

CHAPTER I

INTRODUCTION

A. Background of Research

Indonesia is a state of law, it is clearly stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. As a state of law, all national and state life aspects are regulated, based on, and subject to the legal order. As a regulator of human relations in carrying out its functions, the law must undergo a long process and involve various activities with different qualities.

The legal process includes lawmaking and lawenforcement. Making laws referred to here is the same as making laws. According to Satjipto Rahardjo, law-making is the beginning of the regulatory process, which is the momentum that separates the lawless situation from the state governed by law. It is the separator between the “social world” and the “legal world”.¹In practice, law-making goes through various stages by considering several important things to be accepted and enforced in the life of the nation and state.

As a state of law, in making its laws, of course, Indonesia must pay attention to these things so that the law can be enforced or implemented correctly. In the process, Indonesia has accommodated these ideas in the process of making laws. It is proven by the promulgation of a legal instrument that regulates the formation of laws and regulations. It can be seen in Law Number 12 of 2011 concerning the Establishment of Legislative Regulations.

According to Article 5 of Law Number 12 of 2011 concerning the Establishment of Legislations, it regulates the principles of the formation of good laws and regulations, including clarity of purpose; balance or proper forming official; suitability between types,

¹ Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: PT. Citra Aditya Bakti, 2000), p. 176.

hierarchies, and payload materials; can be implemented; usability and effectiveness; transparency of formulation; and openness. Ideally, all laws and regulations are made with these principles in mind. The role of the principle of law is significant, as in the opinion of Satjipto Rahardjo, who said that the legal basis is the soul of the rule of law, namely its logical ratio.²

The 1945 Constitution of the Republic of Indonesia was ratified as the Constitution of the state of Indonesia in the session of the Preparatory Committee for Indonesian Independence on August 18, 1945, which was the day after the independence of the Republic of Indonesia was proclaimed. Historically, the 1945 Constitution of the Republic of Indonesia has undergone four changes in the period 1999-2002. In drafting the Constitution, until the change process occurred, a very long dynamic and involved various parties to formulate the best Constitution for Indonesia. From the comprehensive text that records the minutes of the People's Consultative Assembly session regarding the Amendment to the 1945 Constitution of the Republic of Indonesia, it can be seen that the choice of words, phrases, or word clauses (language) is an interesting discussion. The use of language is expected to be clearly accepted, so there would not be multiple interpretations.

According to Satjipto Rahardjo, the ideal situation is when interpretation is unnecessary or has a minimal role. It can be achieved if the laws and regulations can be stated in a clear form.³This measure of clarity can be seen by taking into account the conditions put forward by Montesquieu in the previous discussion and the fulfillment of the principles of establishing good laws and regulations. In reality, the existing 1945 Constitution of the Republic of Indonesia has several interpretations so that the

²Satjipto Rahardjo, dalam Nurhadiantomo, "Kekuasaan Kehakiman dan Pandangan Hukum Progresif: Hakim dan Rasa Keadilan Masyarakat", *Pranata Hukum*, Vol. 1, Nomor 1 Januari 2006, p. 7.

³*Ibid.*

Constitutional Court, which is given the authority to examine laws against the Constitution according to Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, has several times to interpret the meaning of the language used. In the 1945 Constitution of the Republic of Indonesia.

Since its inception, the Constitutional Court has had 5 (five) generations of appointment of Constitutional Justices. The first generation of Constitutional Justices was sworn in on August 16, 2003, consisting of 9 (nine) Constitutional Justices, namely Jimly Asshiddiqie, Laica Marzuki, Abdul Mukhtie Fadjar, Achmad Roestandi, Harjono, HAS Natabaya, I Dewa Gede Palguna, Maruarar Siahaan and Soedarsono. Furthermore, in 2008, there was a second generation of appointments of Constitutional Justices along with Jimly Asshiddiqie, Abdul Mukhtie Fadjar, and Maruarar Siahaan, as three Constitutional Justices whose terms of service were extended. The second generation is Mahfud MD, Akil Mochtar, Arsyad Sanusi, Muhammad Alim, Maria Farida Indrati, and Achmad Sodiki. In early 2010, the third generation of Constitutional Justices, Hamdan Zoelva, Achmad Fadlil Sumadi and Anwar Usman, were also appointed. Furthermore, in 2013 the fourth generation of Constitutional Justices, Arief Hidayat and Patrialis Akbar was also appointed. Further, in 2014 the fifth generation of Constitutional Justices was appointed, namely Wahiduddin Adams and Aswanto.⁴

The appointment of Constitutional Justices is mainly regulated in the 1945 Constitution of the Republic of Indonesia, which governs the appointment of Constitutional Justices, all of which contain the mandate of establishing a derivation of the appointment rules and requirements for Constitutional Justices in a law. The concept of appointing Constitutional Justices as mandated in the 1945 Constitution only includes provisions for

⁴Abdul Mukhtie Fadjar, "Penegakan Hukum Konstitusi oleh Mahkamah Konstitusi: Dinamika dan Tantangan", i Malang: Universitas Brawijaya, 18 Oktober 2014, p. 2-4.

state institutions authorized to propose and appoint Constitutional Justices and the main requirements as a Constitutional Justice. Furthermore, as the implementation of the mandate of the 1945 Constitution, the rules regarding the concept of appointing Constitutional Justices are contained in Law Number 48 of 2009 concerning Judicial Power and Law Number 8 of 2011 as an amendment to Law Number 24 of 2003 concerning the Constitutional Court.

One of the formulations related to the use of language in the 1945 Constitution of the Republic of Indonesia, which is interesting to note, is contained in Article 24C Paragraph (5), the article reads, “Constitutional judges must have integrity, and personality that is not blameworthy, fair, statesmen who master the constitution and administration, and not concurrently serving as a state official.”

The position of a Constitutional Court Justice is one of the positions that become one of the requirements stated in the 1945 Constitution. A constitutional judge is a statesman who controls the constitution and state administration. This requirement for statesmanship is not specified for other state positions in the 1945 Constitution, so it has its own meaning when it is associated with the authority of the Constitutional Court. Therefore, Member of Commission III of The House of Representatives of the Republic of Indonesia, Taufik Basari, re-emphasized the rationale during the Draft Law (RUU) discussion concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court into Law. For him, a statesman is a person who is not bound by any interests except to guard the Constitution adequately and properly.⁵

As for the requirements of statesmanship for constitutional judges that are not specified for other state positions, from a grammatical point of view, statesmen are people

⁵DPR RI, 2020, *Hakim Konstitusi Harus Negarawan*, retrieved from: <https://www.dpr.go.id/berita/detail/id/29984/t/Hakim+Konstitusi+Harus+Negarawan>, accessed on November 28, 2020 at 4.15 P.M

who have knowledge and expertise in state administration, sufficient field of experience, and commitment to carry out and oversee state life under the corridors of the constitution.⁶ A statesman can also be interpreted as a visionary, long-term-oriented person who prioritizes the community's welfare, can act egalitarian and fair, and protects all components of the nation.⁷ In English, statesmen are called statesmen or stateswomen, as a designation for a figure who has an honorable career or a respected career in the state field, both nationally and internationally.⁸

Edmund Burke, an English philosopher, gave the meaning to Statesman as a person who sees the future and acts on established principles and for eternity.⁹ While according to Gordon, negarawan adalah one actively engaged in conducting the business of a government or in shaping its policies.¹⁰ The statesman itself is not much different from politicians, but if you draw the point, statesmen have a visionary mindset to manage the country for the better by giving up personal interests in contrast to politicians who think pragmatically and whose orientation lies in the benefits of individuals or groups.¹¹ Statesmen fully think about the people's interests, while politicians always talk about political interests, whether personal goals or groups.¹² Therefore, seeing from their duties and functions to enforce the law, it is appropriate that the judges are essentially statesmen as a stateman works not for other than the state's interests.

⁶Barhamudin, B. (2019). Kemandirian Hakim Dalam Perspektif Negarawan. *Solusi*, 17(3), 269-284.

⁷Indramayu; Jayus; Indrayati, Rosita. (2017). Rekonseptualisasi Seleksi Hakim Konstitusi Sebagai Upaya Memwujudkan Hakim Konstitusi yang Berkualifikasi. *Lentera Hukum*, 4, 1.

⁸*Ibid.*

⁹Collins, G. M. (2019). Edmund Burke, Strauss, and the Straussians. *Perspectives on Political Science*, 48(3), 192-209.

¹⁰Gordon, R. W. (2017). The Return of the Lawyer-Statesman. *Stan. L. Rev.*, 69, 1731.

¹¹Siburian, T. (2017). Melampaui Politisi, Menuju Negarawan: Refleksi Etis Kristiani. *Societas Dei: Jurnal Agama Dan Masyarakat*, 4(1), 64-64.

¹²Priyowidodo, G. (2018). Komunikasi Politik: Memahami Dari Sisi Kepribadian dan Pemikiran Politik Soekarno dan Soeharto. *Komunikasi Politik: Memahami Dari Sisi Kepribadian dan Pemikiran Politik Soekarno dan Soeharto*.

A statesman always thinks about the fate of the nation and state as a unified whole and does not care about his personal/political group but puts the nation's interests above all else. A statesman must risk himself, his personality, and his group for the sake of the country's interests which are much bigger and higher.¹³ The figure of a statesman is not only to maintain a good image among his people.¹⁴ The traits and characteristics of statesmen are implicit in the task, closely related to judges' impartiality, both in examinations and decision-making.¹⁵

In addition, Article 15 of Law Number 8 of 2011 as an amendment to Law Number 24 of 2003 concerning the Constitutional Court, which regulates the requirements for constitutional judges, contains the word “statesman”, which does not have a clear explanation of the meaning and measurement. Thus, it will be difficult to realize or implement, even though, as previously explained, the legislation's language must be clear, even in Law No. 12 of 2011 on Legislation Making the principle of clarity of formulation has been regulated, and the principle can be implemented as part of the principles of establishing good laws and regulations.

The discussion on the meaning of the “stateman” aspect in Article 24C Paragraph (5) of the 1945 Constitution of the Republic of Indonesia and Article 15 of the Constitutional Court Law is critical because it relates to the requirements of Constitutional Justices who will later oversee the Constitutional Court as one of the institutions with a central position in the Indonesian constitutional system. It is what underlies the author's interest in taking research on the Statesman Aspect of Constitutional Justices.

B. Research Problems

¹³Faozi, S. F., Iqbal, R., & Baskoro, R. Y. S. B. (2021). *Negarawan Sejati Menurut Pandangan Hamka. An Naba*, 4(1), 14-24.

¹⁴Overeem, P., & Bakker, F. E. (2019). Statesmanship beyond the modern state. *Perspectives on Political Science*, 48(1), 46-55.

¹⁵Wissler, R. L., Hart, A. J., & Saks, M. J. (2017). Decisionmaking about general damages: A comparison of jurors, judges, and lawyers. In *The Right to a Fair Trial* (pp. 355-430). Routledge.

Based on the description in the background above, the research formulates the problem as follows:

1. Based on the Constitution of the Republic of Indonesia and the constitutional court law, what exactly is the concept and characteristics of statesmen as the requirement of Constitutional Judges?
2. Does the selection mechanism of the Constitutional Judges produce the judges with statesmen behavior?

C. Objective of Research

Based on the formulation of the problem above, the objective of the research is as follows:

1. To understand the concept and characteristics of statesmen as the requirement of Constitutional Judges based on the Constitution of the Republic of Indonesia and the constitutional court law.
2. To analyze whether the selection mechanism of the Constitutional Judges produces the judges with statesmen behavior.

D. Benefit of Research

1. Theoretically

In general, to provides benefits through the contribution of academic thoughts and suggestions for the improvement and development of law, especially in constitutional law. In particular, as reference material for the development of the selection mechanism of Constitutional Judges.

2. Practically

The research will suggest recommendations to The House of Representatives and the President for a better selection mechanism of constitutional judges.