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Beyond Constitutional Limits: An Ultra Vires Analysis of the DPR's Fit and Proper Test and the Erosion of Judicial Independence in Indonesia

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Abstract: This article presents a critical and comparative analysis of the fit and proper test conducted by the Indonesian House of Representatives (Dewan Perwakilan Rakyat, DPR) for candidates of Supreme Court justices. The study argues that the DPR systematically exceeds its constitutional mandate by transforming its confirmation authority into a substantive re-selection process—an ultra vires act that endangers judicial independence and has been explicitly recognized by the Constitutional Court. Using the frameworks of separation of powers and comparative constitutional law, this research contextualizes Indonesia's challenges within broader Southeast Asian patterns. The findings reveal that the tension between political and judicial branches is structural and recurrent across the region, observable in the integrity crises of the Philippine Judicial and Bar Council, executive dominance in Malaysia, and the extreme politicization of the judiciary in Thailand under “rule by law.” Conversely, Singapore offers a model of centralized meritocracy. The study concludes that Indonesia's reform failure stems from procedural loopholes that allow political actors to prioritize political legitimacy over constitutional supremacy. It recommends legislative amendments limiting the DPR's role to formal consent only and strengthening the Judicial Commission to preserve a healthy rule of law.

Keyword: Judicial Independence, Fit and Proper Test, Ultra Vires, Separation of Powers, Southeast Asian Comparison.

INTRODUCTION

Judicial independence is a fundamental pillar of constitutional democracy and the ultimate safeguard for individual liberty and the rule of law (Venice Commission, 2013). Yet, this independence often faces significant challenges at the critical intersection of political and judicial power—namely, in judicial appointments (Vanderbilt Law School, 2017). In many consolidating democracies, including those in Southeast Asia, the appointment of Supreme Court justices has become the principal arena for political influence, producing systemic friction among the legislative, executive, and judicial branches (Emerald Publishing, 2025).

In Indonesia, this tension is visible in the relationship between the Judicial Commission (Komisi Yudisial, KY) and the DPR regarding judicial appointments (Kumparan.com, 2025). The 1945 Constitution (UUD 1945) expressly limits the DPR's role to granting "approval" for candidates nominated by the KY. The assessment of professional competence and integrity constitutionally lies within KY's jurisdiction. Nevertheless, the DPR consistently expands this limited authority into a substantive re-selection process through its comprehensive fit and proper test, which includes essay submissions and technical examinations (Kumparan.com, 2025; YouTube, 2025). This legislative overreach was declared unconstitutional by the Constitutional Court in Decision No. 27/PUU-XI/2013 (Kumparan.com, 2025), yet the DPR continues to conduct such tests despite the clear judicial settlement (OpenEdition Journals, 2019).

This article argues that the DPR's conduct constitutes a serious violation of the principles of separation of powers and judicial independence—an *ultra vires* act that qualifies as *Perbuatan Melawan Hukum* oleh Badan/Pejabat Pemerintahan (PMH-TUN, or abuse of public authority) (Kumparan.com, 2025). This behavior is not an isolated incident but a reflection of political encroachment upon the judiciary, part of what Tate and Vallinder (1995) described as the "global expansion of judicial power." The legislature's persistent attempts to influence judicial recruitment reflect an intentional prioritization of political legitimacy (the will of the majority) over constitutional legitimacy (the supremacy of law) (Kumparan.com, 2025).

To establish the significance of this study, a comparative regional analysis was undertaken. While previous works have examined judicial review practices in Malaysia and Indonesia (RSIS International, 2020), few have critically evaluated constitutional design failures amid ongoing political intervention. By comparing Indonesia with the Philippines, Malaysia, Thailand, and Singapore, this research demonstrates that Indonesia's challenges are symptomatic of broader structural vulnerabilities within Southeast Asian democracies (Emerald Publishing, 2025). The central research question asks: To what extent does Indonesia's legislative overreach mirror similar challenges across the region, and what are the political and legal implications of this persistent constitutional breach? The answer proposed is that such violations arise from inherent design defects exploited by political actors—defects that must be rectified through explicit legislative and procedural reform.

Accordingly, the objectives of this study are twofold: (1) to legally qualify the DPR's substantive examination as a violation of judicial independence, and (2) to contextualize this violation within regional comparative frameworks to inform actionable constitutional reform.

METHOD

This study employs a qualitative legal research methodology situated within the disciplines of constitutional law, political science, and comparative law.

The population examined consists of the constitutional frameworks and political practices surrounding the appointment of Supreme Court justices in Indonesia and four selected Southeast Asian countries: the Philippines, Malaysia, Thailand, and Singapore. A purposive comparative case study sampling method was used, focusing on jurisdictions within similar geographical and political contexts but displaying distinct appointment models: independent commissions (Indonesia, Philippines, Malaysia), highly politicized judiciaries (Thailand), and centralized meritocracy (Singapore).

Instrumentation involved analysis of primary legal documents—particularly the Indonesian 1945 Constitution and Constitutional Court Decision No. 27/PUU-XI/2013 (Kumparan.com, 2025)—alongside key statutes and major judicial rulings in comparative jurisdictions (e.g., *Jardeleza v. Sereno*, Philippines). Secondary data were drawn from academic journals, international organization reports, and reputable media outlets, focusing

on literature addressing judicial independence, separation of powers, and institutionalism (e.g., Tate & Vallinder, 1995; Ginsburg & Moustafa, 2008).

The analytical procedure followed a normative-juridical approach. First, the constitutional boundary of the DPR's authority (*de jure* design) was identified (Kumparan.com, 2025). Second, the political reality (*de facto* practice) of the substantive fit and proper test was documented and legally qualified as *ultra vires* and PMH-TUN (Kumparan.com, 2025; YouTube, 2025). Third, thematic comparisons were conducted using four criteria: (1) role of independent commissions, (2) role of the legislature, (3) role of the executive, and (4) structural integrity of the judicial system. This comparative analysis enabled recognition of recurring regional patterns, such as the "rule by law" phenomenon in Thailand.

Validity and reliability were ensured through triangulation among legal sources, institutional designs, and political outcomes. The legal qualification of the DPR's actions relied on binding Indonesian jurisprudence, while comparative contexts drew upon verified academic and institutional reports. The study's scope is limited to the appointment phase of the judicial cycle and does not extend to performance evaluations or case outcomes unless these directly reflect judicial independence.

RESULTS AND DISCUSSION

The Unlawful Expansion of Legislative Power in Indonesia

The central finding of this study is the persistent discrepancy between *de jure* constitutional design and *de facto* political reality in Indonesia's judicial appointment process (Kumparan.com, 2025). Article 24A (3) of the 1945 Constitution limits the DPR's role to providing "approval," intended merely to confer political legitimacy to nominations. The substantive evaluation of competence and integrity remains the exclusive domain of the Judicial Commission.

Despite the Constitutional Court's binding ruling (Decision No. 27/PUU-XI/2013), the DPR routinely transforms this approval process into a full-scale re-selection. Practices such as requiring legal essays and conducting intensive technical questioning—publicly documented in legislative hearings (YouTube, 2025)—demonstrate that the DPR performs reassessments rather than formal confirmations (Kumparan.com, 2025).

This conduct has substantial legal consequences. The DPR's rejection of candidates based on its own substantive reassessment constitutes an administrative decision (Keputusan Tata Usaha Negara) subject to judicial review (Kumparan.com, 2025). Legally, such action represents a defect of authority (*bevoegdheidsgebrek*) and qualifies as PMH-TUN due to *détournement de pouvoir*—abuse of power (Kumparan.com, 2025). Politically, it reflects the prioritization of representational legitimacy over constitutional authority (OpenEdition Journals, 2019).

Comparative Findings on Political Intervention

1. Vulnerability of Independent Commissions (Philippines & Malaysia)

Both the Philippines' Judicial and Bar Council (JBC) and Malaysia's Judicial Appointments Commission (JAC) were established to professionalize judicial recruitment (Wikipedia, n.d.; Official Portal JAC Malaysia, n.d.). Yet, these *de jure* reforms have not eliminated *de facto* political interference (Aensiweb.com, 2011).

In the Philippines, even though the President must choose from a JBC-nominated list (Wikipedia, n.d.), the process's integrity has been compromised by internal politics, as evidenced in *Jardeleza v. Sereno* (Judiciary.gov.ph, 2014). Political pressures and external influences persist, often noted by international observers (OHCHR, 2018).

Malaysia's JAC, established after judicial scandals, still allows the Prime Minister to request unlimited alternative nominations, effectively granting an unbounded executive veto (Malay Mail, 2025; Channel NewsAsia, 2025). Thus, the ultimate authority over judicial appointments remains within political control—mirroring Indonesia's legislative dominance.

2. Extreme Politicization of the Judiciary (Thailand)

Thailand represents the most extreme case of reversed judicial independence. Unlike Indonesia's legislative encroachment, Thailand's judiciary has become a political actor itself (Kyoto Review, 2024; European Law Institute, n.d.). Since the 2006 coup, the Constitutional Court has expanded its interpretive power to dissolve parties and annul elections, weaponizing law for political ends (Kyoto Review, 2024).

This shift from Rule of Law to Rule by Law (Ginsburg & Moustafa, 2008) demonstrates how judicial institutions can serve authoritarian purposes, undermining democratic movements (Digital Commons University of Washington School of Law, 2017). Thailand thus serves as a cautionary example of the consequences of failing to safeguard judicial independence.

3. The Meritocratic Alternative (Singapore)

Singapore offers a contrasting model of centralized meritocracy. Although judicial appointments are highly centralized—recommended by the Prime Minister and appointed by the President (Judiciary.gov.sg, n.d.)—judicial integrity is maintained through strong meritocratic culture and institutional accountability (ResearchGate, 2010; IntelligenceStrategy.org, n.d.). Rooted in legal communitarianism and a developmentalist ethos (Bloomsbury, n.d.; Routledge Encyclopedia of Philosophy, 1998), Singapore's judiciary benefits from competitive compensation and talent selection (Setiausaha JAC, n.d.), combining centralized control with stringent merit-based evaluation to preserve both efficiency and legitimacy (NCSL, n.d.).

CONCLUSION

This research confirms that the DPR's substantive *fit and proper test* for Supreme Court candidates constitutes a persistent constitutional violation—an *ultra vires* act threatening judicial independence (Kumparan.com, 2025). The issue reflects a deeper struggle between political authority and legal supremacy, a common feature of consolidating democracies (UNDP, 2024).

Comparative analysis shows that Indonesia's situation mirrors regional vulnerabilities: the executive veto in Malaysia, institutional crises in the Philippines, and judicial politicization in Thailand. The key finding is that *de jure* institutional reforms, such as independent commissions, are insufficient if political actors can exploit procedural ambiguities or retain decisive powers.

To restore the rule of law in Indonesia, three core recommendations are proposed:

1. Legislative Amendment – The relevant statutes should be revised to explicitly limit the DPR's role to formal “approval,” eliminating any procedural loophole that enables substantive reassessment (Kumparan.com, 2025).
2. Institutional Strengthening – The Judicial Commission's mandate must be reinforced to ensure transparency and accountability in its internal selection procedures, drawing lessons from the JBC experience (Judiciary.gov.ph, 2014).
3. Procedural Clarification – Transparent and objective procedural rules must be enacted, requiring that every rejection decision be fully documented with clear, reviewable reasoning (Kumparan.com, 2025).

Implementing these reforms is essential to bridge the gap between constitutional promises and political practice, ensuring that the judiciary remains a guardian of power, not a trophy of politics.

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