International Journal of Arts and Social Science www.ijassjournal.com
ISSN: 2581-7922,
Volume 5 Issue 3, March 2022

Comparison of Filling Mechanism for Judicial Power Positions in Some Countries in Realizing Good Indonesian Judicial Power

Fahmi H. Bachmid, Ahmad Yulianto Ihsan, Erwin Syahruddin.

Lecturer of Law University of Narotama Surabaya

ABSTRACT: The filling of the position of the Supreme Court Judge shows the whole series of processes which are divided into stages, schedules, and planned activities. In practice, the implementation is carried out not only by certain institutions or institutions, but involves several state institutions. One thing that is interesting to be studied more in this connection, considering the existence of state institutions involved in filling the position of Supreme Court Justices are institutions that are in different realms or spheres of power.

Keyword: Position, Judicial Power, Filling Position

I. Background

In Indonesia, there are still many things concerning the object of the study of Constitutional Law that must be clearly positioned, both theoretically-conceptually and at the level of state practice. One of them is an in-depth study of the power and institutional environment which is commonly referred to as judicial power, which is still open for research to be developed. The terminology-constitutional equivalent for the environment, functions, and institutions holding judicial power, is officially called the judicial power. The academic foundation for the development of further discussion and study (research) in the context of judicial power is the principle of constitutional-democracy or the teaching of a democratic-law state which has become the basic theory in a modern state of law.

In the United States, the general election not only elects the President, members of Parliament, but also elects judges directly. For local courts, each state has a different way of electing judges. There are at least 3 (three) ways to elect judges in state courts, first, through direct elections by the people through elections. Second, judges are appointed by the State Governor or the local Parliament. Third, there is a commission of legal experts who recommends several judges to be elected by the governor or parliament. The system of selecting judges directly by the people causes judges to make decisions that are closer to the elements of justice for the community. If the judge does not "follow" the people then he will not be re-elected by the people in the next election. This makes judges more responsive to what the public cares about when handling a case (Ali, 2016).

A sovereign government must be separated in 2 (two) or more independent state institutions whose purpose is to prevent one or a group of people from holding too much power. In principle, the normative power that exists in the state should not be handed over to the same person or group to prevent abuse of power. This principle is famously contained in the "triaspolitica" thought or theory (Agassichoi, 2012). Synonym with democracy is people's sovereignty which is more concretely reflected in the formulation of constitutional norms, namely that sovereignty is in the hands of the people and is implemented according to the Constitution. The affirmation of the rule of law is stated in a simple formulation, namely that the State of Indonesia is a state of law. The adoption of the rule of law concept is strengthened by the regulation of Human Rights and Judicial Power is an independent power to administer justice in order to uphold law and justice.

The elements and basic principles of the rule of law are as follows. (1) Recognition, respect and protection of human rights rooted in respect for human dignity (*Human Dignify*). (3) The principle of legal certainty. The rule of law aims to ensure that legal certainty is realized in society. (4) The principle *of Similia Similibus* (principle of equality). In a state of law, the government may not privilege certain people (must be non-discriminatory). (5) The principle of democracy. The principle of democracy provides a way or method of making decisions. This principle demands that everyone should have the same opportunity to influence government action. (6) The government and government officials carry out the public service function (Sidharta, 2004).
According to Sri Soemantri, there are four most important elements of a rule of law, namely (1). That the government in carrying out its duties and obligations must be based on laws or statutory regulations; (2) guarantee of human rights (citizens); (3). There is a division of power within the state; (4) the existence of supervision from judicial bodies (Soemantri, 1992); In addition, according to Jimly Asshiddiqie, there are twelve basic principles of the rule of law. The twelve main principles are the main pillars that support the establishment of a modern state so that it can be called a state of law in its true sense. The twelve principles are (1) the supremacy of law (*supremacy of law*), (2) equality in law (e*quality before the law*), (3) the principle of legality (*due process of law*), (4) limitation of power, (5) independent executive organs, (6) free and impartial judiciary, (7) state administrative court, (8)*constitutional court*, (9) human rights court, (10) democratic (d*emocratische rechtsstaat*, (11) serves as a means of realizing the goals of the state (*welfare rechtsstaat*), and (12) transparency and social control (Asshiddiqie, 2006).

The filling of the position of the Supreme Court Justice shows the whole series of processes which are divided into stages, schedules, and planned activities. In practice, the implementation is carried out not only by certain institutions or institutions, but involves several state institutions. One thing that is interesting to be studied more in this connection, considering the existence of state institutions involved in filling the position of Supreme Court Justices are institutions that are in different realms or spheres of power. Referring to the triaspolitica theory, filling the position of the Supreme Court Justice which is the highest peak of judicial power (Judcial), involves and is even determined by the presidential institution (Executive) and representative institution (Legislative). This model of filling or recruiting Supreme Court Justices is an interesting legal issue to be analyzed so that it can become a new formulation for better filling of Supreme Court justices.

II. Research Methodology

In writing this article, the author uses a normative juridical research with a statutory *approach*, a conceptual *approach*, a *historical approach*, and a *case approach.*

III. Discussion

1. Filling the Office of Judicial Power in South Korea

The judicial system of the Republic of Korea consists of the Supreme Court of South Korea, the Constitutional Court of South Korea, 6 (Six) High Courts, 13 (Thirteen) District Courts, and several courts of special jurisdiction, such as the Family Court and Administrative Court. . In addition, branches of the District Courts can be established, as well as Municipal Courts (territorial District). South Korean courts are regulated in chapters V and VI of the Constitution of the Republic of Korea. There is no jury system in the South Korean justice system, although since February 2, 2008, a limited provision for advising jury has been introduced for criminal cases and environmental cases, and all questions of law and facts are decided by judges.

The Supreme Court of South Korea (consisting of the Chief Justice and 13 (Thirteen) Judges; The Constitutional Court (consisting of the head of the court and 8 (Eight) Judges. The Chief Justice of the Supreme Court is appointed by the President with the approval of the National Assembly. The Supreme Court Justices are appointed by the President based on a recommendation from the Chief Justice and approval from the National Assembly. The position of the Chief Justice of the Supreme Court is with a term of office of 6 (six) years and cannot be re-elected, while the term of office of a Supreme Court Justice is 6 (six) years and can be re-elected. 3

(Three) by the President, 3 (Three) by the National Assembly, and 3 (Three) by the Chief Justice of the Supreme Court The Chief Justice of the Supreme Court and the Constitutional Court retires until the age of 70 (Seventy), while the Supreme Court Justices retire at the age of 65 (Six) Twenty-Five) (DICE, 2016.)

Municipal Courts only exercise genuine jurisdiction over minor cases, such as minor claims cases where the amount is in controversy not to exceed 20,000,000 or a trial crime for which the maximum possible sentence is 30 (Thirty) Days in prison or a fine not to exceed 200,000. Currently there are 103 (One Hundred Three) Municipal Courts in South Korea. There are 18 (Eighteen) District Courts having original jurisdiction over civil and criminal cases. In addition, the District Courts Panel of Appeals may exercise appellate jurisdiction over cases where one judge has rendered a decision at the District Court or Branch Court level. In most cases, the Sole Judge hears the case and makes a verdict, although in very important or serious cases, a panel of Three Judges can take the case and make a decision. An appeals panel also consists of Three District Court Judges.

The branch courts are governed by and are considered part of the District Courts. Branch Courts function as much as District Courts do, but not every appeal function. Currently there are 40 (forty) Branch Courts in South Korea. The six High Courts have appellate jurisdiction over cases decided by a three-judge trial panel in the District Court or Family Court, Administrative Court decisions, and civil cases heard before the District Court in which one judge ruled and where the amount in controversy exceeds 50,000,000. Appeals to the Court of Appeal are heard by a panel of three High Court judges. High Courts located in Seoul, Busan, Daegu, Daejon, and Gwangju. In addition, a special panel of the Gwangju High Court has been established at the Jeju District Court.

The qualifications of judges are delegated by the Korean constitution the Law on Court Organization. Article 42 of the Law on Court Organization states that those who pass the national judicial examination and have completed a 2 (two) year training program at the Judicial Research and Training Institute (JRTI) or those who qualify as lawyers are eligible to become judges. Although a small number of judges are selected from the profession of lawyers, the number of judges is after graduating from JRTI. Judicial reforms in 2009, the law school established by the United States as a replacement for the JRTI also requires new Judges to have several years of legal practice. Judges in South Korea are nominated for their positions by the Chief Justice of the Supreme Court of the Republic of Korea and then confirmed by the Supreme Court Justices Council (the Council is composed of Supreme Court Justices). Judges serve for 10 (ten) years, and can be reappointed to their positions. The nomination process and the above requirements do not apply to Supreme Court Justices or Constitutional Court Justices, each of which has its own nomination process and term of office.

The constitution states that judges may not be dismissed except through *impeachment*, for committing a crime and being sentenced to prison, or if they are unable to carry out their duties because of a serious mental or physical impairment. The Law on Court Organization sets the retirement age for Judges as 63 (Sixty Three), while for Supreme Court Justices, the retirement age is 65. (Wikipedia, 2016.)

2. Filling the Office of Judicial Power in Germany

Federal Court (the court consists of 127 judges including the President of the Court, Vice President of the Court, Chief Justice, and other judges, and is organized into 25 (twenty five) Senate divided into 12 (twelve) civil panels, 5(consisting of 2 (two) Senates each divided into 3 chambers, each with a chair and 8 (eight) members).

Courtby the Committee for Selection of Judges, consisting of the Secretary of Justice from each of the 16 (sixteen) state federations and 16 members appointed by the Federal Parliament; judges appointed by the president of Germany; judges serving until mandatory retirement at the age of 65. Half the Judges of the Constitutional Court the Federal is elected by the Committee of Representatives and the remainder is elected by

the Senate. Judges are appointed for a term of office of 12 (twelve) years with mandatory retirement at the age of 68 (sixty) h eight) Years (Wikipedia, 2016).

The Election Committee consists of 32 (thirty two) members. It is composed of the Ministers of Justice from 16 (sixteen) states and 16 (sixteen) other members who are elected by the German federal parliament. This committee is chaired by the federal Minister of Justice. The Minister will form a Committee if an election is needed which is held once a year. Ministers and members of the Election Committee who are entitled to nominate candidates.

To be eligible for election, a person must be of German nationality, be eligible to hold a court office, and be at least 35 (thirty five) years old. Most of the candidates for judges in the judicial service of the federal states. But there are also Civil Servants from the federal state, or Federal Attorney General, professional lawyers or university professors nominated for election.

Prior to the election, the Board of President of the Federal *Court of Justice*, a special representative body for the participation of Judges of the Court in the process of selecting new judges and consisting of the President, Vice President and 5 (five) Federal Court Judges will give its opinion on the personal and professional qualifications of the candidates. Then the Electoral Committee will decide by a majority of votes, in addition to the personal and professional qualifications of the nominations taking into account the fair representation of the federal states in their proportion (Bundesgerichtshofs, 2012).

3. Filling the Position of Judicial Power in England

The Supreme Court of England consists of 12 (twelve) Judges including the President of the Court and the Vice President of the Court. The Supreme Court was established by the 2005 Constitutional Reform Act and implemented in October 2009, replacing "*The Appellate Committee of the House of Lords*" as the highest court in the UK. Candidates for judges are recommended by an independent committee then submitted to the prime minister, and appointed by the Queen. Judges are appointed during periods of good conduct (Bundesgerichtshofs, 2012).

4. The Process for the Selection of Officials for the Judicial Authority in the Netherlands

Since the last major changes to the judicial system in the Netherlands which took effect on January 1, 2013, the Netherlands has established 11 (eleven) district courts and 4 (four) courts of appeal. The district courts each have several locations in the area consisting of one Supreme Court, one Administrative Court for Trade and Industry, one State Council and one Central Court of Appeals for public services and social security. The Council for the judiciary is positioned between the Ministry of Security and Justice and the courts of appeal, district courts, the Central Court of Appeals for Public Services and Social Security and the Administrative Courts for Commerce and Industry. The Supreme Court and the State Council are not included in the pardon Council.

In the Dutch justice system, a distinction is made between civil, administrative and criminal law. Several special rooms and divisions exist, such as the Agricultural Weaving Room, the Enforcement Division and the Military Room, but these will not be discussed here. Cases are generally first heard by district courts. In civil, criminal and tax cases, the parties can appeal the decision of the district court. The next step is to appeal to the Supreme Court, the Netherlands' highest court in civil, criminal and tax cases. In cassation the Supreme Court does not look at the facts but at whether the law has been applied appropriately. If the decision of the appellate court is overturned on cassation, the Supreme Court will refer the case back to a different court of appeal. The final court should reconsider the case, taking into account the Supreme Court Decision.

Criminal cases are brought before the court by the Public Prosecutor and heard by the competent district court in the area where the offense was committed. Administrative cases should always be preceded by an objection procedure, which begins with lodging a notification of objection with the administrative authority concerned. If

the objection is found to be unfounded, a Request for reconsideration may be filed with the Administrative Court for Trade and Industry (company law) or with the district court. Appeals may be filed against district court decisions with the State Council (asylum and immigration law cases, or environmental and planning law) or with the Central Court of Appeals for Public Services and Social Security (social security cases).

Under the Constitution everyone has the right to legal representation in court proceedings. Some legal cases actually require the parties to be represented by an attorney. Anyone who has no money to pay for an attorney can apply for assistance under the Legal Aid Act. The Netherlands is a democratic country based on the rule of law where there is a separation of powers between the three branches of government. A system of *checks and balances* maintains a balance between the legislative, executive and judicial branches. Parliament is a legislative branch consisting of two Houses. The House of Representatives is directly elected through a proportional electoral system. All Dutch citizens aged 18 (eighteen) years and over may vote and stand in general elections. The House of Representatives decides on legislation and on the ratification of treaties. The government generally introduces bills, then the House of Representatives before deciding whether or not to approve them. The DPR can also introduce its own draft and that of each member. The DPR has the power to approve budgets and scrutinize the work of the government. If a minister or secretary of state, or the government as a whole, no longer has the confidence of the House of Representatives, they must resign.

The Senate reviews laws that have been approved by the House of Representatives, taking into account international treaties, the Constitution, relationships with other laws. The role of the senate in the Netherlands, is less political, unlike the House of Representatives. If a bill is not approved by the Senate, it is referred back to the House of Representatives.

The government is the executive branch consisting of the king and the ministers. The Cabinet considers and decides on overall government policies and promotes the coherence of those policies. The prime minister is responsible for what the king orders. The ministers are accountable to Parliament for all the actions of the king. The government makes policy, manages finances and represents the Netherlands abroad. The judiciary regulates the judicial system, which is governed as previously described. The judiciary in the Netherlands is more independent than the other two branches. Courts render decisions on the basis of international treaties and laws. Judges are appointed for life, by royal decree. The appointment of a judge may only be terminated at the request of the judge himself or when the judge reaches retirement age of 70 (seventy).

Special cases are handled by the Dutch Supreme Court. The judiciary determines which parts of the law are compatible with the constitution for Parliament to determine. The Court did not review the compatibility of the law with the Constitution. Courts can consider a law that is compatible with international treaties, which accommodates the basic rights of citizens. In practice this means that courts may consider all laws compatible with, for example, the European Convention on Human Rights and all EU legislation that has a direct effect.

The Dutch Supreme Court forms an important link in the contacts between the three branches. The Dutch Supreme Court advises the government and the State on legislation and policy regarding the judiciary, both on request and on its own initiative. The Council's advice is very important for the legislative branch (Parliament) and the executive branch (government) in the legislative process. Neither the legislative branch nor the executive branch has any influence on court findings and judgments. Courts also reach their judgment independently of the Dutch Supreme Court and the respective court's management boards. They cannot therefore be called upon to explain the substance of their judgment by the executive or legislative branches or by the Dutch Supreme Court.

Recruitment, selection, training and recommendations for the appointment of Supreme Court Justices are carried out jointly by the judiciary and the Council of Justice. The minimum requirements for appointment as chief justices are established by law. Most of the training of judges is carried out by the courts themselves, but part of it is carried out by the training center of the institute, the Center for Training and Studies for the Judiciary (SSR). The SSR is partly under

the responsibility of the Council of Justice. Once a candidate has successfully completed their training, the Council of Justice recommends them to be appointed as chief justices.

The Minister of Security and Justice assessed the recommendations as meeting statutory requirements and other formal requirements. If these conditions are met, the appointment is left to the king. The King signs the Royal Decree, appoints a Supreme Court Justice. The judge was appointed for life. Nominations for the proposed Supreme Court justices were never rejected.

The process for selecting the Supreme Court Justices of the Netherlands is appointed in a way, the internal committee of the Supreme Court, consisting of experienced and less experienced Supreme Court judges, selects the possible candidates for the appointment of Supreme Court Justices. They are looking for people who may be qualified who have the best competencies to propose next. When a vacancy is opened for a Chief Justice, the committee decides which candidate will be the most suitable for the appointment, depending on what area of law the vacancy relates to. Then the selection committee compiles a list of candidates. The Supreme Court discusses the list in its general meeting and then submits the recommendations of three people to the DPR Parliament.

The people at the top three of this list were invited to interviews with Parliament, the Elections, Security and Justice Committee. Based on the agreement between the Supreme Court and the Election Committee, no candidate for Supreme Court Justice is proposed based on the candidate's political views, religion or belief. In practice, the House of Representatives has always followed the recommendations of the Dutch Supreme Court. The Supreme Court and the DPR agree that the appointment of Supreme Court Justices should not be politicized.

Recommendations for the appointment of new Supreme Court judges are then submitted to the Minister of Security and Justice, who assesses whether formal requirements have been met. If the name of the candidate has been chosen then the nomination for appointment is submitted to the king. The king signed the Royal Decree, appointing the chief justice. As with other judicial appointments, nominations always lead to the signing of royal decrees.

By law, the Council of Justice must have three to five members. There are currently four members, half of them from the judiciary. In terms of binding votes in the Council, the president has the decisive vote. The president is always from the judiciary, which ensures that the
court's opinion is decisive.

Vacancies on the Council of Justice are published in the national media, after which the advisory committee assesses the suitability of candidates and makes recommendations to the Minister of Security and Justice. The advisory committee consists of a court president, a representative from the Dutch Association for the Judiciary, a member of the court management board who is not a judge, and one person appointed by the Minister for Security and Justice. The member who is the president of the court presides over the committee.

Members of the Council of Justice are appointed by Royal Decree on the recommendation of the Council itself. Recommendations the Board has. The influence that Parliament and the government have after the appointment of judges (terms of appointment, dismissal of disciplinary action and training).

Judges are appointed for life. Neither the government nor Parliament has any effect on the dismissal, promotion, disciplinary action or training of judges. The Netherlands has a judicial review system for compliance with the Constitution and international law.

The Dutch system is up to the legislative branch to consider whether the Supreme Court Justice's proposal is consistent with the Constitution. When the government drafts a bill, it also assesses its compatibility with the Constitution and international treaties. When hearing a case, courts may consider whether the law is compatible with international treaties to which the Netherlands is a party, but courts are not officially permitted to judge whether the law is compatible with the Constitution. Failed to comply with this. However, regulations cannot lead to dismissal or other disciplinary actions.

It should be noted that the Council of Justice can always provide advice on the electoral process. This allows the judiciary to express its opinion to Parliament on the constitutionality of the bill in advance. Actually the examination and review of bills is the prerogative of parliament.

The role of the Dutch Council for Justice in the judicial system, namely carrying out the process of selecting and appointing members of the Council of Justice, has been discussed above. The Judicial Council

itself has a clear role in the selection, appointment and training of members of the judiciary. This has also been discussed above. SSR training institutes are also under the responsibility of the Council of Justice.

The role of the Judiciary is clearly defined in the Act. The Council is responsible for, preparing its own budget and the court's overall budget; allocate a budget for each court; support the operational management of the courts; monitor the execution of the budget by the courts; national activities related to recruitment, selection, recruitment, appointment of Supreme Court justices and training of court apparatus.

The duties of the Council also include advising Parliament on new legislation, after consultation with the courts. The budget for the administration of justice is determined according to the objective criteria established in the law. The Minister of Security and Justice provides the necessary funds from the central government budget, which is determined by the government and Parliament (Wikipedia, 2016).

5. Process for the Selection of Officials for the Judicial Powers in Brazil

Brazil is the civil law of the country, and the codification of laws occurred after independence (1822). Brazil has a career justice for which can be used as an example in the career development of a judge. However, to become a judge, apart from a career judge, a legal practitioner who has legal experience and has a professor's degree, as one of the requirements to become a non-career judge. This is directly regulated by the constitution in Brazil (Oliveira, 2006).

Like the United States of America, Brazil is a federation with (twenty seven) states. This federal system includes special courts consisting of labor courts, electoral courts, and military courts. However, unlike the United States, Brazil's constitution dictates the method of selecting judges not only in the federal justice system, but also in state courts. Article 125 stipulates expressly that the country's judicial system will follow the principles of the federal constitution. Therefore, they are both state and federal judges headed by the same Governor. As a result, the Brazilian Judiciary, although separate from federal and state jurisdictions, is governed by uniform rules with the omission of distinctions as in the United States.

The highest judiciary of the Brazilian court system is the Supreme Federal Court (Federal Court Supremo), which is basically responsible for safeguarding the Constitution, as stated in Article 102 of the Federal Constitution. The Federal Supreme Court (hereinafter "Supreme Court") is a court of last resort in constitutional matters. Has jurisdiction over the whole country and can accept appeals against decisions issued by courts of first instance. Brazil's Supreme Court is also responsible for the constitution of the state which forms the basis of federal state law and characterizes state law adopted from the constitutional model of European courts.

The composition and appointment mechanism to the Brazilian Supreme Court closely followed the United States model, which is not surprising given the influence of the United States Constitution on the 1891 Brazilian Constitution. However, the direct transplantation of the United States model of the election and appointment of judges has not reproduced the same institutional pattern. This paper explains why transplantation from a particular removal mechanism may not necessarily produce the same institutional results. The local determinant of the problem and the shape of the implementation of a particular transplant. There are three differences in the process of selecting Supreme Court Justices by the United States Senate and the Brazilian Senate, viz.

(a) The election of Supreme Court Justices in Brazil does not prioritize ideological and cultural differences, but is more ideologically oriented towards the majority and minority in Brazil;

(b) The balance of power between the states and the federal government as well as between the main political parties of the different. For example, since Brazil has a two-party system, and the Senate with the most votes plays an important role in the selection process for Supreme Court Justices;

(c) Since there is a career Judge in Brazilian courts, the Senate contributes to determining an effective electoral system in the form of checks and balances between the federal government and the judiciary. The Senate also reduces the president's involvement in selecting judges by prioritizing the career Judge system.

Before explaining the method of selecting judges in Brazil, the researcher will first explain the Brazilian court system. As mentioned above, at the federal level there is a general court (federal) consisting of labor courts, elections and military courts. Each of them must be tried in a regional court then a court of appeal, and the Supreme Court as a last resort known as the "Superior Court".

Article 93 of the Brazilian Constitution states the principle of the system of selecting judges in Brazil based on the statute of the judiciary (*estuto da magistratura*), which applies to every judge in the country. This article states that prospective judges must pass an entrance test to be admitted to a career court. Anyone interested in becoming a judge in a state or federal court must pass this exam. The test is conducted on a need basis and is only open to applicants with a law degree and at least 3 (three) years of professional legal experience.

Career justice in Brazil has a peculiarity with the European model. Candidates for Judges in Brazil, do not need to attend a school for judges as a prerequisite to become a Judge. In addition, there is no mandatory long-term program and training in judicial schools. However, there are judicial training schools in state and federal judiciary, all operating independently and some privately (not owned and administered by the state or federal government, but by associations of judges). This judicial training provides short-term training or courses for new judges, and continued education for judges at any point in their careers.

After passing the entrance examination, the candidates will serve according to the classification; in other words, the candidate who gets the highest score is hired first. These newly admitted judges then receive the title "substitute judge" (*juizsubstituto*), based on rank. It is important to note that alternate judges have the same duties and responsibilities as senior court judges. After two years in office, court judges gain tenure and serve up to the mandatory retirement age of seventy.

Electoral courts have a special structure. The judicial electoral system has jurisdiction over controversies arising from the electoral process and is responsible for administering elections in Brazil. This task starts from running and creating registration lists to setting up polling sites, as well as recapitulating election results and announcing the winners. Therefore, the decision of the electoral court is not filled by the examination. They consist of state judges, experienced lawyers, and public prosecutors who perform their electoral functions in conjunction with their primary job for a term of two years (one consecutive term is permitted).

The Brazilian constitution provides general rules regarding the career path of judges to special courts. In general, judges of first instance fill the seats of the court of appeals. The Court of Appeal itself selects judges of first instance through alternative criteria of seniority and merit. This means that if the previous appellate judge was chosen by seniority, the next judge will be selected exclusively on merit, and vice versa.

Where elections are based on seniority, the appellate court may reject the most senior judge by only a reasonable two-thirds vote of its members; candidates are fully permitted to defend themselves against disputes raised against their promotion. Assessment based on merit by considering the performance and reliability of judges in carrying out their judicial functions as well as certificates or diplomas for further legal education courses that are recognized or official. Article 93, section II, section b, of the Brazilian Constitution stipulates that promotion based on merit requires two years of service at the respective level and that judges must be in the top fifth of the seniority list of that level, unless none of these meet these requirements and willing to accept the vacant post. The promotion of a judge who enters the merit list three times in a row or five times non-consecutively is mandatory.

State appeals courts (*tribunais de justice*) follow the same process as for selecting federal appeals judges: four-fifths of the seats are occupied by first-degree judges, the remaining fifth by state attorneys and public prosecutors. However, at the state level, the Governor of the state, the President of Brazil, selects one-fifth of the seats from a list of three candidates presented by state courts, selected from six candidates provided by the association of lawyers or the state public. prosecution.

As mentioned earlier, the Supreme Court is the highest court in Brazil. It consists of eleven judges. Like the United States model, constitutional authority for the appointment of Supreme Court Justices rests with the President of Brazil, subject to confirmation by the Senate by a majority of its members. The process of

appointing Supreme Court Justices is by not setting aside seats for certain legal professional categories. It does require nominations to be trustworthy in law, have an impeccable reputation, and be of a certain age ranging between thirty-five and sixty-five. However, the Supreme Court also has the greatest influence. Pursuant to Article 96, I of the Federal Constitution, the Supreme Court has the prerogative to choose, among them, the Chair and Deputy Chief Justice of the Supreme Court. The Supreme Court Justice rotates as Chairman and Deputy Chief Justice of the Supreme Court, for a term of two years, according to the order of seniority (Jardim, 2011).

6. The Process for Election of Officials of the Judicial Authority in Thailand

The selection of candidates for Supreme Court Justices in Thailand is after the candidates who meet the criteria as stipulated by the Constitution. Selection is made by a panel which then nominates candidates for Supreme Court Justices to the Senate for approval. Article 257 of the Thai constitution stipulates that the process of nomination and selection of Supreme Court Justices is based on the field of jurisprudence and is an expert in political science. Whereas Article 255, paragraph 1 of the Constitution which clearly states that Supreme Court Justices are appointed by the King "on the advice of the Senate".

The Senate is accountable to the King and has the power to review the background of nominees for Supreme Court Justices to determine whether or not they will submit the names of the nominees to the King. That is, although the Constitution does not give the Senate the power to “choose” nominations, Article 255 does not give the Senate full authority to accept or reject nominees for Supreme Court Justices (JETRO, 2019).

7. The Process of Election of Officials of the Judicial Authority in Indonesia

During the implementation of the constitutional periods in Indonesia, there have been outlines or main points of regulation of judicial power in general, and in particular for the filling of positions of Supreme Court Justices at the Supreme Court of the Republic of Indonesia. However, in this discussion, it is not discussed in its entirety in each period of the constitution's enactment, but what is considered important and monumental according to the researcher. The considerations are based on the reality of the main provisions in the constitution and specifically related to the existence of a law on the Supreme Court. For example, very specifically, the legal construction in the Constitution of the Republic of the United States of Indonesia (KRIS) of 1949, shows and regulates the pattern of filling the positions of Supreme Court Justices in the context of relations between state institutions. In the KRIS it is stipulated that the Chairperson, Deputy Chairperson and judges of the Supreme Court are appointed by the President at the recommendation of the DPR from at least 2 (two) candidates for each appointment.

The positive constitutional basis regarding the filling of the position of Supreme Court Justices and which has been going on for quite a long time is the provisions contained in the 1945 Constitution (UUD 1945). The 1945 Constitution has a validity period of 2 (two) periods, namely the period of 18 August 1945 to 27 December 1949 and the period of 5 July 1959 to 19 October 1999. However, in this study objectively the focus of the researcher places the 1945 Constitution within the validity period the period from 5 July 1959 to 19 October 1999. The 1945 Constitution as the basic law applicable in Indonesia has undergone several changes, or what are often called amendments.

Linguistically, the amendment comes from English, to amend or to make better (change to make it better). Amendments are additions or changes, there are several meanings regarding these changes, including the replacement of one text with a completely different text, changes in the meaning of the text of the Constitution by adding, subtracting, or revising a formulation in the text of the Constitution according to the traditions of European countries. Continental, changes by attaching the text of the amendment to the existing text of the Constitution (addendum system), and this is what is commonly referred to as an amendment according to the United States tradition.

In the amendments to the 1945 Constitution there is no replacement of the basic state, be it Pancasila, the form of a unitary state, or the form of presidential government. But only perfecting, clarifying, correcting mistakes,

and making corrections to existing articles, without having to make changes to basic things in the 1945 Constitution itself.

Based on the reference to the same constitutional article, namely the provisions of Article 25 of the 1945 Constitution before the Amendment which emphasized that the conditions to become and to be dismissed as judges were stipulated by law, at the beginning of the New Order regime a certain pattern was applied regarding filling the positions of Supreme Court Justices. . It can be said that it is a more democratic and egalitarian pattern that is based on lines of coordination and consultation.

In practice, during the New Order era, the pattern of filling the position of Supreme Court Justices in the recruitment process was initiated by holding a forum that involved the Supreme Court and the government together, known as the Supreme Court and Departmental Forum (MahDep). MahDep is a forum used as a forum for consultation between the Supreme Court and the Ministry in discussing the list of candidates for Supreme Court Justices that will be submitted by the Supreme Court and the Government to the House of Representatives. The MahDep Forum follows up on an initiative or proposal initiated by the Supreme Court to provide the names of candidates for Supreme Court Justices to the Department first. Thus, it appears that in this pattern there is an increase in the role of the government (executive) with the involvement of departmental elements in a more dominant proportion.

The initial pattern was developed and adopted within the Supreme Court internally. In the first opportunity, the Chief Justice of the Supreme Court consulted with the leadership of the Supreme Court before submitting a name proposal to the Department. However, in practice the Chief Justice of the Supreme Court often has dominant control in determining the names of the candidates to be included in the proposal.

Next, the names of the candidates were presented in MahDep. At the time of presentation, the Department usually proposes several changes, for example by including the names of the military and the prosecutor's office. After the proposed names of candidates for Supreme Court Justices are discussed, then the names are submitted to the House of Representatives which is then appointed as Supreme Court Justices by the President.

Thus, it can be concluded that the role of MahDep in the pattern of filling the position of Supreme Court Justices in the administration of the New Order regime in the early days of his administration was far more significant when compared to the role of the House of Representatives. In other words, on the other hand, the role and position of the House of Representatives is small and weak in determining the election of Supreme Court Justices compared to the participation of government (executive) power.

The House of Representatives has the authority to approve or reject candidates for Supreme Court Justices proposed by the Judicial Commission. This authority is important to observe considering the strategic position of a Supreme Court Justice, both legally and politically. There are two problems that usually arise related to the selection of this Supreme Court Justice. First, the issue of the ratio of candidates to be submitted by the Judicial Commission (KY). Second, there is an effort to politicize. These two problems always become obstacles when the public demands KY to nominate the best candidates and have high integrity.

One of these legal reforms is in the form of amendments to the 1945 Constitution of the Republic of Indonesia. In relation to filling the positions of Supreme Court Justices, after the amendments, the recruitment mechanism for Supreme Court Justices is different from ordinary judges. Candidates for Supreme Court Justices are selected by a special state institution which was only held after the amendment to the 1945 Constitution, namely the Judicial Commission (KY) and submitted for proper approval from the DPR. In full, the regulation is contained in the formulation of Article 24A of the results of the Third Amendment to the 1945 Constitution, in particular the provisions of Article 24A paragraph (3) which affirms that "Candidates for Supreme Court Justices are proposed by the Judicial Commission to the House of Representatives for approval and subsequently appointed as Supreme Court Justices by the President".

Taking into account the formulation of the new constitutional provisions above, the spirit is in line with the basic understanding of democracy to be implemented, although not completely. If the principles of democracy are truly applied, then the pattern of filling the position of Supreme Court Justices can be carried out by means of direct elections. In this case, it is carried out by an institution that was intentionally formed to carry

out the filling of the position of a Supreme Court Justice and is independent and independent, free from the influence of any power. The special institution is given the nomenclature of the Judicial Commission (KY).

The Judicial Commission is a new state institution that was born as a response to the demands for reform, which was then set forth in the 1945 Amendment to the 1945 Constitution of the Republic of Indonesia. In his spirit, the existence of the Judicial Commission is important in efforts to reform the judiciary, including maintaining and upholding the honor, dignity, and behavior of judges. The existence of this Judicial Commission in the future is expected to be one of the partners of the Supreme Court to continue to make efforts in the context of reforming the judiciary. Article 24A paragraph (1) of the 1945 Constitution only states that candidates for Supreme Court Justices are proposed by the Judicial Commission to the House of Representatives and subsequently appointed as Supreme Court Justices by Presidential Decree.

If the legal structure is examined, the Judicial Commission acts as the proposer, while the DPR is the giver of approval or rejection, and is subsequently determined by a Presidential Decree. The 1945 Constitution confirms the role of the Judicial Commission as the permanent committee for the selection of the Supreme Court whose final results are determined by the choice of Commission III of the DPR. The President only issues a decision on the appointment of Supreme Court Justices. KY balances the President and DPR even though KY members are appointed by the president with the approval of the DPR (Gunarto, 2011).

IV. Conclusion

Based on these provisions, it is clear that the House of Representatives is not determined to conduct a *fit and proper test.* The right to approve or reject is what is referred to as *the right to confirm* owned by the House of Representatives in the context of carrying out its supervisory function on the appointment and dismissal of public officials which are deemed not to be allowed to be determined unilaterally by the President. This also implies that the oversight function by the DPR is carried out not only regarding the implementation of legislature policies in the form of implementing laws, elaborating the provisions of the Act in implementing regulations that are more operational, and in the form of supervision of the appointment and dismissal of certain public officials which should not be left to be determined by themselves. arbitrarily by the President.

BIBLIOGRAPHY

[1.] Agassichoi, TriasPolitica, https://shiningwiris.wordpress.com, Accessed April 17, 2012.

[2.] Ali, Here's How the United States Chooses Judges, http://www. Hukumonline.com, Accessed November 2, 2016.

[3.] B AriefSidharta, "Philosophical Studies on the Rule of Law", Jentera, (3 Year II Edition, November 2004): 124-125.

[4.] CESifo DICE, *Judge Selection in Highest Courts2013-2014,https://www.cesifo-group.de*, Accessed July 29, 2016.

[5.] Der Präsident des Bundesgerichtshofs, *Appointment of Judges to the Supreme Court, www.heinzlegal.com,* Accessed at May 11, 2012.

[6.] IDE JETRO, Joint-Project between the Central Intellectual Property and International Trade Court and the Institute of Developing Economies, Japan External Trade Organization, https://www.ide.go.jp, Accessed January 8, 2019 , Translated by BayuEndragupta, Surabaya Religious Court Class 1.A,, Surabaya, 2018.

[7.] Jimly Asshiddiqie, Indonesian Constitution & Constitutionalism, (Jakarta: Secretariat General and Registrar of the Republic of Indonesia Constitution, 2006), p. 154-161

[8.] Maria Angela de Santa Cruz Oliveira Jardim, *Choosing Judges in Brazil: Reassessing Legal Transplants from the United States*, Texas A&M University School of Law Texas A&M Law Scholarship, 2011, Translated by BayuEndragupta, Surabaya Religious Court Class 1.A, Surabaya, 2018.

[9.] Maria Angela Jardim de Santa Cruz Oliveira, *Reforming the Brazilian Supreme Court: A Comparative Approach*, 5 WASH. U. GLOBAL STUD. L. REV. 99, 2006.

[10.] Rahmad Gunarto, *Papers: The Authority of the Supreme Court and the Appointment and Dismissal of Supreme Court Justices of the Republic of Indonesia*, Ministry of National Education, Republic of Indonesia, Faculty of Law, Gadjah Mada University, Yogyakarta, 2011.

[11.] Sri Soemantri, Anthology of Indonesian Constitutional Law, (Bandung: Alumni, 1992), p. 29-30.

[12.] Wikipedia, *Judiciary of the Netherlands, https://en.wikipedia.org*, Accessed September 2, 2016.

[13.] Wikipedia, *Law of South Korea, https://en.wikipedia.org*, Accessed May 22, 2016.