.

[7] 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' (2022) 12 no 3 *Indonesia Law Review*, https://scholarhub.ui.ac.id/ilrev/vol12/iss3/1/; Alsyam Alsyam, 'Kewenangan Dewan Perwakilan Rakyat Dalam Penggantian Hakim Konstitusi Yang Berasal Dari Usulannya Dalam Masa Jabatan' (2024) 6 UNES Law Review 6903, https://doi.org/10.31933/unesrev.v6i2.1574.

namely Constitutional Court Decision Number 103/PUU-XX/2022, which explicitly states that such practices should not be repeated in the future. Although historically the Constitutional Court Decision is problematic, because it contains a change in phrase from the original "Thus" (the phrase uttered in the trial) to "In the future" (the phrase in the copy of the decision) which has implications for the constitutionality of the dismissal of Constitutional Justice Aswanto, the existence of this decision can at least be used as a basis and reminder for the proposing institution (especially the DPR) not to carry out such unconstitutional state practices.[8]

The DPR's efforts to disrupt the independence of the Constitutional Court did not stop there, the following efforts were still carried out secretly. For example, the DPR revised the Constitutional Court law, by including an article that would allow the DPR to recall the proposed Constitutional Justices. However, in the latest developments, these efforts were held back due to public rejection. Oddly enough, these efforts appear to have been carried out again by trying to include them in the Regulation of the People's Representative Council of the Republic of Indonesia Number 1 of 2025 concerning Amendments to the Regulation of the People's Representative Council of the Republic of Indonesia Number 1 of 2020 concerning Rules of Procedure (hereinafter referred to as DPR RI Regulation No. 1 of 2025). This regulatory model in legal studies is usually known as autocratic legalism, namely that the law is used as justification for the interests of certain people or groups.

This time, the DPR is trying as hard as possible to hide behind its supervisory function as mandated by Article 20A paragraph (1) of the 1945 Constitution of the Republic of Indonesia to conduct evaluations and very likely to recall all officials who have gone through the fit and proper selection process in the DPR (such as Constitutional Justices, Governor of Bank Indonesia, Chief of Police, etc.). This then raises questions in Constitutional Law and Legislation, whether the practice as stated in Article 228A

[8] Muhammad Fuad Hassan and Anita Zulfiani, 'Pelanggaran Kode Etik Dan Perilaku Hakim Konstitusi Dalam Tindakan Merubah Substansi Putusan Secara Tidak Sah (Studi Putusan Majelis Kehormatan Mahkamah Konstitusi No.01/MKMK/T/02/2023)' (2023) 6 Ranah Research : Journal of Multidisciplinary Research and Development 21, Doi: 10.38035/rrj.v6i1.792; Arfiani, Ilhamdi Putra and Afdhal Fadhila, 'Pelanggaran Etik Hakim Konstitusi Dan Rekomendasi Penegakan Hukum Pada Kasus Pemalsuan Putusan' (2024) 7 Unes Journal of Swara Justisia 1234, https://doi.org/10.31933/ujsj.v7i4.436.

of DPR RI Regulation No. 1 of 2025 can be justified. The reason is that such practices are considered inconsistent with the theory of independence, the theory of authority, the theory of separation of powers, the theory of the hierarchy of statutory regulations (Stufenbau Der Rechtsordnung), and the Decision of the Constitutional Court Number 103/PUU-XX/2022).

Therefore, this study intends to comprehensively examine and analyze the Constitutionality of the Recall Regulations for Officials Elected by the House of Representatives, which includes a discussion of supervision from the perspective of administrative law and the constitutionality of DPR RI Regulation No. 1 of 2025. Thus, through this study, it is hoped that it can be a reference for policymakers in formulating a policy. Thus, what is expected from the issuance of a policy is a policy that can benefit society at large, not as a basis for smoothing political agendas that will be carried out next.

This research has a fairly high value of originality and novelty since, to date, no one has researched the Regulation of the Indonesian House of Representatives No. 1 of 2025, either in the context of legal research or other types of research. Therefore, this research can be said to have a fairly high value of originality and novelty in the context of the development of legal science, especially Constitutional Law.

Research Method

This legal research method is a type of normative legal research.[9] The approach methods used are the statutory, conceptual, and case approaches. Meanwhile, the legal materials used are primary legal materials and secondary legal materials. Primary legal materials are collected using the inventory and categorization method, while secondary legal materials are collected using the literature search method. Primary legal materials and secondary legal materials that have been collected are then identified, classified, and systematized according to their sources and hierarchies. After that, all legal materials are reviewed and analyzed using legal reasoning with the deductive method.[10]

[9] Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana 2021).

[10] Irwansyah and hmad Yunus, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (Mirra Buana Media 2020).

Supervisory Function in the Perspective of Administrative Law

Administrative law is a branch of law that is known by several foreign terms with various terms, including "Administratiefrecht" (Netherlands),[11] "*Bestuur recht*" (Netherlands),[12] "*Administrative Law*" (English),[13] "*Droit Administratif*" (French), and "*Verwaltungsrecht*" (German). The word administration itself comes from Latin, namely "ad + ministrare" which means to provide services, help, support, or fulfill. The word "ad" has the same meaning as the word "to" in English, While the word "ministrare" has the same meaning as the term to serve or to conduct, namely "to serve," "to help," or "to direct".

The many terms as described above also occur in the Indonesian academic world. This is seen in Indonesia, where many people refer to administrative law with the following terms: Indonesian State Administrative Law,[14] Indonesian State Administrative Law,[15] State Administrative Law,[16] State Administrative Law,[17] Administrative Law,[18] Indonesian Administrative Law,[19] and this contemporary development is called Government Administration Law. Philipus M. Hadjon and others conclude that the correct term is "administrative law" (without the word state) on the grounds that the term "administration" itself already contains the meaning of "state administration".[20]

One of the studies in administrative law is studying supervision. In administrative law, the purpose of supervision is divided into two, namely the purpose as a preventive

[11] This term was used by Prof. Mr. W.G. Vegting in his book entitled Het Algemeen Nederlands Administratief Recht, 1954. See his book Utrecht, *Pengantar Hukum Administrasi Negara Indonesia* (Pustaka Tinta Mas 1986) 8.

[12] As stated by Utrecht, this term is used, among others, by Samson, *Nederlandsh Bestuursrecht*, 1934, 1953; Prof Mr G.A. van Poelje, *Inleiding tot het bestuursrecht*, 1937, 1956; Prof Mr. G.J. Wearda, *De Wetenschap van het bestuursrecht en de spanning tussen gezag en gerechtigheid*. Lihat bukunya Utrecht, *ibid*.

[13] William F Fox Jr, *Understanding Administrative Law* (Matthew Bender & Company, Inc 2000).

[14] E Utrecht, *Pengantar Hukum Administrasi Negara Indonesia* (Pustaka Tinta Mas 1986); Bachsan Mustafa, *Pokok-Pokok Hukum Administrasi Negara* (Citra Aditya 1990).

[15] Prins W. F, *Inleiding in het Administratefrecht van Indonesia* (JB Wolters 1950).

[16] Djenal Hoesen Koesoemahatmadja, *Pokok-Pokok Hukum Tata Usaha Negara* (Alumni 1979).

[17] Prajudi Atmosudirdjo, *Hukum Administrasi Negara* (Ghalia Indonesia 1981).

[18] Kuncoro Purbopranoto, *Catatan Hukum Tata Pemerintahan dan Peradilan Administrasi Negara* (Alumni 1981); H Faried Ali dan Nurlina Muhidin, *Hukum Tata Pemerintahan-Heteronom dan Otonom* (Refika Aditama 2012); Soehino, *Asas-asas Hukum Tata Pemerintahan* (Liberty 1984).

[19] Philipus M.Hadjon and others., *Pengantar Hukum Administrasi Indonesia* (cet IX, Gadjah Mada University Press 2005).

[20] ibid.

effort and the purpose as a repressive effort.[21] The purpose of supervision as a preventive effort is basically used as an effort to avoid errors, while the purpose of supervision as a repressive effort is used as an effort to correct if there is an error.[22] The supervisory function held by the DPR as stated in Article 20A paragraph (1) of the UUD NRI 1945 basically also has two objectives as above. However, in certain cases the DPR only exists in a preventive supervisory position.

For example, Article 228A of the DPR RI Regulation No. 1 of 2025. This article essentially tries to get out of the ontology of the DPR's supervisory function as mandated by Article 20A paragraph (1) of the UUD NRI 1945. This is because the presence of Article 228A of the DPR RI Regulation No. 1 of 2025 is not part of the supervision as mandated by Article 20A paragraph (1) of the UUD NRI 1945 but rather a trick by the DPR which is suspected of being used to provide a smooth path for certain political agendas. Through the provisions of Article 228A of the DPR RI Regulation No. 1 of 2025, it clearly provides legitimacy to the DPR to recall candidates determined through a plenary meeting. Meanwhile, these positions are independent.[23] This means that once it has been determined by the DPR, no one can intervene or make a recall if it is deemed to be detrimental to the institution that proposed it.[24]

When talking about the purpose of the administrative function in administrative law as described above, in this case the DPR still has the authority to carry out the supervisory function as mandated by Article 20A paragraph (1) of the 1945 NRI Constitution. However, this supervisory function is only limited to preventive measures, namely it is used to prevent errors in choosing positions through fit and proper means

[21] Hufron dan Syofyan Hadi, *Tanggung Gugat Pemerintah & Perlindungan Hukum Bagi Rakyat* (Jejak Pustaka 2022).

[22] Muhammad Iqbal N, Randy Aulia N, and M Rafly Ashari, 'Implementasi Pengawasan Legislatif (Pengawasan Terhadap Kebijakan Infrastruktur Jalan Provinsi Tahun 2020)' (2022) 8 Moderat : Jurnal Ilmiah Ilmu Pemerintahan 303.

[23] Nur Rizkiya Muhlas, Muchamad Ali Safa'at and Indah Dwi Qurbani, 'Quo Vadis The Legal Politics Of Filling Constitutional Judge Positions In Indonesia' (2023) 3 IBLAM LAW REVIEW 23, https://doi.org/10.52249/ilr.v3i2.128 ; Carissa Patricia Hong and others, 'Review of the Authority of the House of Representatives in Removing Constitutional Court Judges' (2023) 2 QISTINA: Jurnal Multidisiplin Indonesia 768, https://doi.org/10.57235/qistina.v2i1.472 ; Rio Aldino Yosevan Silalahi, 'Kedudukan Jaksa Agung Dalam Perspektif Independensi Penyelenggara Kekuasaan Kehakiman' (2024) 7 Transparansi Hukum 22.

[24] Titon Slamet Kurnia, 'Recall Aswanto: Tertutupnya Ruang Disagreement Antara Pembentuk Undang-Undang Dan Mahkamah Konstitusi' (2023) 7 Refleksi Hukum: Jurnal Ilmu Hukum 143, https://doi.org/10.24246/jrh.2023.v7.i2.p143-162.

in the DPR. This is a form of DPR supervision in that context. However, if it is said that Article 228A of DPR RI Regulation No. 1 of 2025 is part of the DPR's supervisory function, then this is a mistake. In fact, this provision clearly contradicts the provisions of higher laws and regulations, contradicts the theory of independence, the theory of authority, the theory of separation of power, and the Constitutional Court Decision Number 103/PUU-XX/2022 which will be explained in more detail in the following sub-discussion.

In practice, the implementation of supervision in administrative law is also divided into two, namely external supervision and internal supervision. In simple terms, external supervision is carried out outside the government, while internal supervision is carried out by the government. The supervisory function held by the DPR as referred to in Article 20A paragraph (1) of the 1945 NRI Constitution is essentially carried out internally, namely by the government. However, if the DPR as one of the state institutions explicitly mentioned in the 1945 NRI Constitution is suspected of committing deviations from state practice, then in reality the DPR can be supervised by the government internally (in this case the judiciary or judicial institution) and externally, namely by the people who are categorized as supervisors outside the government.

The presence of DPR RI Regulation No. 1 of 2025 needs special attention. Without a supervisory mechanism for the DPR, political goals that are suspected of benefiting certain groups will run smoothly. These allegations do not only benefit certain groups, but will also damage the Indonesian constitutional order. Therefore, the DPR in this case needs to receive internal supervision by the judicial institution, even though a judicial review must be carried out first at the Supreme Court or a demonstration or hearing can also be held by the people against the DPR.[25] This aims to ensure that at least the DPR can carry out its constitutional duties and authorities in accordance with the mandate it has been given.

Supervision in administrative law is an important aspect to ensure that all government actions are in accordance with applicable regulations and do not harm the public interest. In this context, supervision can be distinguished based on time

[25] Airlangga Gama Shakti, Maharani Wicahyaning Tyas and M Lutfi Rizal Farid, 'The Integration of Judicial Review in Indonesia' (2023) 6 Syiah Kuala Law Journal 212.

into two categories: a priori and a posteriori.[26] Both have different roles and functions in maintaining justice and legal certainty, as well as in increasing government accountability.

A priori supervision is carried out before administrative action is taken. The aim is to prevent abuse of authority or decisions that are not in accordance with the law. In practice, this supervision often involves a licensing process, where government agencies must give approval before an activity can be carried out. For example, in infrastructure development, a priori supervision ensures that the plan has followed established procedures, including feasibility studies, environmental impact assessments, and public consultations. In this way, potential conflicts and problems in the field can be minimized before the project begins.

Meanwhile, a posteriori supervision is carried out after administrative actions have been implemented. This type of supervision aims to assess whether the actions have been implemented in accordance with existing regulations and to determine whether any violations have occurred. A posteriori supervision often involves audits, evaluations, and supervision by authorized institutions. For example, after an infrastructure project is completed, the government may conduct an evaluation to assess the social and environmental impacts of the project. If significant violations or negative impacts are found, corrective measures can be taken to address the problem.

These two types of supervision complement each other and have their own advantages. A priori supervision provides preventive protection, so that potential problems can be avoided early on. On the other hand, a posteriori supervision provides an opportunity to make corrections and improvements after the action has been taken. In the context of administrative law, it is important to have a balance between these two types of supervision in order to create a transparent and accountable system. Without adequate supervision, government actions risk being inconsistent with the principles of law and justice.

[26] Bagus Anwar, 'Rekonstruksi Pengawasan Etik Hakim Mahkamah Konstitusi Dalam Perspektif Hukum Administrasi Negara' (2021) 1 Staatsrecht: Jurnal Hukum Kenegaraan dan Politik Islam <https://ejournal.uin-suka.ac.id/syariah/Staatsrecht/article/view/2374>.

The birth of Article 228A of the DPR RI Regulation No. 1 of 2025 which regulates the recall mechanism for positions elected through a fit and proper test in the DPR has raised debate about its essence in the context of supervision.[27] Although this article is intended to provide control over elected officials, many argue that this regulation is not an appropriate form of supervision, either a priori or a posteriori. A priori supervision focuses on prevention before a decision is taken, while a posteriori supervision assesses actions afterward. In this case, recall is more directed at reactive actions that are not in accordance with a systematic supervision framework.

Furthermore, criticism of Article 228A of DPR RI Regulation No. 1 of 2025 also includes its constitutionality aspect. Many legal experts argue that this norm can be considered unconstitutional because it has the potential to violate the basic principles of democracy and individual rights. Recall of elected officials can cause instability in government and damage public trust in the election process. In addition, this mechanism can be misused by certain parties for political interests, which will ultimately create uncertainty in public office and disrupt effective government functions.

In this context, Article 228A should be viewed as a more political norm than an objective oversight tool. Rather than contributing to increased accountability and transparency, this regulation can create space for conflicts of interest and political manipulation. Therefore, it is important to conduct a thorough evaluation of the impact and implications of this article, and to seek alternative solutions that are more in line with the principles of law and democracy. With the right approach, it is hoped that the process of monitoring public officials can be carried out more effectively without damaging the stability and integrity of the government system.

In contrast to preventive oversight mechanisms, the courts, especially the Supreme Court, function as a posteriori oversight institutions. In this context, the Supreme Court has the authority to assess the validity and constitutionality of a regulation, including Article 228A of the DPR RI Regulation No. 1 of 2025. If the article is deemed to be contrary

[27] Machradin Wahyudi Ritonga and Nikolaus Harbowo, 'Revisi Tatib DPR Buat Ruang Politik Indonesia Berantakan' (*kompas.id*, 2025) <https://www.kompas.id/artikel/revisi-tatib-dpr-buat-ruang-politik-indonesia-berantakan>.

to higher legal principles, such as the constitution or higher laws and regulations, the Supreme Court has the right to annul it. This kind of oversight is very important to ensure that all legislative actions remain within the established legal framework, as well as to protect individual rights and public interests.

Courts may also consider aspects such as the theory of separation of powers, which emphasizes the importance of dividing powers between the legislative, executive and judicial branches.[28] If Article 228A is deemed to violate these principles, it could lead to instability in the governance structure and law enforcement. Thus, the Supreme Court's decision to strike down the article would reflect a commitment to the rule of law and democratic principles. Through this oversight process, the courts not only serve as law enforcers, but also as guardians of constitutional values and social justice in the governance system.

In addition to the supervision being divided by object, and others, supervision in administrative law can also be distinguished based on its object, namely into two main categories: supervision from a legal perspective and supervision from a benefit perspective. These two types of supervision have different approaches and objectives, but both complement each other in maintaining justice and accountability in government. Supervision from a legal perspective focuses on compliance with applicable legal regulations and provisions. This includes evaluation of administrative decisions, decisions of public officials, and policies taken by the government. In this case, supervisory institutions, such as the Ombudsman or the Supreme Court, have an important role in enforcing compliance with the law. This supervision aims to prevent abuse of authority and ensure that government actions do not violate individual rights or higher legal norms. Thus, supervision from a legal perspective helps create a transparent and accountable government system.

Meanwhile, monitoring from the perspective of benefits focuses on the impacts and outcomes resulting from government actions. This involves assessing whether the policies and programs implemented actually provide benefits to the community.

[28] Eoin Carolan, *The New Separation of Powers : A Theory for the Modern State* (Oxford University Press 2009) <https://academic.oup.com/book/12777>.

This type of monitoring often involves analyzing the effectiveness and efficiency of the program, as well as the social and environmental impacts of the policies taken. In this context, community participation is very important, because they are the parties who feel the most impact from the policy. By involving the community in the monitoring process, the government can obtain valuable feedback to improve the quality of existing policies and programs.

In the context of the birth of Article 228A of the DPR RI Regulation No. 1 of 2025 which regulates the recall mechanism for positions elected through a fit and proper test, it raises major questions regarding its status as a supervisory instrument. Although this article seems to aim to provide control over public officials, in essence, this recall mechanism is not included in the category of supervision in terms of law or benefit. From a legal perspective, this norm has the potential to violate the basic principles of the constitution, such as the separation of authority and independence of state institutions, which should be guidelines for implementing good governance.

Furthermore, from the perspective of utility, Article 228A does not provide the expected positive impact in state administration practices. On the contrary, this recall mechanism can create uncertainty and instability in government, because elected officials may face excessive political pressure. This can disrupt their function and performance in carrying out their duties, which should be focused on public service. Therefore, instead of providing benefits to the community, this article has the potential to bring harm, including reducing public trust in the democratic process.

In this context, it is important to realize that effective supervision should not only focus on norm-making, but also on implementation in line with legal principles and democratic values. The birth of Article 228A appears to be more of a political move than an objective oversight tool. Therefore, an in-depth evaluation of the impact of this article is essential to ensure that the state system continues to function well, without sacrificing the basic principles that are the foundation of democracy and law in Indonesia.

Constitutionality of Article 228A of DPR RI Regulation No. 1 of 2025

Constitutionality refers to the conformity of a norm, law, or government action with the principles and provisions stated in a country's constitution. In this context, constitutionality is essential to maintain the supremacy of law and protect human rights, as well as ensuring that all government actions remain within the framework set out in the constitution. The assessment of constitutionality is often carried out by a judicial institution, such as the Constitutional Court, which has the authority to annul norms or actions deemed to be in conflict with the constitution. Thus, constitutionality serves as a guarantee that every public policy and action is not only legally valid, but also in accordance with the values of democracy and justice expected by society.

The constitutionality of Article 228A of DPR RI Regulation No. 1 of 2025 is an important issue that requires serious attention, considering its impact on the structure of government and state practices in Indonesia. This article regulates the recall mechanism for officials elected through a fit and proper test in the DPR, which is basically aimed at increasing accountability and as a form of DPR supervision as stated in the considerations of DPR RI Regulation No. 1 of 2025. However, the question arises whether this regulation is in accordance with the principles of the constitution that regulate the separation of powers and individual rights. In this context, the analysis of the constitutionality of this article must consider various relevant legal aspects, including:

1. Article 228A of DPR RI Regulation No. 1 of 2025 has the Potential to Violate Provisions of Higher Legislation

   Analysis of Article 228A of DPR RI Regulation No. 1 of 2025 shows the potential for violations of higher statutory provisions, especially in the context of evaluating Constitutional Court (MK) judges. This article, which regulates the recall mechanism for officials selected through a fit and proper test, can create uncertainty and political pressure on Constitutional Court judges, who should work independently. As one of the institutions proposing the Constitutional judge, the DPR can submit a recall in this context. The proposal or discussion regarding the recall refers to the provisions of Article 228A paragraph (2) of the DPR RI Regulation No. 1 of 2025 submitted by the commission conducting the evaluation to the DPR leadership for follow-up in

accordance with the applicable mechanism. This has the potential to conflict with Article 24 paragraph (1) of the 1945 NRI Constitution, which emphasizes that judicial power is an independent power and may not be interfered with by other powers.[29]

With the provision of recall in Article 228A of DPR RI Regulation No. 1 of 2025, MK judges may face a situation where their independence is threatened by political intervention.[30] In this context, the independence of judges becomes very important to maintain justice and objectivity in deciding cases. The existence of a mechanism that allows the dismissal of judges based on pressure from certain parties can lead to a decline in the integrity of the judicial institution. This clearly has the potential to violate the basic principles stipulated in the constitution, which emphasizes the importance of the separation of powers and protection of the judicial institution.

Law Number 48 of 2009 concerning Judicial Power also emphasizes the importance of an independent judiciary. In this law, it is emphasized that judges may not be intimidated or influenced by any party in carrying out their duties. Therefore, Article 228A of the DPR RI Regulation No. 1 of 2025, which provides space for the assessment and dismissal of MK judges based on subjective assessments from other parties, can be considered a violation of this provision. If judges feel threatened by the possibility of a recall, they may tend to make more conservative decisions or follow the political current, which will harm the principle of justice.

The recall mechanism regulated in Article 228A of DPR RI Regulation No. 1 of 2025 can also reduce public trust in the judicial institution. An independent and objective judiciary is essential to creating public trust in the legal system. If the public sees the potential for political intervention in law enforcement, this can lead to dissatisfaction and skepticism toward the decisions taken by judges. The long-term

[29] Priandita Koswara and Megawati Megawati, 'Analisis Prinsip Independensi Hakim Konstitusi Di Indonesia' (2023) 3 Ahmad Dahlan Legal Perspective 47, https://doi.org/10.12928/adlp.v3i1.7902 ; Tomi Agustian and Choirul Salim, 'The Problems of the Independence of Judicial Power in Indonesia in a Review of Islamic Law' (2022) 6 Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam 163, https://doi.org/10.25217/jm.v6i2.1896.

[30] Wayan Karya, 'Eksekusi Sebagai Mahkota Lembaga Peradilan' (2023) 4 Jurnal Tana Mana 292; Muhammad Fawwaz Farhan Farabi and Tanaya, 'Polemik Legalitas Pemecatan Hakim Konstitusi Oleh Lembaga Pengusul: Tinjauan Kasus Pemecatan Hakim Aswanto Dan Implikasinya Terhadap Kemandirian Kekuasaan Kehakiman' (2023) 2 Jurnal Hukum dan HAM Wara Sains 294.

consequences of this can be very detrimental, including reducing the legitimacy of the judicial institution in carrying out its functions.

2. Article 228A of DPR RI Regulation No. 1 of 2025 has the Potential to Violate the Theory of the Hierarchy of Legislation

The Hierarchy Theory of Legislation, known as the Stufenbau Theory, is a concept that explains the structure and order of legal norms in a legal system. This theory classifies laws and regulations based on their level, where each legal norm has a clear position and must be subject to higher norms. In Indonesia, this hierarchy starts from the 1945 Constitution as the highest norm, followed by laws, government regulations, regional regulations, and so on. With this hierarchy, each lower regulation cannot contradict the higher one, thus creating legal certainty and stability in the legal system.

Stufenbau Theory also emphasizes the importance of consistency and harmony between various legal norms. Any changes or additions to norms must be made by considering the position and standing of existing norms in the hierarchy. This is important to prevent legal conflicts and ensure that every policy or regulation implemented has a strong legal basis. Thus, this theory plays a vital role in maintaining the integrity and effectiveness of the legal system, as well as ensuring that all government and legislative actions remain within the applicable legal corridor.

In the context of the analysis of Article 228A of the DPR RI Regulation No. 1 of 2025, it shows the potential for violations of the theory of the hierarchy of laws and regulations, especially in the context of regulating the content of the material which should be limited to the internal legislative institution. As an internal regulation, the DPR Regulation should be binding and not regulate matters that exceed legislative authority, such as the recall mechanism for public officials. This regulation not only violates the principle of the legal hierarchy, but can also create confusion in the implementation of law in Indonesia.

The theory of the hierarchy of legal regulations asserts that every legal norm has a clear position in the legal order. The 1945 Constitution and other laws provide clear guidelines regarding the separation of powers and the procedures for supervision of

public officials. When the DPR Regulation attempts to regulate the recall mechanism, this has the potential to conflict with the provisions regulated by higher laws, which should handle this matter. Therefore, Article 228A can be considered a norm that is inconsistent with the principle of the existing hierarchy of regulations.

The regulation on recall in Article 228A not only violates the hierarchy of regulations, but can also disrupt the stability of the state system. The external mechanism, regulated in the internal regulations of the DPR, can create the impression that the legislative institution is trying to expand its authority beyond the established limits. This damages public trust in the DPR as an institution that should function to supervise and regulate the government, not create legal uncertainty that can harm public officials.

The hierarchical implications related to the existence of Article 228A of the DPR RI Regulation No. 1 of 2025, which is contrary to the 1945 Constitution of the Republic of Indonesia and the regulations above it, are very significant in the context of the Indonesian legal system. In a hierarchical legal order, the 1945 Constitution of the Republic of Indonesia as the state constitution has the highest position, so that every law, including the internal regulations of the DPR, must be in accordance with and not contradict the norms that have been set out in the Constitution. If Article 228A is declared contrary to the Constitution, then the article automatically becomes invalid and can be sued through the mechanism of testing regulations under the law against the law at the Supreme Court.[31] This shows the importance of compliance with the principle of the supremacy of law in ensuring justice and protecting constitutional rights.

The recall mechanism stipulated in Article 228A is not only contrary to the hierarchy of regulations, but also contrary to common constitutional practices. In many legal systems, the mechanism for dismissing public officials is usually regulated in detail in the law and cannot be regulated arbitrarily in internal regulations. This

[31] Tria Sutrisna and Dani Prabowo, 'Revisi Tatib DPR Digugat Ke MA, Dianggap Tak Sesuai Fungsi Pengawasan' (*Kompas.com*, 2025) <https://nasional.kompas.com/read/2025/02/24/20004461/revisi-tatib-dpr-digugat-ke-ma-dianggap-tak-sesuai-fungsi-pengawasan?page=all>.

is important to ensure that the dismissal process is fair and transparent. With the inappropriate provisions in Article 228A, the potential for abuse of authority and politicization of public officials becomes greater.

3. Article 228A of DPR RI Regulation No. 1 of 2025 has the Potential to Violate the Theory of Independence

The theory of independence, in the context of law and state administration, refers to the principle that state institutions, especially the judiciary, must operate independently without interference from other powers. This principle is very important to maintain fairness and objectivity in the legal process, where judges and judicial officials must be able to make decisions based on existing laws and facts, without pressure from outside parties, be it from the government, politicians, or interest groups. Thus, the independence of the judiciary contributes to the creation of public trust in the legal system.

The theory of independence also emphasizes the importance of protecting individual rights. In a good legal system, every individual has the right to receive fair and impartial treatment before the law. When the judiciary operates independently, it can better protect these rights, make fair decisions, and uphold justice without considering political or economic interests. This independence also serves to prevent abuse of power by other institutions, thus maintaining balance in the system of government.

Analysis of Article 228A of DPR RI Regulation No. 1 of 2025 shows that this provision has the potential to violate the theory of independence, especially in the context of supervision of public officials such as Constitutional Court judges. This article regulates the recall mechanism which gives the DPR the authority to revoke the trust of officials elected through a fit and proper test. With this mechanism, judges who should operate independently can be influenced by political pressure, which directly interferes with their independence in carrying out their duties.

The independence of the judiciary is a basic principle in a democratic legal system. The theory of independence emphasizes that judges should be able to make decisions without any influence from outside parties, including the legislature. When

the DPR has the authority to conduct a recall, this creates the potential for political intervention in the judicial process. Judges may feel pressured to make decisions that are more in line with certain political interests, rather than based on law and facts, which has the potential to damage the integrity of the judicial system.

The recall mechanism in Article 228A can create legal uncertainty for public officials. Judges who know that they can be recalled by the DPR may tend to avoid controversial or unpopular decisions, even though the decision may be legally correct. This uncertainty will reduce the courage of judges to uphold justice, and ultimately, the public will lose confidence in the judicial system. The independence of judges is very important to maintain the integrity of the law and provide protection for individual rights.

The provisions in Article 228A also have the potential to damage the balance of power between the legislative and judicial institutions. The theory of independence emphasizes the importance of the separation of powers to prevent abuse of authority. When the DPR has the authority to recall judges, this creates an incompatibility with the principle of separation of powers, where the legislative institution should not be able to intervene in the judicial process. Thus, the potential to damage the independence of the judicial institution becomes increasingly real.

4. Article 228A of DPR RI Regulation No. 1 of 2025 has the Potential to Violate the Theory of Authority

The theory of authority is a concept that explains the legitimacy and limits of power held by institutions or individuals in carrying out their duties and responsibilities. This theory emphasizes the importance of clear regulations regarding who has the authority to make decisions in the context of government and public administration. In the legal system, authority is often regulated in laws, which provide guidelines on the limits and scope of an institution's power, thus preventing abuse of authority.

In the context of government, the theory of authority is also related to the principle of separation of powers, where each branch of government, the executive, legislative, and judicial, has different powers and supervises each other. This separation aims

to maintain a balance of power and prevent the dominance of one institution over another. With clear regulations regarding authority, each institution can carry out its functions effectively without disrupting or interfering with the authority of other institutions, which in turn supports stability and justice in the government system.

The theory of authority also emphasizes the importance of accountability in decision-making. Every action taken by an authorized institution or individual must be accountable, both to the public and to the law. This creates transparency and public trust in government institutions. When authority is exercised in accordance with legal and ethical principles, the legitimacy of the decisions taken will be stronger, and the public will respect and support the existing government system more.

Analysis of Article 228A of the DPR RI Regulation No. 1 of 2025 shows the potential for violations of the theory of authority, especially in the context of regulating the DPR's right to recall public officials such as Constitutional Court judges. The theory of authority emphasizes that every institution or individual must act within the limits of power that have been determined by law. In this case, the regulation of recall should be the realm of a higher law, not an internal regulation issued by the DPR. However, within the limits of reasonable reasoning, according to the author, the regulation of recall of positions that are inherently independent should not be regulated.

The legitimacy of the DPR's authority to recall judges is highly questionable. According to the principle of separation of powers, the legislative body should not have the authority to intervene in the decisions of the judiciary. When the DPR regulates the recall mechanism, this has the potential to violate the limits of authority that have been set out in the constitution and laws. Thus, Article 228A can be seen as an action that is inconsistent with the principles of authority that apply in the Indonesian legal system.

The provisions in Article 228A can create legal uncertainty for public officials. If judges feel that their positions can be threatened by the DPR's decision, they may think twice before making bold or unpopular decisions. This can lead to evasion of their duty in upholding justice, which should be the top priority. This uncertainty is

detrimental not only to judges, but also to the public who depend on objective and impartial justice.

The recall regulation in Article 228A can create potential abuse of authority by the DPR. The theory of authority emphasizes that every action must be within the limits permitted by law. By giving the DPR the authority to revoke the confidence of judges, there is a risk that the legislative institution can use this power for political interests, not for justice. This has the potential to damage the integrity and independence of the judicial institution, which should be protected from interference by other powers.

According to Bruce Ackerman, excessive political intervention can damage public trust in state institutions, because such actions can be seen as an attempt to prioritize certain political interests over public interests. When the DPR does not carry out its legislative function transparently and accountably, this can erode the legitimacy of the institution and create skepticism among the public toward the democratic process, which ultimately has a negative impact on political and social stability.[32]

5. Article 228A of DPR RI Regulation No. 1 of 2025 has the Potential to Violate the Separation of Power Theory

The theory of separation of powers is a principle that governs the distribution of power within a country to prevent abuse of power and ensure a balanced system of government. This theory, proposed by political thinkers such as Montesquieu, divides state power into three main branches: executive, legislative, and judicial. With each branch having different functions and powers, this separation aims to create a system of checks and balances, where each branch can monitor and limit the power of the other branches.

In practice, the separation of powers requires that each branch of government act independently and not interfere with each other. The executive branch is responsible for implementing laws, the legislative branch is responsible for making and passing laws, and the judiciary is responsible for interpreting and enforcing laws.

[32] Bruce Ackerman, 'The New Separation of Powers' (2000) 113 Harvard Law Review 633 <https://www.jstor.org/stable/1342286>.

With these limitations, it is hoped that every government action can be carried out with accountability and transparency, and reduce the risk of tyranny or domination by one branch of government. The separation of powers also creates space for public participation and public oversight of government actions.

The importance of the theory of separation of powers lies not only in the structure of government, but also in protecting individual rights and ensuring justice. With the system of checks and balances, every decision taken by the government can be accounted for and supervised by other branches. This allows the public to have a voice in the government process and ensures that power is not abused. In the context of democracy, the separation of powers is the foundation for creating a responsive, accountable, and public interest-oriented government.

An analysis of Article 228A of DPR RI Regulation No. 1 of 2025 shows the potential for violations of the theory of separation of powers, especially in the context of the DPR's authority to recall Constitutional Court judges. This theory emphasizes the importance of a clear separation between the executive, legislative, and judicial branches of government so that each can function independently and supervise each other. With this article, there is a risk that the legislative power can intervene in the independence of the judiciary, which should be free from political influence.

Granting the DPR the authority to revoke the confidence of judges creates a significant conflict of interest. In a good governance system, the legislative institution should not have the power to influence the decisions of the judicial institution. With the recall mechanism, judges may feel pressured to issue decisions that are more beneficial to the political interests of the DPR, which can damage the principle of impartiality and fairness in the judicial process.

The provisions in Article 228A can result in legal uncertainty and weaken public confidence in the judicial system. If judges feel that their positions are threatened by legislative decisions, they may tend to avoid decisions that are risky or controversial. This can lead to the avoidance of their responsibility to uphold justice, which should be the main priority of the judicial institution. This uncertainty has the potential to harm the public who depend on objective and impartial justice.

The potential for abuse of power is also a major concern. By giving the DPR the authority to conduct recalls, there is a risk that the legislative institution can use this power for political interests, rather than to uphold justice. The theory of separation of powers requires strict supervision of each branch of government to ensure that power is exercised in accordance with legal principles. However, the recall mechanism stipulated in Article 228A can cause the DPR to act arbitrarily, which has the potential to damage the integrity of the judicial institution.

6. Article 228A of DPR RI Regulation No. 1 of 2025 has the Potential to Violate Constitutional Court Decision Number 103/PUU-XX/2022

Analysis of Article 228A of the Indonesian House of Representatives Regulation No. 1 of 2025 shows the potential for violations of the Constitutional Court Decision Number 103/PUU-XX/2022, which emphasizes the importance of protecting the independence of the judiciary. In the decision, the Constitutional Court emphasized that judges must be able to carry out their duties without pressure or intervention from other parties, including the legislative body. With the provision in Article 228A which gives the DPR the authority to recall judges, this has the potential to disrupt the principles that have been emphasized in the decision. This is as stated in the considerations [3.13.3] in the Constitutional Court Decision Number 103/PUU-XX/2022, which states that:

> "... In the future, the dismissal of a constitutional judge before the end of his/her term of office can only be carried out for the following reasons: resignation at his/her own request submitted to the Chief Justice of the Constitutional Court, continuous physical or mental illness for 3 (three) months so that he/she cannot carry out his/her duties as evidenced by a doctor's certificate, and dishonorably dismissed for reasons as stated in Article 23 paragraph (2) of the Constitutional Court Law. If there is a reason for dismissal during the term of office, the dismissal by the President will only be carried out after there is a letter of request from the Chief Justice of the Constitutional Court. Such an affirmation needs to be stated firmly because the process of replacing a constitutional judge by the proposing institution will only be followed up after there is a presidential decree regarding the dismissal of a constitutional judge before the end of his/her term of office. Within the limits of reasonable reasoning, the existence of clear and firm regulations regarding the possibility of dismissing a constitutional judge before the end of his/her term of office is intended to maintain independence and at the same time maintain the independence and

> independence of the judicial power. This means that actions taken outside the provisions of the norms of Article 23 of the Constitutional Court Law is not in line with the 1945 Constitution. This, apart from having the potential to damage and disrupt the independence of constitutional judges, actions outside these provisions also damage the independence or self-reliance of the judiciary as the main bulwark of the rule of law as stated in Article 1 paragraph (3) and Article 24 paragraph (1) of the 1945 Constitution".

Article 228A can create a sense of uncertainty for judges in carrying out their duties. When judges realize that their position may be threatened by the DPR's decision, they may feel pressured to issue decisions that are in line with political interests, not based on law and facts. This is contrary to the Constitutional Court's decision which emphasizes the importance of judges' freedom from external influences, so that their independence in upholding justice can be disrupted.

The potential for abuse of authority by the DPR is a significant issue. In the Constitutional Court's decision, it was stated that the judiciary must be protected from political interference in order to maintain integrity and objectivity. However, with the recall mechanism in Article 228A, the DPR can use this power to pressure or influence judges' decisions that are considered unfavorable. This situation is not only contrary to the Court's decision, but can also damage public trust in the justice system. The provisions in Article 228A have the potential to create injustice in the judicial process. When judges feel threatened by the possibility of being recalled, they may tend to avoid decisions that are risky or controversial. This can cause judges to not carry out their functions optimally, resulting in unfair treatment for the parties to the case. The Constitutional Court's decision emphasizes that justice must be upheld without fear or favoritism, and the implementation of Article 228A can hinder the achievement of this goal.

Conclusion

The birth of DPR RI Regulation No. 1 of 2025 has created new constitutional problems. It can be strongly suspected that this is because there are certain political interests that are being implemented. Although normatively the DPR argues that the regulation of recalls of officials elected by the DPR is part of the supervisory function, in reality this is just a political trick. In terms of administrative law, the regulation of

recalls of state officials elected by the DPR which is categorized as a form of supervision cannot be justified, either as a preventive or repressive effort, either internal or external supervision, either a priori or a posteriori supervision, either supervision in terms of law or benefit, all are not justified. Moreover, if viewed from a constitutional perspective, the regulation of recalls of state officials elected by the DPR has the potential to be declared unconstitutional by the Supreme Court. This is because it has the potential to violate the provisions of higher laws and regulations, the theory of the hierarchy of laws and regulations, the theory of independence, the theory of authority, the theory of separation of powers, and the Constitutional Court Decision Number 103/PUU-XX/2022.

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