

CHAPTER ONE

INTRODUCTION

A. Background

The bribery case which involved Akil Mochtar as the Chairman of the Constitutional Court of Republic has created “distrust” to the Court. Akil received a long life imprisonment sentence from the Court of Corruption (*Tipikor*) of Jakarta. Akil was declared guilty of accepting bribes and selling verdict dispute over the local election.¹ Akil’s case gave a bad impact to the Court itself. In the first decade of its establishment, the Constitutional Court has given significant contribution to the life of state. People trust a lot to the Court. However, after the arrest of Akil Mochtar, the Chairman, public trust has becoming deteriorated.

Public trust to the Constitutional Court dipped until below 30%. The society who still believes to the Constitutional Court is only 28.0%. While the majority of the society who does not believe to the Constitutional Court as the

¹No name, 2016, “Hakim MK Jangan ‘Bermain Api’”, available at: <http://www.mahkamahkonstitusi.go.id/index.php?page=web.Berita&id=12667#.WFv60VOLS01>, accessed on 23 November 2016 at 2.27pm.

institution of law enforcement in Indonesia is 66.5%. Before the occurrence of this case, the level of public trust in the Court reached until 60%.²

After 4 years, the Constitutional Court has successfully received back the public trust. As a consequence people have bigger hope to the Constitutional Court to exercise its power to reach legal reform agenda. However, on Thursday 26 January 2017, the Constitutional Court again faced a disaster. Patrialis Akbar, the judge of the Court, was caught red-handed by the Anti-Corruption Eradication Commission. He allegedly accepted a bribe related to the judicial review of Law No. 41 of 2014 on Animal Husbandry and Health. The arrest of Patrialis Akbar, again, has made a shocking news society. Due this unexpected event, public trust started decreasing.

The Constitutional Court is one of the institution of judicial power³, which is equal to Supreme Court. The Court has aim to uphold justice and to protect human rights guaranteed by the 1945 Constitution.⁴The responsibility of constitutional judge is not based on the will of a particular party, but based on constitution.⁵

²Lingkaran Survei Indonesia, 2013, "Robohnya MK Kami", taken from <http://lsi.co.id/lsi/wp-content/uploads/2013/10/Materi-Konpers-Minggu-6-Oktober-2013-Robohnya-MK-kami.pdf> downloaded on 23 November 2016 at 3pm.

³Article 24 Paragraph (2) of the 1945 Constitution

⁴Winda Wijayanti, Nuzul Quraini M, Siswantana Putri R, 2015, "Transparansi dan Partisipasi Publik dalam Rekrutmen Calon Hakim Konstitusi", *Jurnal Konstitusi*, Vol. 12, No. 4, 2015, Mahkamah Konstitusi Republik Indonesia, p. 664.

⁵Aribijoto Arbijoto, 2007, "Pengawasan Hakim dan Pengaturannya dalam Perspektif Independensi Hakim", *Jurnal Hukum Prioris*, Vol. 1, No. 2, 2007, Fakultas Hukum Trisakti, p. 315.

The Constitutional Judges have special nature, because the Constitutional Court was designed to be the guardian and interpreter of the Constitution through its decisions. In carrying out the constitutional duties, the Constitutional Court seeks to realize the vision of institutions, namely the enforcement of the Constitution in order to realize the ideal of a state law and democracy for the sake of our nationhood and statehood dignity. If a dispute arises regarding to the implementation of constitutional authority between state institutions, the Constitutional Court could give the authority to hear and decide constitutional settlement through the judicial process.⁶

Therefore, its recruitment process is different from ordinary judge or Supreme Court Justice. There are nine judges of the Constitutional Court that consist of three judges appointed by House of Representatives, three judges appointed by the President and the three judges appointed by the Supreme Court. The distribution of appointment of the judges to the three branches of state organs is to ensure the position of the Constitutional Court as a referee and to prevent the domination of particular state organ to the Constitutional Court. However, they have different recruitment system appointment of constitutional judges.

⁶Jimly Asshiddiqie, "Pokok Pikiran tentang Penyempurnaan Sistem Pengangkatan dan Pemberhentian Hakim Indonesia", p. 8-9, taken from http://www.jimly.com/makalah/namafile/65/POKOK_PIKIRAN_TENTANG_PENYEMPURNAAN_SISTEM.pdf, downloaded on 27 November 2016 at 13.22pm.

Akil Mochtar is a Constitutional judge appointed by the House of Representative, Akil's selection as Constitutional judges in the second time is also considered unusual, because the common fit and proper test was not conducted. Unfortunately, the case of Akil was not used as lessons for the Court and the three institutions that has authority to select the Constitutional judges in a transparent manner and to involve the public control. Patrialis Akbar is a constitutional judge appointed by the President. The appointment of Patrialis as a constitutional judge is also the same as Akil which is not transparent and does not involve the public consideration. Therefore, there is a big question of the recruitment system of the constitutional judges.

Constitutional judges have been changed for several times due to the expiration of their turn of office or resignation several times because the turn of the personal term of office has expired or terminated personally well. Constitutional judges' expiration of term of office, firing and violations of law are polemical problems which deal with the enforcement of the Constitution and public trust on judiciary performance in Indonesia. A judge has freedom in an effort to uphold law so that judges should be active, skilled and creative.⁷Therefore the judges need a special recruitment system of the candidate. There is an urgent need of recruitment of the candidates for the Constitutional Court judges, because the Constitutional Court need the judge to

⁷Suhrawardi K. Lubis, 2002, *Etika Profesi Hukum*, Jakarta, Sinar Grafika. p. 6.

occupy the vacant positions of Constitutional judges. The polemic is that the higher requirements of the Constitutional judge candidate in the recruitment will be creating a high level of satisfaction and trust in the community. So, the criteria that can be used to support the recruitment system of the candidate for the constitutional judge should either become the task of recruitment committee to explore further and to find the ideal candidate of constitutional judge during the recruitment process.⁸

Seeing the dilemma on the case of some of the judges of the Constitutional Court, the author thinks that the recruitment system for candidate of Constitutional judges needs to be evaluated. A good judge is not born but made, it means that a good judge is a judge who has the professionalism, integrity and quality. They are not born but they are made⁹ through the recruitment system and therefore the recruitment system of constitutional judges is important to be evaluated. Accordingly, this research will evaluate the recruitment system of the constitutional judges.

B. Research Problems

The research problems include:

⁸Sudikno Mertokusumo, 2011, *Teori Hukum*, Yogyakarta, Universitas Atma Jaya, p. 22-23.

⁹Mira Fajriyah, 2015, "Refraksi dan Alinasi Pengangkatan Hakim Konstitusi", *Jurnal Konstitusi*, Vol. 12, No. 2, 2015, Mahkamah Konstitusi Republik Indonesia, p. 256.

1. How is the recruitment system of the Constitutional Court judges in Indonesia?
2. What are the problems of requirements of constitutional judges?
3. What are the problems of the selection mechanism of the Constitutional Court judges in Indonesia?

C. Objectives of Research

The objectives of research are:

1. To describe the current recruitment system of the Constitutional Court judges.
2. To analyze the problem of requirement and selection mechanism of the Constitutional Court judges.
3. To propose some suggestion on a better requirement and selection mechanism of the Constitutional Court judges.

D. Benefits of Research

The benefit of research, are:

1. Theoretical Benefit

This research will provide the understanding on the Constitutional Court, particularly on the requirement and recruitment mechanism of constitutional judge in Indonesia. This research will open the view on the importance of evaluation of selection of the Constitutional Court judges in Indonesia.

2. Practical Benefit

This research will propose some recommendations to the relevant state organs related to the process of recruitment of constitutional judges, i.e. the Supreme Court, The House of Representatives (DPR), and President.