



## POLITICAL INTERVENTION IN THE INDEPENDENCE OF THE CONSTITUTIONAL COURT IN INDONESIA



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### Abstract

The Constitutional Court of Indonesia was established to safeguard constitutional supremacy and the system of checks and balances; however, its independence has increasingly been challenged by political intervention. This study examines how political interests influence the independence of the Constitutional Court through the mechanisms of judicial selection and dismissal, and how these mechanisms create structural opportunities for political intervention. Employing a normative juridical method, the research analyzes primary legal materials, including constitutional provisions, statutory regulations, and Constitutional Court decisions, supported by secondary sources such as scholarly literature and official legislative records. A focused case study on the replacement of a constitutional judge by the House of Representatives following Constitutional Court Decision Number 96/PUU – XVIII/2020 is used to illustrate these dynamics. The findings demonstrate that the involvement of political institutions in judicial recruitment and removal has systematically weakened judicial independence and undermined security of tenure. This study concludes that procedural reform, clearer legal limitations on the authority of proposing institutions, and stronger judicial ethics oversight are essential to restoring the Constitutional Court's independence. By highlighting the structural dimensions of political intervention, this article contributes to the broader scholarly discourse on judicial independence and constitutional adjudication in democratic systems.

### Abstrak

Mahkamah Konstitusi (MK) dibentuk untuk menjaga supremasi konstitusi dan prinsip checks and balances, namun dalam praktiknya independensi lembaga ini semakin rentan terhadap intervensi politik. Penelitian ini mengkaji bagaimana kepentingan politik memengaruhi kemandirian MK melalui mekanisme seleksi dan pemberhentian hakim konstitusi serta bagaimana mekanisme tersebut membuka ruang intervensi politik secara struktural. Penelitian ini menggunakan metode yuridis normatif dengan menganalisis bahan hukum primer berupa ketentuan konstitusi, peraturan perundang-undangan, dan putusan Mahkamah Konstitusi, yang didukung oleh bahan hukum sekunder seperti literatur akademik dan dokumen resmi legislatif. Studi kasus mengenai pergantian hakim MK oleh DPR pasca Putusan MK Nomor 96/PUU-XVIII/2020 digunakan untuk menggambarkan praktik tersebut. Hasil penelitian menunjukkan bahwa keterlibatan lembaga politik dalam proses rekrutmen dan pencopotan hakim telah secara sistematis melemahkan independensi kekuasaan kehakiman dan menggerus jaminan masa jabatan hakim. Penelitian ini menyimpulkan bahwa



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*reformasi prosedural, penegakan batas kewenangan lembaga pengusul, serta penguatan pengawasan etika yudisial merupakan prasyarat penting untuk memulihkan independensi MK. Dengan menekankan dimensi struktural intervensi politik, artikel ini memberikan kontribusi ilmiah bagi kajian independensi peradilan dan peradilan konstitusional dalam sistem demokrasi.*

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## INTRDUCTION

The amendment to the 1945 Constitution of the Republic of Indonesia has brought fundamental changes to the structure of the Indonesian state. One of the important results of this process was the establishment of the Constitutional Court (MK) as a new institution holding judicial power that stands on equal footing with the Supreme Court.(Sumadi 2011) The MK is expected to be a main pillar in upholding constitutional supremacy and ensuring that the exercise of state power is based on the principles of the rule of law and checks and balances between state institutions.(Walangitan 2025)

However, this constitutional idealism has not always been consistently realized in constitutional practice. In recent years, there has been a phenomenon of political interests penetrating the judicial sphere, particularly in the selection, appointment, and dismissal of constitutional judges.(Muhlas et al. 2023) This has raised concerns about the declining independence of the MK as the guardian of the constitution. The dismissal of Constitutional Court Judge Aswanto by the House of Representatives in 2022 is the most concrete example of how political power can influence the judiciary, setting a precedent that has the potential to undermine public confidence in the independence of the Constitutional Court.(Bintari 2022)

This phenomenon raises fundamental questions about the boundaries between political power and judicial independence. In this context, the process of selecting constitutional judges, which involves three state institutions, namely the President, the DPR, and the Supreme Court , could be a point of vulnerability to intervention.(Soedirjo and Santiago 2024) This mechanism opens up the possibility that judges are not selected solely on the basis of competence and integrity, but also because of their political affiliations or closeness to the proposing institution.(Wantu et al. 2021) This raises structural issues that could disrupt the function of the Constitutional Court as an institution that should be neutral and oriented towards the constitution, rather than towards specific political interests.(Fauziah 2025)

The existing literature has established a clear diagnosis of this problem. Research has effectively mapped the procedural vulnerabilities in the appointment mechanism. Studies confirm that the DPR's dominant role creates an imbalance in oversight and politicizes appointments.(Munir et al. 2023) The study also emphasizes the importance of reforming the mechanism for selecting judges and affirming legal norms to prevent the politicization of the Constitutional Court. However, the study has not fully explored the structural and institutional dimensions of political intervention, nor has it proposed concrete steps to

strengthen the independence of the Constitutional Court in the long term.(Lestari 2023)

However, a significant research gap persists. First, the literature remains predominantly focused on the input stage (appointments), offering a limited examination of how political influence permeates the internal, structural, and institutional processes of the Court post–appointment. There is insufficient exploration of how informal networks, internal deliberation dynamics, and career incentives for justices create enduring pathways for influence beyond the initial selection. Second, as noted by Lestari (2023), proposed solutions are often generic calls for legal reform, lacking concrete, operational frameworks for long–term institutional resilience. Few studies offer a strategic blueprint detailing specific procedural innovations, internal ethical architectures, or accountability mechanisms that could insulate the Court throughout its entire decision–making chain.

It is precisely within this gap that the present study positions its contribution. Moving beyond the established critique of appointment politics, this research employs a political–institutional analysis to investigate the sustained dimensions of political intervention. It asks: how are political interests structurally embedded and operationalized within the MK's ecosystem after judges take office? Consequently, it aims to formulate a comprehensive reform strategy that transitions from diagnosing vulnerability to modeling durable independence, thereby addressing the critical lacuna between normative prescription and implementable institutional design in safeguarding constitutional justice in Indonesia.

Based on these conditions, this study aims to analyze the influence of political interests on the independence of the Constitutional Court, examine how the mechanism for selecting constitutional judges opens up opportunities for political intervention, and formulate legal and institutional reform strategies that can strengthen the position of the Constitutional Court as a judicial institution free from political pressure.(Fauziah 2025)

## METHODS

This study uses a normative legal research method, The normative legal method is operationalized by critically analyzing positive legal norms within Indonesia's constitutional framework. This analysis diagnoses structural vulnerabilities and synthesizes legally–articulated recommendations to reinforce judicial independence.(Sumadi 2011) This type of research was chosen because the issues examined are directly related to the normative aspects of the constitution, institutional mechanisms, and the principle of judicial independence in the Indonesian constitutional system.(Bintari 2022)

Within this framework, the study utilizes a legislative approach to examine the provisions of the 1945 Constitution of the Republic of Indonesia, Law No. 24 of 2003 and its amendments, as well as regulations related to the mechanism for selecting, appointing, and dismissing constitutional judges. This approach allows for a systematic analysis of the potential for political intervention arising from the existing normative design. This study also utilizes a case study approach by

examining relevant Constitutional Court decisions on judicial independence, conflicts of interest, and the relationship between the institutions that propose judges and the function of ethical oversight. Through a case – t analysis, the study obtains an empirical legal basis for understanding the actual dynamics that reflect the relationship between political interests and the independence of constitutional judges. A conceptual approach is also used to enrich the analysis through a study of constitutional theories, the principle of separation of powers, and ideas regarding an independent constitutional court. (Soedirjo and Santiago 2024)

The data used consists of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court and its amendments, as well as relevant Constitutional Court decisions.(Wantu et al. 2021) Secondary legal materials include scientific literature, legal journals, academic articles, and previous research reports. The technique of collecting legal materials was carried out through library research, which included collecting, reviewing, and classifying legal materials based on their relevance to three focus areas, namely: the extent to which political interests influence the independence of the Constitutional Court; how the mechanism for selecting judges opens up space for political intervention; and how legal reforms and institutional mechanisms can be designed to strengthen the independence of the Constitutional Court.(Lestari 2023)

## RESULT AND DISCUSSION

The Constitutional Court (MK) of the Republic of Indonesia was constitutionally established as an independent judicial institution under Article 24 paragraph (1) of the 1945 Constitution.(Sumadi 2011) However, the findings of this study indicate that such constitutional guarantees have not been consistently realized in institutional practice. An examination of statutory provisions governing the appointment of constitutional judges reveals that the involvement of three political and state institutions, namely the President, the House of Representatives (DPR), and the Supreme Court, creates structural conditions that enable external influence on the Court. Document analysis of recent legislative amendments and appointment procedures shows that changes to tenure arrangements and evaluation mechanisms have coincided with increased political contestation surrounding judicial decisions.(Komisi Yudisial, n.d.) Furthermore, several recent Constitutional Court rulings and institutional developments demonstrate a pattern in which political dissatisfaction with judicial outcomes is followed by regulatory or procedural responses affecting judicial positions. These findings suggest that political considerations have been embedded within the regulatory framework governing the Constitutional Court, thereby generating sustained pressure on judicial independence. (Lestari 2023)

### The Influence of Political Interests on the Independence of the Constitutional Court

The influence of political interests on the independence of the Constitutional Court (MK) often takes the form of intervention and pressure from various parties

such as the government, parliament, political parties, or individuals who want to influence the MK's decisions for certain political interests.(Satriawan et al. 2023) Political interests can influence the Constitutional Court (MK) through several main mechanisms. First, in the process of recruiting constitutional judges, political parties often play a role in nominating candidates. This can result in judges who have political affiliations, so that their decisions may lean towards a particular political agenda. Official records and legislative hearing transcripts show that a significant number of constitutional judges proposed by the House of Representatives previously held positions connected to political institutions, including former legislators, government advisors, or individuals with identifiable political affiliations, indicating that political considerations are embedded in the nomination process rather than occurring incidentally.(Munir et al. 2023) Second, political pressure arises in the handling of sensitive cases, such as the review of laws drafted by parliament or the impeachment of the president, where outside parties attempt to influence the outcome of the decision for the sake of power. An examination of Constitutional Court decisions between 2019 and 2024 indicates that cases involving election law, presidential authority, and legislative products consistently triggered public statements, institutional responses, and political mobilization shortly after decisions were issued, demonstrating a recurring pattern of external pressure surrounding politically strategic cases(Munir et al. 2023) Although the Constitutional Court, as the guardian of the constitution, must be free from any form of political interference in order to uphold the principles of impartiality and justice ( ), in reality, the Constitutional Court often faces political pressure, especially in the recruitment process of judges and in decisions related to political issues such as violations by the president or the testing of laws that are political products.(Walangitan 2025) Documented institutional practices further show that political reactions to Constitutional Court rulings are frequently followed by legislative initiatives proposing amendments to the Constitutional Court Law or public questioning of judicial reasoning, reinforcing the presence of sustained political engagement with judicial outcomes. This political interference can threaten the independence and image of the Constitutional Court as the highest judicial institution that must operate free from political influence.(Pratama 2024)

Political intervention in the independence of the Constitutional Court can be analyzed through structural, procedural, and temporal conflicts of interest. Structural conflicts are evident in the mechanism of representation of the branches of power in the nomination of judges. Each branch (the House of Representatives, the President, the Supreme Court) nominates candidates for judges, which has the potential to create sympathy or loyalty on the part of a judge towards the nominating institution.(Munir et al. 2023) Parliamentary documentation confirms that this institutional design has enabled nominating bodies to retain influence over judges after appointment, as reflected in formal statements and actions taken against sitting judges. As an illustration, the dismissal of Constitutional Court Judge Prof. Aswanto by the DPR in 2022, even though he still had a term of office,



shows a clear structural conflict of interest. The DPR, which nominated Aswanto, then dismissed him because he was considered to have "nullified the products of the DPR" (laws formed by the DPR). (Red 2022) Parliamentary records indicate that this dismissal occurred less than two years after several Constitutional Court decisions invalidated legislative products supported by the DPR, despite the absence of findings of ethical or criminal misconduct. This action clearly violates Article 23 of the Constitutional Court Law, as Aswanto did not commit any misconduct or legal violations that would justify his dismissal. I Dewa Gede Palguna (former Constitutional Court judge) called this dismissal an "attack on judicial independence." (Thea 2022) From a state structure perspective, the DPR's decision can be considered a form of abuse of legislative authority that violates the principle of security of tenure (guaranteed fixed term of office for judges), which is one of the pillars of judicial independence. (Satriawan et al. 2023)

Procedural conflicts of interest arise when legal procedures or policies are formulated to accommodate certain political interests. The revision of the Constitutional Court Law (UU MK), which was widely discussed during the 2024 political year, is one example. The closed discussions, the target of its passage during the recess, and the changes to the articles on the term of office and age requirements for judges are seen by many as the politicization of the Constitutional Court. (Hidayat 2024) Legislative records and draft versions of the revised Constitutional Court Law show multiple changes to provisions on judicial tenure and evaluation mechanisms within a short legislative period, with deliberations conducted predominantly in closed committee meetings. For example, Article 23A of the proposed new Constitutional Court Law stipulates a 10-year term of office for judges but requires the approval of the proposing institution when entering the second five-year term. (Ardiyan 2024) The ambiguity of the actual term of office (10 full years or two five-year terms) creates temporal uncertainty and opens up opportunities for political intervention in the judges' terms of office. (Walangitan 2025) Parliamentary minutes indicate that these procedural changes were introduced during an accelerated legislative schedule, limiting public participation and oversight. Ferdian Andi, a lecturer at the State Islamic University (UIN) Jakarta, warned that closed amendments to the Constitutional Court Law "have constitutional implications for judicial power." (Hidayat 2024) This view is reinforced by Prof. Susi Dwi Harijanti, who argues that the substance of the fourth Constitutional Court Bill is laden with partisan political interests and does not strengthen the independence of the Constitutional Court. (Munir et al. 2023) Thus, legislative procedures colored by political interests (e.g., the 10-year deadline and the "maturity" of evaluations) actually weaken the principle of judicial independence. (Umam et al. 2025)

Temporal conflicts of interest relate to the influence of time variables on judicial independence. In the context of the Constitutional Court, this relates to the end of a judge's term of office or career prospects after retirement. For example, with the evaluation clause in the middle of their term of office, two constitutional judges (Saldi Isra and Enny Nurbaningsih) who supported different

opinions in a strategic case were considered "potentially removable" because they were approaching the second five – year term.(Pratama 2024) This situation raises concerns that judges could be influenced by the short – term interests of politicians so that their terms of office are not complicated. More broadly, any threat to the security of a judge's temporary position—such as the threat of transfer or deactivation outside of formal legal mechanisms—undermines the principle that judges are free from concerns about term limits.(Ardiyan 2024)

The actualization of political interests is also evident in the practice of Constitutional Court decisions. For example, Constitutional Court Decision Number 90/PUU – XXI/2023 (removing the minimum age limit of 40 years for Vice Presidential candidates) sparked widespread criticism and accusations of politicization.(Umam et al. 2025) Research reports, although somewhat critical, called the decision "laden with power interests" and "politically charged."(Walangitan 2025) The controversy was even followed up by the Constitutional Court itself through an election dispute hearing, in which the Constitutional Court Honorary Council (MKMK) declared that there had been a "serious ethical violation" in the decision – making process.(Muliawati 2024) Although the Constitutional Court ultimately ruled that there was no evidence of presidential intervention or nepotism, public debate on this case reflects a crisis of confidence due to allegations of political interests penetrating the constitutional courtroom. Academic studies suggest that in order to strengthen the independence of the Constitutional Court, there is a need for transparency in court proceedings, accountability in decisions, and the selection of judges based on merit rather than political control.(Cahayani et al. 2024)

### **The Mechanism for Selecting Constitutional Court Judges and Political Intervention**

The Constitutional Court (MK), as the guardian of the constitution, demands full independence in carrying out its functions. Legally, Article 24C of the 1945 Constitution and the Constitutional Court Law stipulate that the process of appointing Constitutional Court judges involves three state institutions: the House of Representatives, the President, and the Supreme Court. The purpose of this design is to maintain a balance of power (checks and balances), so that the process is not controlled by one party and the independence of constitutional judges is maintained. (Munir et al. 2023)

In the theory of trias politica, this division of powers is intended to ensure that judicial power is free from legislative or executive intervention. Rezah and Sapada (2023) emphasize that the appointment of constitutional judges by the three branches of government is not to represent the interests of their respective institutions, but to ensure the integrity and multiple layers of control of the Constitutional Court as the guardian of constitutional supremacy.(Munir et al. 2023)

The independence of constitutional judges—which is in line with the principle of the rule of law—is a key prerequisite in a legal democracy.(Yarni et

al. 2024) Thus, normatively, the selection process that involves the DPR, the President, and the Supreme Court should strengthen, not weaken, the independence of the Constitutional Court. Law No. 7/2020 (amendment to the Constitutional Court Law) even requires that every selection of judge candidates be conducted objectively, accountably, transparently, and openly. (Munir et al. 2023)

However, in reality, the involvement of the legislature and executive as proposers opens up space for the politicization of the selection process. The DPR and the President, which are political institutions, tend to propose candidates with certain affiliations or loyalties. This raises concerns about the "political loyalty or conflict of interest" of the selected judges. (Satriawan et al. 2023) The case of Constitutional Court judge Aswanto—who was proposed by the DPR and then replaced by the DPR after failing to accommodate legislative interests—shows how the dynamics of appointing and dismissing judges can be influenced by politics. (Pratama 2024) From a legal – normative perspective, this situation violates the spirit of judicial independence, as selection decisions should be based on merit rather than political pressure.

International comparisons reveal the uniqueness and vulnerability of Indonesia's system. For example, in Germany, the Federal Constitutional Court is only proposed by the federal parliament (Bundestag) and the state council (Bundesrat), where each candidate is selected through a two – thirds majority voting mechanism. (Ulum and Diniyanto 2024) This approach emphasizes cross – party consensus and candidate qualifications, thereby minimizing the influence of short – term political interests. On the other hand, Indonesia combines the legislative, executive, and judicial branches into a single mechanism, with each having its own recruitment pattern. (Siregar 2024) As a result, candidates for the Constitutional Court are often influenced by domestic political logic. Unlike systems with independent commissions or special court appointments, the Indonesian model provides ample opportunity for political bargaining between factions in the House of Representatives and the government. This contrasts with the principle of judicial review, which should ideally be "free from the pressure of any political power." (Yarni et al. 2024)

Normatively and theoretically, this situation is considered problematic. Constitutional law requires constitutional judges to exercise their authority without outside interference. Constitutional experts emphasize that judges should be impartial and not take sides with the proposing institution. However, legislative – executive interference can actually encourage bias in Constitutional Court decisions, for example in "strategic" cases involving the interests of those in power. As a result, the independence of judges as a pillar of democracy is weakened. Therefore, a number of studies suggest reforming the Constitutional Court Law, including clarifying the limits of the proposing institution's authority so that decisions to dismiss judges are based more on legal rather than political reasons. Transparency in selection and mechanisms based on merit principles are also recommended to reduce the scope for intervention. (Ulum and Diniyanto 2024)



## **Institutional Reform for the Independence of the Constitutional Court from Political Intervention**

The Constitutional Court (MK) is a judicial institution established after the amendment of the 1945 Constitution to guarantee the supremacy of the constitution and maintain the balance of power between state institutions. However, in practice, the independence of the Constitutional Court is often under pressure due to the political dynamics that accompany the selection, appointment, and dismissal of constitutional judges. Law Number 24 of 2003 concerning the Constitutional Court, which has been amended several times, including through Law Number 7 of 2020, stipulates that the nomination of MK judges is carried out through three state institutions: the President, the DPR, and the Supreme Court Judicial Council (Mahkamah Agung). (Munir et al. 2023) This tripartite design was originally intended to maintain balance and prevent the domination of one branch of power, but in practice it has opened up opportunities for political intervention. The nomination mechanism, which is carried out separately and behind closed doors in each institution, makes the selection process vulnerable to political considerations, patronage, and institutional loyalty. (Satriawan et al. 2023) The selection process for constitutional judges, which should be an instrument for strengthening meritocracy and transparency, is often carried out without an effective public review mechanism. The dismissal of Constitutional Judge Aswanto by the House of Representatives in 2022 shows that the position of Constitutional Court judges is still viewed as a "representative of the nominating institution" rather than as an independent judicial official. (Andriyani 2023) This incident shows a distortion of the principle of security of tenure—the guarantee of a judge's term of office free from political pressure—and indicates that the current legal system is not yet fully capable of protecting the independence of the Constitutional Court from the penetration of political interests.

Therefore, legal and institutional reforms are necessary to restore the Constitutional Court's reputation as an impartial guardian of the constitution. One of the main steps that needs to be taken is the formation of an independent selection committee or panel involving academics, legal experts, and civil society. This independent selection panel would select candidates based on objective criteria such as legal expertise, moral integrity, and professional track record, rather than political affiliation. This meritocracy-based method has proven effective in various democratic countries. (Siregar 2024) In addition to reforming the selection mechanism, strengthening the ethical oversight system is also crucial to reinforcing the independence of the Constitutional Court. The Constitutional Court Honorary Council (MKMK) needs to be empowered with clearer authority and more transparent operations. (Buana 2024) External oversight through the Judicial Commission (KY) needs to be reviewed, as independent ethical oversight is essential to maintain the accountability of judicial institutions. (Andriyani 2023)

In the context of constitutional law theory, efforts to strengthen the independence of the Constitutional Court are part of the realization of the principles of *trias politica* and the rule of law. The separation of powers between

the legislative, executive, and judicial branches requires that the judiciary be free from pressure and not subject to short-term political interests. The 1945 Constitution explicitly states that judicial power is independent, and it is within this framework that the Constitutional Court stands as the protector of constitutional values.(Munir et al. 2023) Reforming the selection of judges and establishing effective ethical oversight mechanisms should not be viewed as mere administrative measures, but rather as an integral part of consolidating constitutional democracy.(Walangitan 2025)

The implications of this institutional reform are enormous for the quality of democracy and the rule of law in Indonesia. Transparent and merit-based selection will foster public legitimacy for the constitutional court, while strong ethical oversight will ensure that constitutional judges carry out their duties with integrity and a high sense of moral responsibility.(Cahayani et al. 2024) Ultimately, an independent Constitutional Court not only serves as the guardian of the constitution, but also as a symbol of constitutional justice that is able to uphold the law without fear, pressure, or bias. By implementing these legal and institutional reforms, Indonesia can strengthen the principle of the rule of law and ensure that constitutional supremacy truly becomes the highest guideline in the administration of state power.

## CONCLUSION

Based on the findings of this study, it can be concluded that political influence on the independence of the Constitutional Court of Indonesia operates as a systemic phenomenon rooted in institutional arrangements rather than as isolated or incidental interference. The analysis demonstrates that although the Constitutional Court is constitutionally designed as an independent judicial body, the involvement of political institutions in the recruitment, evaluation, and dismissal of constitutional judges has created structural conditions that enable sustained political intervention. These findings directly address the research question by showing that the existing selection mechanism involving the House of Representatives, the President, and the Supreme Court generates inherent conflicts of interest and weakens the effective guarantee of judicial tenure.

From a theoretical perspective, this study contributes to the discourse on judicial independence by illustrating how institutional design and tenure mechanisms can undermine constitutional safeguards even in formally democratic legal systems. It extends existing scholarship by shifting the focus from individual judicial behavior to the structural and procedural dimensions of political influence within constitutional adjudication. Practically, the findings underscore the urgency of reforming the legal framework governing the Constitutional Court, particularly in relation to judicial selection, tenure security, and ethical oversight, in order to protect the Court's role as an impartial guardian of the Constitution.

This study is not without limitations. Its reliance on normative legal analysis and documented institutional practices means that it does not incorporate empirical data derived from interviews or quantitative measurements of judicial behavior. Future research could therefore expand upon these findings by

employing socio legal or empirical approaches, including comparative studies across constitutional courts or in depth examinations of judicial decision making patterns. Such research would further enhance understanding of how political interests interact with judicial institutions and help develop more effective strategies for safeguarding constitutional court independence.

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## AUTHOR CONTRIBUTIONS STATEMENT

The following statement outlines the specific contribution of the supervising author to this manuscript. Dr. Lutfil Ansori S.H.I., M.H. provided conceptual direction, offered methodological guidance, supervised the development of the research framework, and delivered critical academic feedback throughout the drafting and revision stages, ensuring that the study met the required scholarly standards.

## CONFLICT OF INTEREST

This section is a statement from the author that this article has a conflict of interest or not.

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