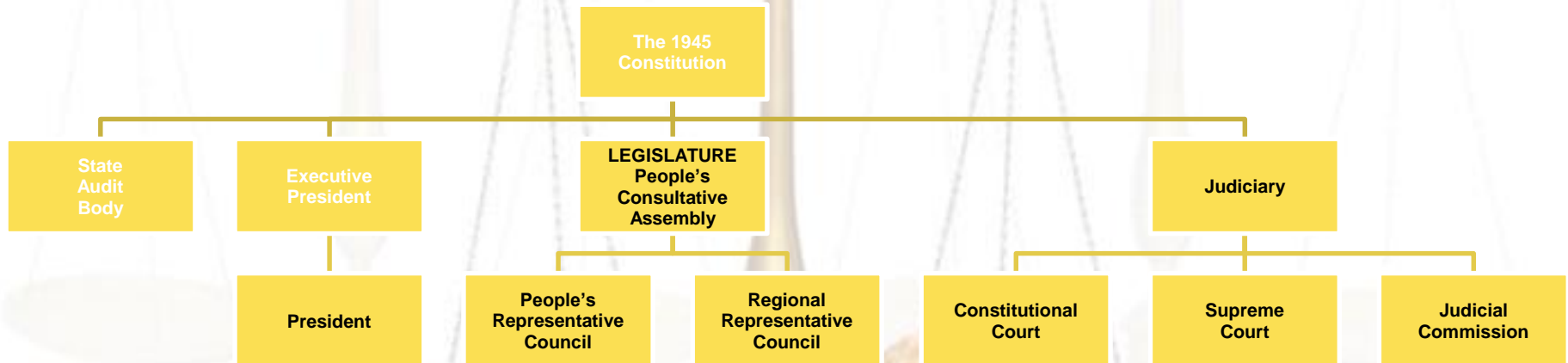




# RI Constitution in A Nutshell

**Mohammad Fajrul Falaakh**  
**January 2012**

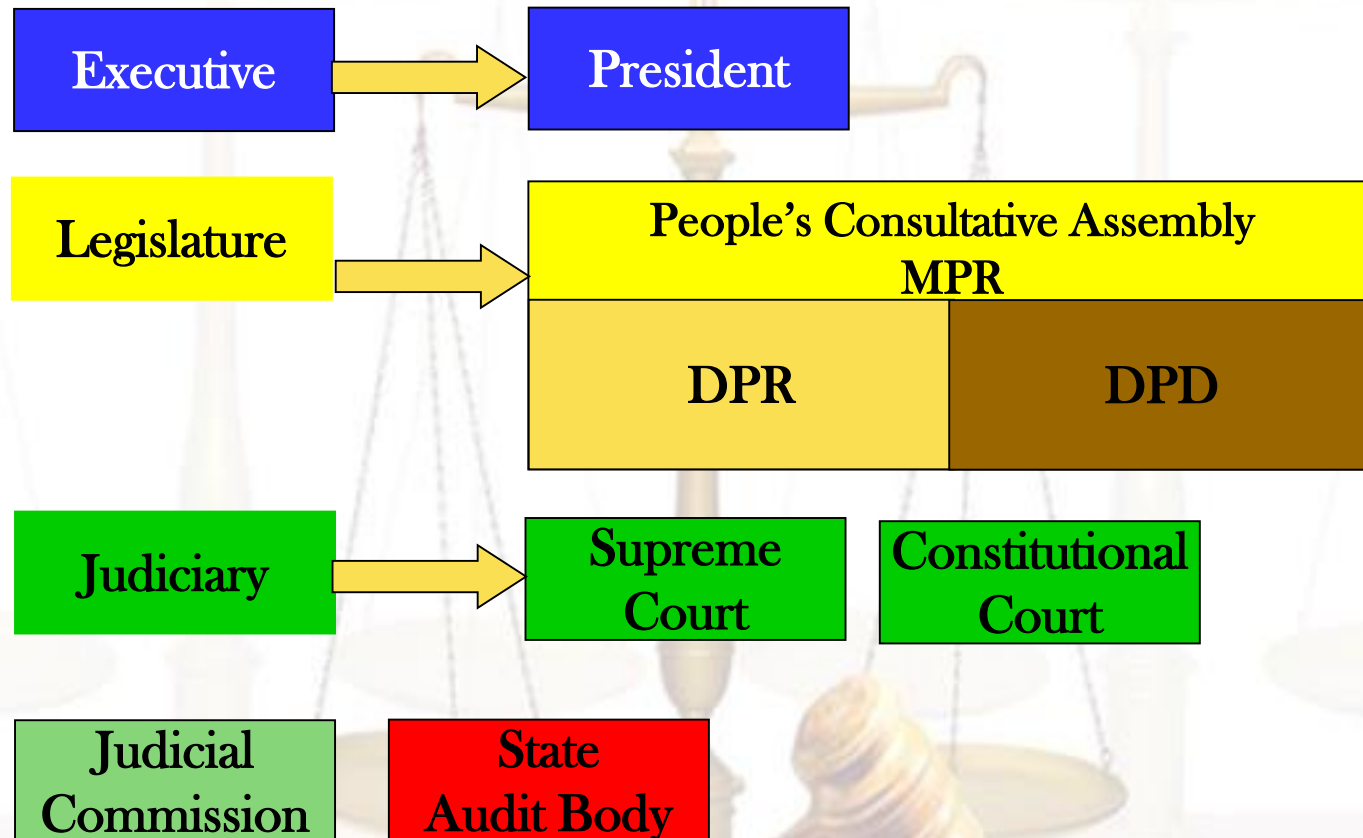
# Indonesian State Agencies Structure (Change with *RI Triaspolitika*)



# Fundamental Constitutional Issues

- Democratic constitutional state (*demokratische rechtsstaat*)
- Human rights protection
- Separation of power, checks and balances, *nebengeordnet staatsorganen*
- Divergent decentralism
- Electoral systems

# Separation of Powers



# President

- FUNCTIONS
  - Chief executive (Article 4 (1))
  - Legislative role (Article 5 and 20)
  - Chief of the military (Article 10)
  - Chief of diplomacy (Article 13)
- Direct Presidential election
  - Nominated by political parties or coalition of parties  
→ no independent candidate
  - Two rounds election system
  - Tenure: Limited to two terms
- Presidential system

# People's Consultative Assembly (MPR)

- Amendment of the Constitution
- Inauguration of an elected President
- Impeachment of the President
- Elected the President or Vice President when one or both of the positions are vacant.

# DPR



- **FUNCTIONS**

- **Legislative**
  - With President
  - With DPD on local issues
- **Budgetary**
  - With President
  - With State Audit Body
  - With DPD on local budget issues
- **Supervisory**
- **Appointment**
  - Judges of the supreme court
  - Three judges of the constitutional court
  - Members of the judicial commission

- **ELECTION**

- **Open Proportionality**
- **550 members**

# DPD

- FUNCTIONS:

- Legislative function on local issues; giving ***consideration or submit bill*** to the DPR
- Supervisory function on local issues
- Impeachment, as members of the MPR

- ELECTION

- FPTP, 4 from each province
  - $4 \times 32 = 128$  members



# Judiciary



- Dual structure
  - Supreme Court (*Mahkamah Agung*; MA)
  - Constitutional Court (*Mahkamah Konstitusi*; MK)
  - Judicial review of subsidiary legislations
- A Judicial Commission (*Komisi Yudisial*; KY) is established for judicial recruitment and disciplinary measure.

# Supreme Court



- **FUNCTIONS**

- Judicial power
- To hear “ordinary” cases on cassation level
- Judicial review of subsidiary legislations

- **APPOINTMENT**

- Nominated by the Judicial Commission and elected by the DPR, inaugurated by the President.

# Constitutional Court

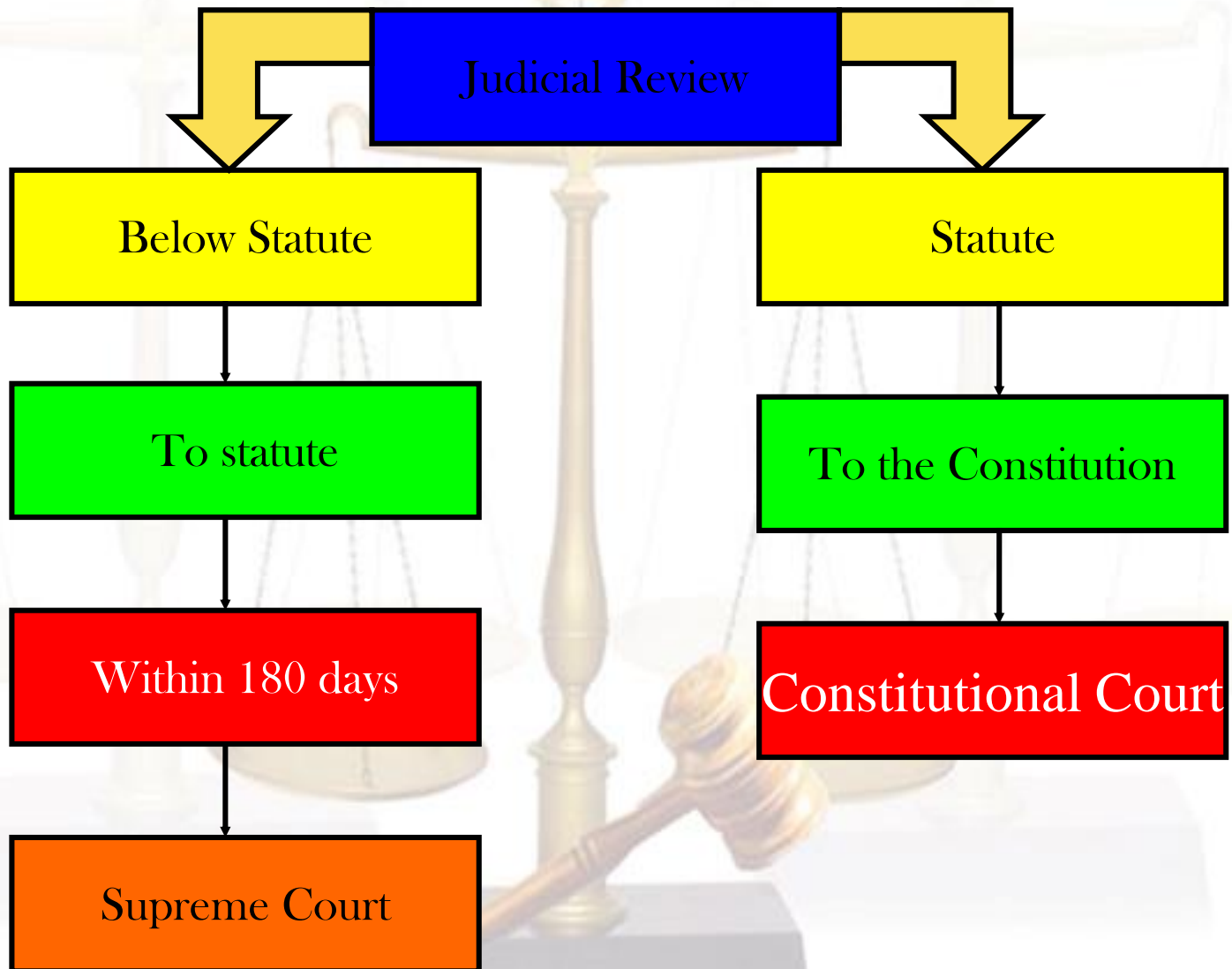


- **FUNCTIONS**

- Constitutional review of parliamentary laws
- To settle disputes between state agencies
- To settle electoral disputes
- To decide dissolution of political party proposed by the government
- To decide DPR charge to impeach president or vice president

- **APPOINTMENT**

- Nine judges
  - Three are appointed by the President
  - Three by the DPR
  - Three by the Supreme Court



# Judicial Commission



- **FUNCTIONS**

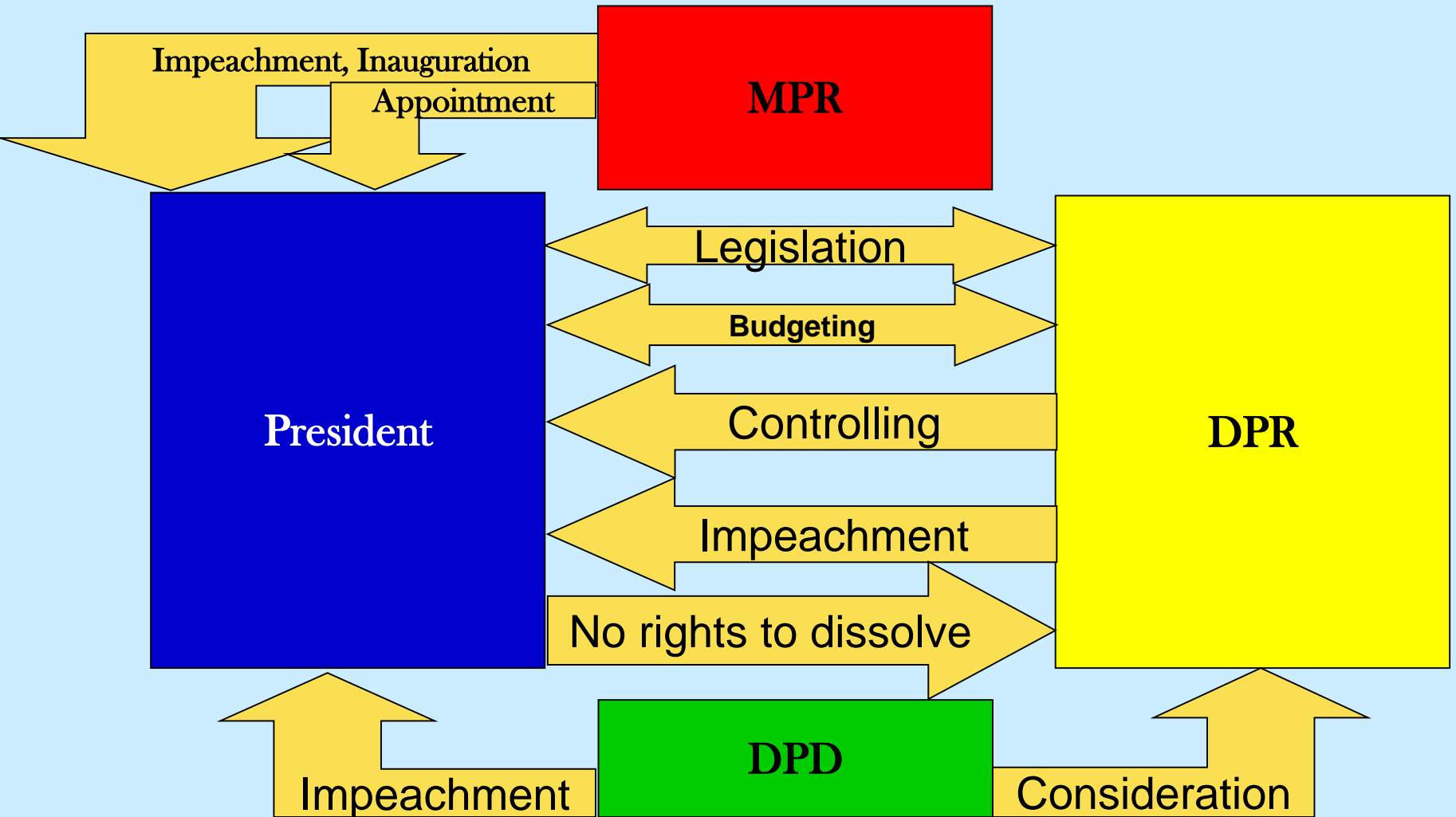
- to nominate Justices of the Supreme Court
- to protect and uphold the honor, dignity and the conduct of judges

- **APPOINTMENT**

- Seven members
- Appointed and removed by the President with the approval of the DPR

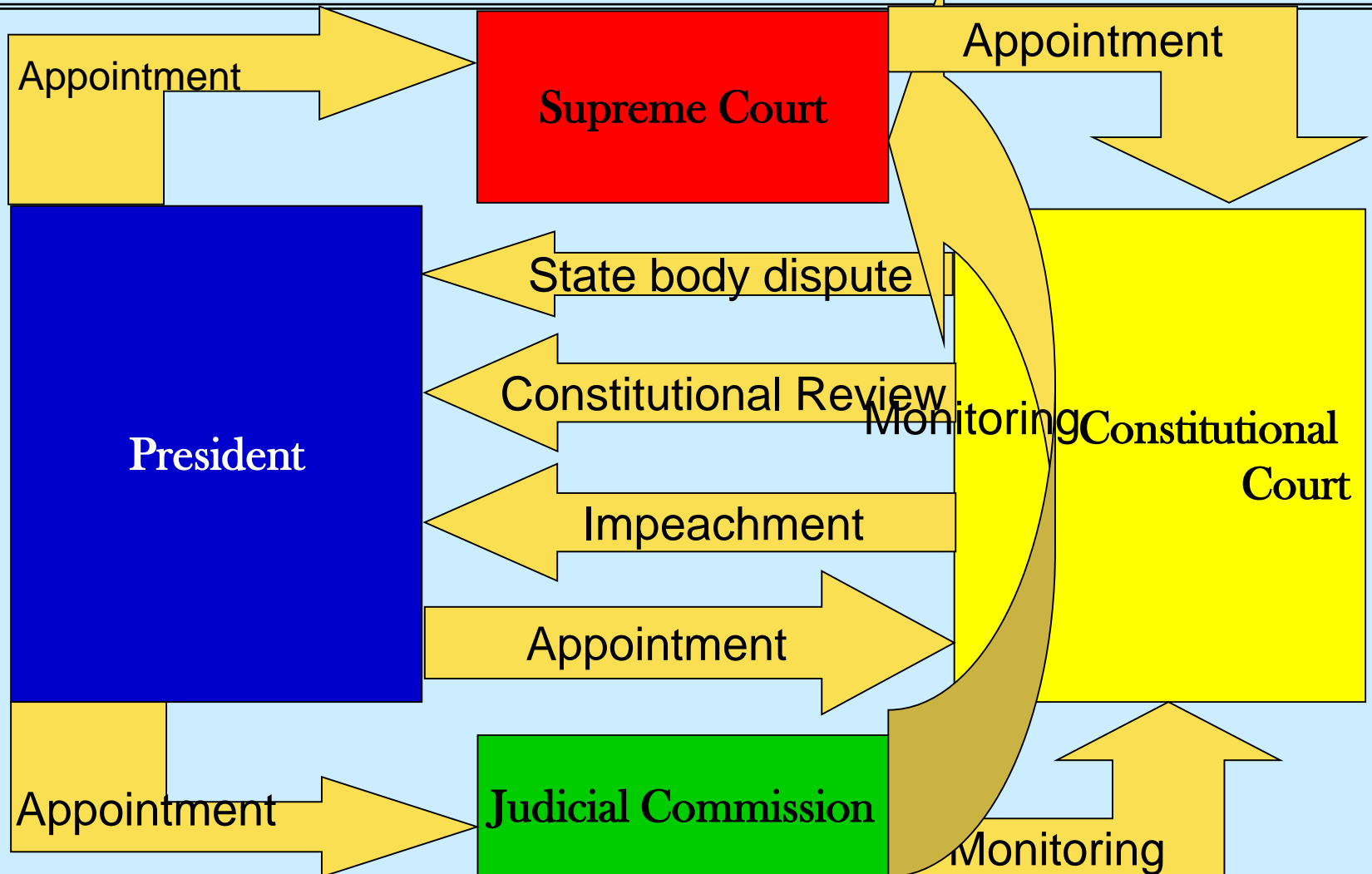
# Executive-Legislative Relations

## President and Parliament



# Checks and Balances

## President and Judiciary



# Checks and Balances

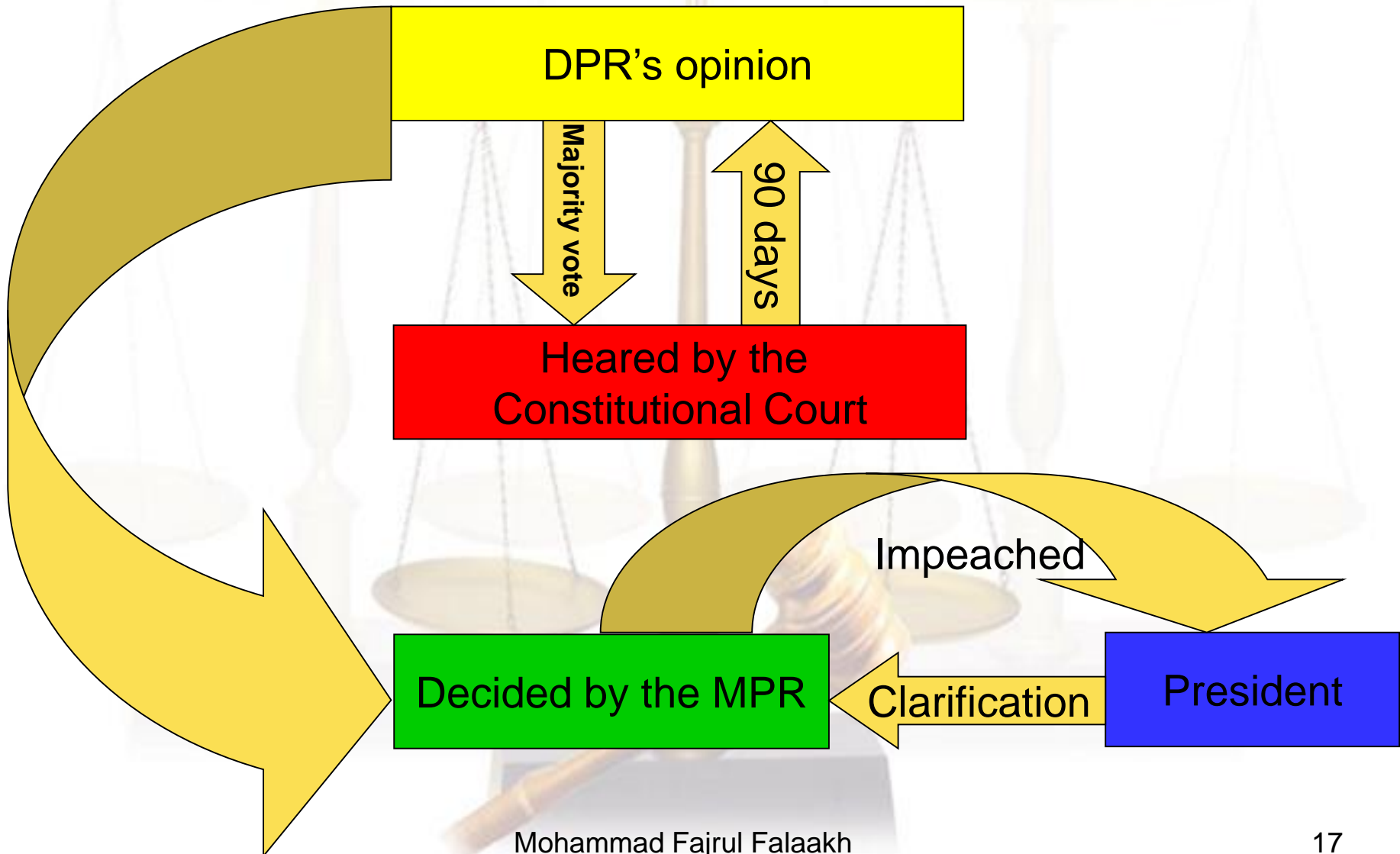
## Legislature and Judiciary

MPR	Supreme Court
DPR	Constitutional Court
DPD	Judicial Commission

- Constitutional Court v. DPR = Constitutional Review
- DPR v. Judicial Commission = appointment
- Constitutional Court v. MPR, DPR, DPD, Judicial Commission = dispute between states body
- DPR v. Constitutional Court v. MPR = impeachment



# Presidential Impeachment and Dismissal



# Bill of Rights



- Article 28, 28A – 28J of the 1945 Constitution.
- After the constitutional amendments, the Bill of Rights are more complete, includes non-derogable rights.
- The problem with non-retrospective principle.

# Achievements of Constitutional Reform 1999 - 2002

- Constitutional democracy (article 1 (2))
- Constitutional law state (Article 1 (3))
- Redistribution of powers, proliferation of state organs
- Clearer checks and balances
  - Pure presidential system?
  - Judicial review
  - Asymmetric bicameralism
- Bill of Rights
- Decentralization of powers to the regions
- Independence of the judiciary (Article 24 (1))
- Free and fair election (Article (22E (1))

# Some Problems

- Presidential vs. Multi-party system
  - Presidential nomination by political parties
  - Minority President
  - Divided Government
- Asymmetric bicameralism
- New constitutional tradition (and democracy)