

E-MAGAZINE **KONSTITUSI**



**CONSTITUTIONAL COURT
CONFIRMS FACTUAL
VERIFICATION**

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CONSTITUTIONAL HISTORY CENTER

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Editor's Foreword

Ahead of the registration for political party candidates contesting in the 2024 General Election, the Constitutional Court (MK) reiterated the verification of political parties participating in the General Election. In its decision, the Constitutional Court affirmed that every political party, including those participating in the 2019 General Election and new political parties, must undergo factual verification. In the HEADLINE NEWS, you can read a full review of the Decision Number 64/PUU-XX/2022 filed by the Indonesian Solidarity Party (PSI).

There is also an OPINION that discussed the proposal regarding using the Police Record Certificate/Police Clearance Certificate (SKCK) as a requirement for legislative candidates participating in the 2024 General Election. In addition, various interesting information is presented through Konstitusi Magazine's special rubrics. There are Courtroom, News Flash, Minutes of Amendment, Milestones of Constitution, and others.

We hope that the September 2022 Edition of Konstitusi Magazine can provide new knowledge for the readers. Long Live the Constitution!

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CONSTITUTIONAL COURT AFFIRMED FACTUAL VERIFICATION OF NON-PARLIAMENTARY POLITICAL PARTIES

Political parties that have passed the parliamentary threshold in the 2019 general elections do not need to undergo factual verification. On the other hand, those that do not pass must undergo administrative and factual verification by the General Elections Commission (KPU). The Indonesian Solidarity Party (PSI) challenged the factual verification requirements before the Constitutional Court because they considered this provision discriminatory.



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Human Rights and Protection of Citizens' Constitutional Rights



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PATH OF JUSTICE FOR POLITICAL PARTIES VERIFICATION

Under the Constitutional Court (MK), the provisions concerning the verification of political parties contesting in elections experience dynamics. Constitutional Court made several legal changes against the legal policy in Law Number 7 of 2017 concerning General Elections (UU 7/2017). It seems changeable; however, it is within the framework of finding and providing treatment that is in accordance with the principles of justice for the political parties participating in the general election.

The first law, according to its initial provisions regarding the verification of political parties, is stipulated in Article 173, paragraph (1) of Law 7/2017. It is stated that "A Political Party Contesting in an Election is a political party established as an election contestant following a verification process by the KPU." The law was amended before it was implemented as the norm was challenged in the Constitutional Court. It was decided through Constitutional Court Decision Number 53/PUU-XV/2017, dated January 11, 2018. In its ruling, the Constitutional Court stated that the phrase "established" is unconstitutional. Thus, Article 173, paragraph (1) of Law 7/2017 reads, "A Political Party Contesting in an Election is a political party that has passed the verification by the KPU."

The Constitutional Court also invalidated Article 173 paragraph (3) of Law 7/2017, which stated, "A political party established as an election contestant following a verification process by the KPU as mentioned in paragraph (2) shall not be re-verified and established as a Political Party Contesting in an Election. As a result, all political parties must undergo a verification process in the 2019 Simultaneous Elections. Political parties that passed the verification have constitutional rights as participants in the general election.

This means that all political parties must undergo a verification process to participate in the next election. This was done to avoid imposing different conditions (unequal treatment) on participants in the same contestation (general election). Position and standing was an attempt to uphold the principle of equality before the law. This is a condition of the second law that replaced the first one.

Later, the Constitutional Court realized that standing tended to be ignorant of upholding the principle of justice

because it viewed it in the same way as something that should be treated differently. Thus, the third law was stipulated from Decision Number 55/PUU-XVIII/2020. This decision answers the judicial review of Article 173 paragraph (1) of Law 7/2017 filed by the Garuda Party. This law was created after observing the dynamics, developments, and results of the 2019 election.

As it is known, there were political parties in the 2019 Election (1) that passed the Parliamentary Threshold, so they have representatives in the DPR, and (2) did not pass the parliamentary threshold, so they did not have representatives in the DPR. However, they might have representatives at the Provincial/Regency/City DPRD level, and (3) have no representative, either at the DPR level or the Provincial/District/City DPRD level. The question is, is it fair

that the three variants of vote acquisition results and the level of representation of a political party are equated with new political parties that will be the participants of the Election in the "verification" of the next election contest?

From the perspective of justice, this is considered unfair because the essence of justice is equals should be treated equally and unequals unequally. Providing equal treatment for the verification process of all political parties participating in the general elections, including those participating in the previous elections and new political parties, is a form of injustice.

In the end, the Constitutional Court declared that Article 173 paragraph (1) of Law 7/2017 is unconstitutional or contrary to the 1945 Constitution insofar as not interpreted as the Constitutional Court's decision that (1) 'A Political Party contesting that has passed the verification of the 2019 Elections and have passed/met the Parliamentary Threshold requirement in the 2019 Elections shall undergo administrative verification but not a factual one; (2) while a Political Party that has not passed/has not met the Parliamentary Threshold requirement and a Political Party that only has representation at the provincial/regency/city DPRD and a Political Party that doesn't have representation at the provincial/regency/city DPRD must be re-verified administratively and factually, (3) this is also applicable for new political parties, they must undergo administrative and factual verification. This is the current law. This is the path of justice granted by the Constitutional Court through its decision. Long Live Constitution!





Window

MISHA

I D.G.Palguna

“Imagine a country that flies into space, launches Sputniks, creates such a defense system, and it can’t resolve the problem of women’s pantyhose. There is no toothpaste, no soap powder, not the basic necessities of life. In was incredible and humiliating to work in such a government.”

Mikhail Gorbachev, Presiden terakhir Uni Soviet.



in World War II. For this reason, the country became one of the five permanent members of the United Nations Security Council, which gave it the right to veto any of its resolutions. The United Nations Security Council is an international organization formed after the great war that killed no less than 60 million people. It is hard for people who do not speak or do not understand Russian to pronounce the official name of this country: *Soyuz Sovetskikh Sotsialisticheskikh Respublik* (in English, Union of Soviet Socialist Republics or U.S.S.R.). The word “Soviet” literally means “Council” or “Assembly” and refers to a specific body or system of government. In its glory days, the Soviet Union consisted of 15 Soviet Socialist Republics, including Russia, Ukraine, Belarus (formerly called Byelorussia), Georgia, Armenia, Azerbaijan, Estonia, Latvia, Lithuania, Turkmenistan, Tajikistan, Uzbekistan, Kazakhstan, Kyrgyzstan and Moldavia (Moldova). In terms of the number of states, the states of the Soviet Union are less than a third

of the states of the United States of America. However, the total area of the Soviet Union is two and one-half times that of the United States of America. This means equal to one-sixth of the earth’s land surface.

The Soviet Union was the “successor state” of the Russian Empire—an empire ruled by the Romanov dynasty since 1721. This empire ended when Tsar Nicholas II, the last emperor of the Romanov dynasty, was forced to abdicate in a revolution known as the 1917 February Revolution. He was forced to abdicate for being seen as incompetent, especially after the humiliating defeat of the Russian Empire in the war against Japan (Russo-Japanese War), which lasted over a year (10 February 1904 – 5 September 1905). During that great war, the Russian army was completely destroyed by the Japanese military, especially its naval fleet, in a disastrous battle that lasted for two days, from 27 – 28 September 1905, in the Tsushima Strait. The Empire was replaced by a nationalist

Misha — and Gorby—is Mikhail Sergeevich Gorbachev’s favorite nickname.

He passed away on August 30, 2022, at the age of 91. He was the last General Secretary of the Communist Party of the Soviet Union (CPSU) and the last President of the Soviet Union, a northern Eurasian empire stretching from the Baltic and Black seas in the West to the Pacific Ocean in the East. The Soviet Union is a superpower country that was one of the victors

government under the leadership of Alexander Kerensky. However, Kerensky did not last long in power.

On November 7, 1917 (according to the Gregorian calendar) or October 25, 1917 (in the Julian calendar), Vladimir Lenin led a revolution (again), the Bolshevik Revolution—which refers to the name of a faction in the Russian Social Democratic Party, the well-known hardliner Bolshevik faction, which fueled this revolution. Meanwhile, after more than a year of being detained and moved around, Tsar Nicholas II and his wife, children, and people closest to him, were finally executed in July 1918 by the Bolsheviks. Thus, the story and dynasty of the Romanov family in the country where Rasputin was born ended.

The establishment of the Soviet Union totally dismantled the fundamentals of the political, social, economic, and cultural order. After the Bolshevik Revolution, the political and governmental foundations of the Soviet Union were formed by the Soviets (Councils) of People's Deputies. These existed at all levels of the administrative hierarchy, with the Soviet Union as a whole under the symbolic control of the Supreme Soviet, which was based in Moscow. The Supreme Soviet has two chambers—the Soviet of the Union, with 750 members elected on a single-member constituency basis, and the Soviet of Nationalities, with 750 members representing the various political divisions. In elections to these bodies, the voters were rarely given any choice of a candidate other than those presented by the Communist Party of the Soviet Union (CPSU), which was the leading and guiding

force of Soviet society and the nucleus of its political system. In theory, all legislation required the approval of both chambers of the Supreme Soviet. However, in its practice, all decisions were made by the small group known as the Presidium of the Supreme Soviet. The Politburo of the CPSU strongly influenced the Presidium of the Supreme Soviet. The role of the councils (soviets) in the individual republics and other territories was primarily to put into effect the decisions made by the Supreme Soviet. Thus, the political system was authoritarian and highly centralized, which also applied to the economic system. The economic foundation of the Soviet Union was "Socialist ownership of the means of production, distribution, and exchange," and the economy of the entire country was controlled by a series of five-year plans that set targets for all forms of production.

What happened then? Instead of working, the political and economic system à la the Soviet Union actually created and led to two major problems: an outdated bureaucracy and a dying economy. Misha must face those problems when he was elected as Secretary General of the CPSU in March 1985. This was the origin of his statement quoted at the beginning of this article. For this reason, he thinks restructuring (*perestroika*) is fundamental to the foundation of new thinking in the Soviet Union, as reflected in his 1987 book, *Perestroika* and New Political Thinking. He even officially "announced" the new political thinking to the world through his speech at the United Nations in December 1988.

Fundamental and large-scale reforms, which became known as

glasnost (openness) and *perestroika* (restructuring), were announced by Misha as soon as he was appointed as President of the Soviet Union to respond to the difficult situation in his era. He referred to the era he faced as the "Stagnation Era," which resulted from the negative impacts of the previous leaders' economic, political, and social policies, which, according to Misha, did without overseeing or correcting them. As a result, the Soviet Union (and allied countries that joined the mutual defense organization Warsaw Pact) has been trapped in the "Cold War" for years with the United States (and its allied countries, especially those who are members of the North Atlantic Defense Organization, NATO). The Cold War was a term used to refer to a large period of political tension between the two great powers of the time and their allies (the United States and the Soviet Union and their respective allies) that lasted for decades—and could erupt at any time into the deadliest and devastating war between the two superpowers and their allies. The impact of the cold war leads to an arms race, including weapons of mass destruction, such as nuclear weapons, and draining energy and budget from both sides. In the case of draining the budget, Burns H. Weston (1989) confirmed Misha's concern. According to Weston, between 1988/1989 alone, the annual military spending of the countries worldwide reached 1.8 million dollars per minute.

This amount is equivalent to the annual income of 2.6 million people in the 44 poorest countries worldwide. It can be said most of that \$1.8 million per minute was

spent by the two blocks of countries involved in the cold war, especially the United States and the Soviet Union.

Therefore, regardless of all other political considerations, Misha's annoyance toward such reality was understandable.

"This has to end, not later but now," he said. So, he took a policy that really turned 180 degrees from his predecessor: he approached the President of the United States, Ronald Reagan. He assures that the arms race and the cold war are just futile. It's Success. Various strategic agreements were successfully reached, especially regarding ending the arms race. One of the most important is the signing of the *INF Treaty—Intermediate-Range Force Treaty*—with the United States in December 1987. The Cold War ended. The world breathed a sigh of relief. Misha was praised and even worshiped from all corners of the earth, like a saint who brings peace to the world and humanity. In the end, he was rewarded with a prestigious award, the Nobel Peace Prize, in June 1991. In his acceptance speech when receiving the award, Misha quotes the German philosopher Immanuel Kant's "prophecy" that one day humans will face a dilemma: whether to join the true unity of nations or perish in a devastating war that will end humanity. "Now, as we move from the second to the third millennium, the clock has stuck the moment of truth," he said

while promising that the leadership of the Soviet Union is working and will continue to make every effort to ensure that future developments in Europe and the world as a whole will always be based on openness, mutual trust, international law, and universal values.

However, what happened within the Soviet Union itself? Simply put, through *glasnost*, Misha wanted to encourage dialogue. As for *perestroika*, he intended to introduce quasi-free market policies toward state-run industries. But what happened? *Glasnost*, instead of inducing reformation from the perspective of Communist thought or ideas, opened the floodgates of criticism directed at all state officials. As a result, the state lost its control over the media and the public. Meanwhile, in all countries that had been under the influence of the Soviet Union, the democratic reform movement gained momentum. On the other hand, *perestroika*, which was expected to encourage the birth of sound economic policies, actually exposed the worst sides of the capitalist and communist systems. When control over prices was taken off in some markets, the old bureaucracy was allowed to remain in place, which meant letting the Communist officials who were in the bureaucracy to push back policies that did not benefit them.

When the Soviet Union collapsed, which was marked by the declaration of independence of one by one of

the member countries of its soviet republics, Misha sadly delivered his resignation speech as President of the Soviet Union. However, at the same time, he also emphasized, "We live in a new world. The arms race has ended, and so does the excess militarization that has damaged our economy, our public spirit, and our morals. The threat of world war has been removed. Again I want to emphasize that from my side, everything has been done during this transitional period to maintain reliable control over nuclear weapons." There is another tragic-comedy story that accompanies the dissolution of the Soviet Union. Some cosmonauts (astronauts) were conducting their country's missions in space when their country declared disbanded. Their fate has been hanging around for a long time in a "country" in the middle of nowhere. Somehow and where, however, they finally landed. There are also other rumors that because the Soviet Union had disbanded, their troops who were stationed in the satellite states of the Soviet Union (countries that were under the influence and control of the Soviet Union) were cut off from the supply of the logistics and in order to survive, they were forced to sell off their war equipment, including tanks. This sparked serious concern as it opened the possibility that the weapons might fall into the hands of terrorists, especially for the latter. Only God Knows the truth.

Catalog

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SKCK FUNCTIONS IN GENERAL ELECTIONS

The Police Record Certificate/ Police Clearance Certificate (SKCK) is a certificate issued by the police to explain whether someone has committed a crime or not. SKCK is undoubtedly essential to know the history of the candidates for legislative members. The Constitutional Court (MK) decision Number 2/PUU-XX/2022 allowed the ex-drug convicts to run for Regional Head Elections. The reason is that SKCK is an administrative requirement that violates constitutional rights. The phrase violations of decency are considered to contain a very broad sentence and tends to have multiple interpretations. In lieu of SKCK, ex-convicts attach a letter from the correctional institution stating that they have finished serving their sentence.

Law No. 7 of 2017 Article 240 paragraph (1) letter G has explained the requirements for candidates for legislative members is someone who has never been imprisoned with a prison term of 5 years or more, except to be honest and open to announcing their background as ex-convicts to the public. The honesty of the ex-convicts is what should be underlined. This is not only limited to the attempt to be honest during the register and campaign process but also if elected as a legislative member.

The upcoming 2024 elections are tainted with a stir because of allowing ex-corruption convicts to run for re-election as legislative members. Corruption is an act that is closely related to honesty and integrity. Someone who is honest and has

high integrity will certainly not be easily tempted and commit acts of corruption.

With the SKCK, the candidates for legislative members indirectly have been filtered automatically. Moreover, in the case of an ex-convict who cannot disclose their history openly and honestly to the public. With the low level of literacy of the Indonesian people, it is feared that acts of corruption will happen again.

The ban on former corruptors from running for legislative members had previously occurred in the 2019 elections and was canceled. The result is 49 candidates for legislative members who are ex-corruption convicts elected to the legislature. What a great result, given that corruption, is an extraordinary crime that impacts the wheels of the country's economy. It certainly can be detrimental to many people and hamper national development.

Something is missing when the ex-convicts are allowed to run for legislative seats with the only assurance

that candidate members will not commit crimes again. Moreover, corruption is a crime that seriously harms many parties. It should be remembered again that corruption is an extraordinary crime that should receive treatment that is not equated with ordinary criminal offenders.

Thus, SKCK as an administrative requirement requires more attention, especially for ex-corruption convicts who cannot guarantee that they will not repeat their actions. It is necessary to form regulations related to elections to see the rights of the public in general and not only legislative candidates. Moreover, legislature members are representatives of the people who should represent all elements of society, not just the upper class.

VERIFICATION OF POLITICAL PARTIES CONTESTING IN THE ELECTION

The Government and the House of Representatives (DPR), together with the election organizers (KPU and Bawaslu), agreed to hold the elections on September 14, 2024. This agreement was reached at a working meeting between Commission II of the DPR RI and the Minister of Home Affairs,

General Elections Commission (KPU), and the General Election Supervisory Body (Bawaslu) on Monday, January 24, 2022, at the DPR Building.

Following up on this, General Elections Commission (KPU) issued General Election Commission Regulation (PKPU) Number 3 of 2022 concerning Stages and

Schedules for the 2024 General Election and PKPU Number 4 of 2022 concerning Registration, Verification, and Determination of Political Parties Contesting in the General Election for Members of the People's Representative Council and Regional People's Representative Council.

The KPU of Serang City conducts administrative verification



KPU Kota Serang lakukan verifikasi administrasi keanggotaan Partai Politik Hari Pertama, Selasa 16.08.2022. Sumber Foto Instagram KPU Kota Serang

of Political Party membership on the first day, Tuesday (16/08/2022). Photo source: Instagram of KPU of Serang City

Based on the stages of the election contained in the appendix of PKPU Number 4 of 2022, registration of political parties is open on August 1, 2022. Until the registration was closed on 14 August 2022, 40 political parties had registered as participants in the 2024 election.

The next stage is verification which includes administrative and factual verification. The provisions of Article 173 of the Election Law state that political parties contesting in elections are political parties that have passed the verification by the KPU. Political parties must also meet

several strict requirements to be able to compete in the 2024 elections, as contained in Article 174 of the Election Law. Nine general requirements must be met by political parties contesting in the election:

Have the status of a legal entity in accordance with the Law on Political Parties;

1. Have management throughout the province;
2. Have management at 75% (seventy-five percent) of the number of regencies/cities in the province concerned;
3. Have management at 50% (fifty percent) of the number of regencies/cities concerned;
4. Have fulfilled at least 30% (thirty percent) of their organizers being female at the central level;
5. Have at least 1,000 members, or 1/1,000 (one thousandth) of the total population in the management of political parties as referred to in letter c and proof of membership card;
6. Have permanent offices for their management at the central, provincial, and regency/city levels until the last election stage;
7. Submit the name, symbol, and/or icon of the political party to the KPU;
8. Submit a bank account where the account holder's name is the registering political party to the KPU.

KPU conducts administrative verification of registered political parties as candidates for election contestants. Administrative verification is to check the complete and validate the documents to fulfill the requirements for political parties to become election participants. Administrative verification is carried out on the requirements document of the candidate's political parties

contesting in the elections, alleged multiple memberships of political parties, and membership of political parties that are potentially ineligible. Announcement of recapitulation result of administrative verification to Political Parties and the Election Supervisory Body is on October 14, 2022.

After passing administrative verification, political parties must go through factual verification of management and membership. The KPU conducts factual verification of the candidate's political parties contesting in the elections that have been declared eligible for administrative verification requirements. Factual verification is carried out based on administrative verification documents.

Factual verification is checking and verifying the completeness, authenticity, and accuracy of the required documents with objects in the field as a requirement for political parties to participate in elections. Factual verification is carried out on the management and membership of political parties as candidates for election contesting at the central, provincial, and regency/city levels.

The KPU will conduct the factual verification program from October 15 - November 4, 2022. The political parties that have passed as participants in the 2024 Election will be announced on December 14, 2024.

Currently, 40 political parties are registered as candidates for contesting in the 2024 Election. All these political parties must undergo administrative verification.

The next stage is factual verification. However, not all political parties are factually verified. Political parties that passed the parliamentary threshold in the 2019 elections are not factually verified. ■

NUR ROSIHAN ANA



CONSTITUTIONAL COURT AFFIRMED FACTUAL VERIFICATION OF NON-PARLIAMENTARY POLITICAL PARTIES

Political parties that have passed the parliamentary threshold in the 2019 general elections do not need to undergo factual verification. On the other hand, those that do not pass must undergo administrative and factual verification by the General Elections Commission (KPU). The Indonesian Solidarity Party (PSI) challenged the factual verification requirements before the Constitutional Court because they considered this provision discriminatory.



The Constitutional Court (MK) decision Number 55/PUU-XVIII/2020 amended Article 173 paragraph (1) Law Number 7 of 2017 on the General Elections (Election Law). Article 173, paragraph (1) of the Election Law originally reads, “A Political Party Contesting in an Election is a political party established as an election contestant following a verification process by the KPU.”

Article 173 paragraph (1) is amended by the Constitutional Court Decision Number 55/PUU-XVIII/2020. The Constitutional Court decision Number 55/PUU-XVIII/2020 point 2 stated that Article 173 paragraph (1) of the Election Law is contrary to the 1945 Constitution or unconstitutional and not legally binding as long is

not interpreted as “political parties that have passed verification for the 2019 Election and have passed/met the requirement for parliamentary threshold in the 2019 Election shall undergo administrative verification but not a factual one. As for political parties that have passed verification for the 2019 Election and have not passed/met the requirement for the parliamentary threshold in 2019 Election and parties that only have representation at the provincial/regency/city DPRD, and political parties that do not have representation at the provincial/regency/city DPRD shall have to pass administrative and factual verification, which also applies to new political parties.”

Decision Number 55/PUU XVIII/2020 was read out in the plenary session of the Constitutional

Court, which is open to the public on Tuesday, May 4, 2021. The nine constitutional justices failed to reach a unanimous decision. Three of the justices—Constitutional Justices Saldi Isra, Suhartoyo, and Enny Nurbaningsih—expressed a dissenting opinion regarding the decision.

PSI Objected

The Indonesian Solidarity Party (PSI) considers the enactment of Article 173 paragraph (1) of the Election Law as amended by Constitutional Court Decision Number 55/PUU-XVIII/2020 has harmed their constitutional rights and/or authorities. The Indonesian Solidarity Party (PSI), represented by Giring Ganesha Djumaryo (Chairman of PSI) and Dea Tunggaesti (Secretary General of PSI), filed a petition



Kuasa Hukum Partai Solidaritas Indonesia (PSI) secara daring bergantian memaparkan pokok permohonan pengujian Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum dalam sidang pemeriksaan pendahuluan, Senin (20/06.2022) di Ruang Sidang MK. Foto Humas/Ifa.

to the Constitutional Court. They Challenged Article 173 paragraph (1) of the Election Law.

The Indonesian Solidarity Party (PSI) legal counsel appeared before the Court virtually at the preliminary hearing of the judicial review of Law No. 7 of 2017 on General Elections on Monday, June 20, 2022, in the Court's Courtroom. Photo by HR/Ifa.

Based on the Registrar's Office of the Constitutional Court records, the PSI filed the petition on June 3, 2022. The Constitutional Court's Registrar's Office registered PSI's petition in the Electronic Constitutional Case Registration Book (e-BRPK) with Case Number 64/PUU-XX/2022 on June 8, 2022. Furthermore, PSI submitted the revisions to the petition on July 1, 2022.

PSI was established on November 16, 2014. PSI is a political party that has passed verification and has been

declared a participant in the 2019 General Election. However, PSI's vote acquisition in the 2019 Election did not meet the parliamentary threshold as stipulated in Article 414 (1) of the Election Law, which requires a minimum of 4% (four percent) of the total number of valid votes nationwide to compete for the House of Representatives (DPR) seats, with 2,650,361 votes. (1,89%).

PSI plans to contest in the upcoming 2024 election. However, PSI bears a heavier burden because it undergoes factual verification in the 2024 election. Even though PSI has passed administrative and factual verification in the 2019 Election.

Discrimination on Political Party Factual Verification

PSI states that every political party must receive equal recognition, rights, treatment, position, and

opportunity before the law in a fair and just, and non-discriminatory as guaranteed in Article 27 paragraph (1), Article 28 D paragraph (1) and paragraph (3), Article 28 I paragraph (2) of the 1945 Constitution. PSI believes that all political parties must be verified whenever participating in an election. This verification is to ensure that the political party meets the requirements as a candidate for a political party contesting in the election. Specifically, factual verification must always be conducted even if there is no change in regulations related to elections considering the internal dynamics of political parties, votes, as well as dynamics in Indonesian demography.

Such dynamics result in no political parties that are free from change even though they have passed verification in the previous election.



MK membacakan sejumlah putusan perkara pengujian undang-undang. Salah satunya, putusan pengujian Undang-Undang Nomor 7 tahun 2017 tentang Pemilihan Umum yang diajukan oleh Partai Solidaritas Indonesia (PSI), Rabu, (31/08/2022) di Ruang Sidang MK. Foto Humas/Ifa.

The Constitutional Court read the decision on the judicial review of Law No. 7 of 2017 on General Elections filed by the Indonesian Solidarity Party (PSI) on Wednesday, August 31, 2022, in the Constitutional Court's Courtroom. Photo by: HR/Ifa.

Therefore, administrative and factual verification of political parties must always be carried out considering changes, both internal and external, which are almost certain will always occur from time to time, so administrative and factual verification is essential to prevent and ensure that there is no degradation in the qualifications of all political parties contesting in the election.

PSI believes that it harmed their constitutional rights as one of the political parties contesting in the 2024 Election where they have passed factual verification in the 2019 Election even though the implementation of the 2019 Election and the 2024 Election use the same law, namely Law Number 7 of 2017 on General Elections.

The Importance of Factual Verification

According to PSI, administrative verification must be supported by factual verification because administrative verification does not guarantee the authenticity and accuracy of the data, so the documents from all political parties without exception must and need to be checked as requirements for candidate political parties contesting in the election through factual verification.

If factual verification is not performed, KPU, as election organizers, relies solely on the truth and the accuracy of documents submitted by political parties based on the honesty and integrity of the

political party concerned. However, the truth is there still found fictitious data during the factual verification related to the membership, management, and political party offices (fictitious membership and/or multiple identity cards, fictitious management, non-fulfillment of women's representation at the central level, fictitious office, and non-fulfillment of the requirements for having a permanent office, division of political parties due to internal conflicts, expansion and formation of regions and transfers of political party membership). Acquiring DPR seats in the previous election is not a guarantee of passing factual verification in the next election.

Legal counsel Rian Ernest said that factual verification is a form of seriousness and accuracy so that there is no repeat of 2014 practices where the KPU often finds fictitious offices and fictitious memberships when verification is carried out. The preliminary hearing was held virtually at the Constitutional Court on Monday, June 20, 2022.

Article 14 letter (b) of the Election Law states that the KPU must treat all election participants fairly and equally at all levels as stipulated in Article 17 letter (b) and Article 20 letter (b) of the Election Law.

The unfair treatment by giving privileges to political parties that pass the parliamentary threshold in the 2019 Election seriously undermines the principle of equality before the law and justice. The petitioner believed that the unfair treatment is detrimental to their constitutional rights as political parties that will undergo administrative and factual verification processes as a requirement to participate in the upcoming 2024 elections.

PSI asserted that in order to achieve justice and equality

without discrimination, all terms and conditions for political parties to participate in the 2024 general election and onward elections must be treated the same, either for reasons that political parties have seats in the DPR or DPRD or they gain public support. This is in accordance with the dissenting opinion on pages 70-71 of the Constitutional Court Decision Number 55/PUU-XVIII/2020 by citing the Court's consideration in Decision Number 53/PUU-XV/2017, which reads, "In the event that a political party obtains votes and seats in the General Election, it does not mean that political parties concerned to be immediately verified to be a participant in the next election or to be a participant in an election without further verification in meeting the requirements as a candidate contesting in an election."

Factual Verification of All Political Parties

In its petition, PSI states that of the 16 political parties participating in the 2019 Election, only nine political parties met the parliamentary threshold, including the Indonesian Democratic Party of Struggle (PDI Perjuangan), the Great Indonesia Movement Party (Gerindra), the Golongan Karya Party (Golkar), the National Awakening Party (PKB), Nasdem Party (National Democrat), Prosperous Justice Party (PKS), Democrats Party (PD), National Mandate Party (PAN).

Previously, in the 2012 election, several parties, such as the Golkar Party and PKS Party, did not pass the factual verification. Thus, they had to improve in the next election. Therefore, there is a possibility that if factual verification is carried out for the 2024 Election, we will find political parties that meet the provisions of the 2019 parliamentary

threshold. Still, they may also fail during the factual verification process. In 2009, Golkar and PKS were already in parliament because they passed the parliamentary threshold in the 2009 Election. However, this fact does not ensure that they meet the requirements for the 2014 election.

Similar to the 2024 election, just because the political parties have passed the parliamentary threshold in the 2019 election, then they certainly pass factual verification.

“The PSI hopes that the democratic festivity will not only be enjoyed by political parties sitting in the parliament but also those who do not. On that basis, the PSI requested that factual verification will not only be burdened by political parties, which have no power in the parliament. It must be fair, equal, and non-discriminatory towards all political parties participating in the election. Thus, it is only appropriate that all political parties contesting in the election must be verified administratively and factually,” said Rian Ernest Tanudjaja.

In its petition, PSI requested the Constitutional Court to declare Article 173 paragraph (1) of the Election Law as amended by the Decision of the Constitutional Court of the Republic of Indonesia Number 55/PUU XVIII/2020 unconstitutional or contrary to the 1945 Constitution and not legally binding insofar as not interpreted as, “All political parties, including (i) political parties that have passed verification for the 2019 Election and have passed/met the requirement of parliamentary threshold in the 2019 Election; (ii) political parties that have passed verification for the 2019 Election and did not pass/meet the requirement of parliamentary threshold in the 2019

Election; (iii) and new political parties shall have to pass administrative and factual verification by the General Election Commission of the Republic of Indonesia (KPU).”

Constitutional Court Rejects PSI's Petition

The Court considered that the petition filed by PSI was pretty straightforward. Therefore, the Constitutional Court believed that there was no urgency or need to hear the statements of the parties, in this case, the statements of the DPR and the President as referred to in Article 54 of the Constitutional Court Law, which makes the process of judicial review concerning the General Election Law faster.

The Constitutional Court held three hearings to handle petition Number 64/PUU XX/2022 filed by the Indonesian Solidarity Party (PSI) concerning the judicial review of the General Election. The first hearing with the agenda of the preliminary hearing was held on Monday, June 20, 2022. The second hearing, with the agenda of hearing the revisions to the petition, was held on Monday, July 4, 2022.

The third hearing was the final hearing where the Court reading out the decision was held on Wednesday, August 31, 2022. The Constitutional Court, in its Decision Number 64/PUU-XX/2022, stated that they rejected PSI's petition.

“Reject the Petitioner's petition entirely,” said Chief Justice of the Constitutional Court Anwar Usman, accompanied by the other seven constitutional judges at the ruling hearing, which was held in the plenary courtroom, on Wednesday, August 31, 2022

The Court's legal considerations at the ruling hearing stated that

the constitutional issue in the PSI's petition is the different treatment related to the verification of political parties, especially factual verification, between political parties that passed the verification for the 2019 Election and have passed/met the parliamentary threshold for the 2019 Election, and the Petitioner, who passed the verification for the 2019 Election but did not pass/meet the parliamentary threshold for the 2019 Election or a new political party,

Concerning the constitutional issues in the PSI's petition, the Constitutional Court had made its stance on the verification of political parties contesting in elections in Decision No. 55/PUU-XVIII/2020, following Article 173 paragraph (1) of the Election Law. The legal consideration of law Number 55/PUU XVIII/2020 in point [3.17], among other things, states that political parties contesting in elections reflect the people's aspirations on a large scale and are national (except for local political parties in Aceh Province). Therefore, the management structure of political parties must be in all provinces (national scale), have management in 75% of the regencies/cities in the province concerned, have management in 50% of sub-districts in the regency/city concerned, have a permanent office for management at the central level, provinces, and regencies/cities until the final stages of elections and other requirements. The problem does not end there. After participating in the 2019 Simultaneous Election, there were political parties in the 2019 Election that passed the Parliamentary Threshold, so they had representatives in the DPR, and those that did not pass the parliamentary threshold, so they did not have representatives in the

DPR. However, they might have representatives at the Provincial/Regency/City DPRD level. There were also political parties contesting in the General Election, which did not have representatives either at the DPR level or at the Provincial/Regency/City DPRD level. Looking at the dynamics and development of vote results and the representation level of a political party in an election contestation. The question is, is it fair that the three variants of vote acquisition results and the level of representation of a political party are equated with new political parties that will be the participants of the Election in the “verification” of the next election contest?

From the perspective of justice, this is considered unfair because the essence of justice is equals should be treated equally and unequals unequally. Providing equal treatment for the verification process of all political parties participating in the general elections, including those participating in the previous elections and new political parties, is a form of injustice. Therefore, political parties that have passed the parliamentary threshold shall undergo administrative verification, not a factual one. Political parties that have not passed the parliamentary threshold, parties that only have representation at the provincial/regency/city DPRD, and

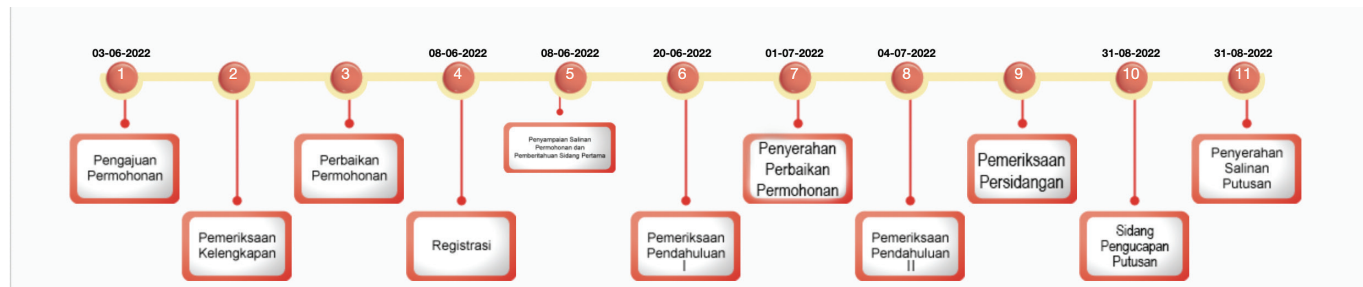
political parties that do not have representation at the provincial/regency/city DPRD shall have to pass administrative and factual verification, which also applies to new political parties.

The Court asserted that the content that the Petitioner challenged was essentially the same as what it had ruled in Decision No. 55/PUU-XVIII/2020, namely challenging the verification of political parties, both administratively and factually. Thus, the legal considerations in the Constitutional Court Decision Number 55/PUU XVIII/2020 mutatis mutandis apply in the legal considerations of Decision Number 64/PUU-XX/2022. ■

NUR ROSIHIN ANA



Steps of PSI's Petition in Political Party Factual Verification



STEP	DATE	PROCESS	FILE
1	03-06-2022	Submission of Petition together with the Issuance of AP3 and DKPP with Number 60/PUU/PAN.MK/AP3/06/2022	Petition AP3 and DKPP
2	08-06-2022	Checking the Completeness and Revision of the Petition	-
3	-	Revision of the Petition	-
4	08-06-2022	The Petition has been registered with the Court case Number 64/PUU-XX/2022, and ARPK has been issued with Number 64/PUU/PAN.MK/ARPK/06/2022	ARPK
5	08-06-2022	A copy of a submission letter has been issued with the number 64.64/PUU/PAN.MK/SP/06/2022	<ol style="list-style-type: none"> 1. Submission of the Petition to the Chairman of the Regional Representative Council of the Republic of Indonesia 2. Submission of the Petition to the Chairman of the House of Representatives of the Republic of Indonesia 3. Submission of the Petition to the Chairman of the People's Consultative Assembly of the Republic of Indonesia 4. Submission of the Petition to the President of the Republic of Indonesia 5. Submission of the Petition to the Registrar of the Supreme Court of the Republic of Indonesia
6	20-06-2022 09.00 WIB	Session Agenda: Preliminary Hearing I Session Agenda: Preliminary Hearing (I)	Session Schedule
7	01-07-2022	Submission of Revision of the Petition	Revision of the Petition
8	04-07-2022 13.30 WIB	Session Agenda: Preliminary Hearing II Session Agenda: Preliminary Hearing (II)	Session Schedule
10	31-08-2022 10.00 WIB	Verdict Reading Session Agenda: Verdict Reading	Session Schedule Verdict Documents
11	31-08-2022	A verdict copy has been issued with the number 97.64/PUU/PAN.MK/SPts/08/2022	<ol style="list-style-type: none"> 1. Submission of a copy of the verdict to the Chairman of the Regional Representative Council of the Republic of Indonesia 2. Submission of a copy of the verdict to the Chairman of the House of Representatives of the Republic of Indonesia 3. Submission of a copy of the verdict to the Chairman of the People's Consultative Assembly of the Republic of Indonesia 4. Submission of a copy of the verdict to the Registrar of the Supreme Court of the Republic of Indonesia 5. Submission of a Copy of the verdict to the Petitioner 6. Submission of a Copy of the verdict to the President of the Republic of Indonesia

DISSENTING OPINION:

ALL POLITICAL PARTIES MUST BE VERIFIED ADMINISTRATIVELY AND FACTUALLY

Nine constitutional justices failed to reach a unanimous decision Number 64/PUU-XX/2022 regarding the judicial review of the Election Law filed by the Indonesian Solidarity Party (PSI). Three Constitutional Justices, Saldi Isra, Suhartoyo, and Enny Nurbaningsih, expressed dissenting opinions. Previously, they also had different opinions on Decision Number 55/PUU-XVIII/2020.

The three constitutional judges, in their dissenting opinion, revealed that after Decision Number 53/PUU-XV/2017, constitutionally, the norms of Article 173 paragraph (1) of the Election Law reads, “A Political Party Contesting in an Election is a political party that has passed the verification by the KPU.” The verification is interpreted administratively as well as factually.

However, this meaning has changed after being amended by the Constitutional Court (MK) decision Number 55/PUU-XVIII/2020. The legal considerations for Decision No. 53/PUU-XV/2017 clearly and explicitly stemmed from the spirit that all political parties intending to contest in the election must be treated equally. Any discrimination that results in unfairness must be eliminated. Preferential treatment for certain political parties would be against the mandate of the

Constitution, including political parties concerning their participation in elections.

The legal arguments in the PSI’s petition stated that administrative and factual verification is a necessity. Factual verification is necessary because, without it, the KPU (General Elections Commission), as an election organizer, would only rely on the truth and accuracy of the documents submitted by the political parties.

“In this case, we agree that factual verification is vital for the verification of political parties contesting in the election,” stated the three constitutional justices in their dissenting opinion.

They believed that some of the Petitioner’s arguments that administrative and factual verification must apply equally to all parties to contest in the election were in line with the substance of the Decision No. 53/PUU-XV/2017 and their dissenting opinion in the Decision No. 55/PUU-XVIII/2020.

“Therefore, we stand with our previous stance that all political parties must be verified administratively and factually to contest in the election. Thus, the Court should have granted the a quo petition,” said the three constitutional judges as quoted from the point of the dissenting opinion of Decision Number 64/PUU-XX/2022.

QUESTIONING THE MEANING OF NATIONAL RESOURCE MANAGEMENT RESERVE COMPONENTS

A set of rules related to threats, supporting components, reserve components, and funding for the National Resource Management for State Defense in Law Number 23 of 2019 concerning Management of National Resources for National Defense (UU PSDN) were challenged formally and materially to the Constitutional Court. The petition with case number 27/PUU-XIX/2021 was filed by four NGOs—the human rights group *Inisiatif Masyarakat Partisipatif untuk Transisi Berkeadilan* (IMPARSIAL), the Commission for Missing Persons and Victims of Violence (Kontras), *Kebijakan Publik Indonesia* Foundation, the Indonesian Legal Aid and Human Rights Association (PBHI).

The preliminary hearing took place on July 22, 2021. They challenged Article 4 paragraphs (2) and (3), Article 17, Article 18, Article 20 paragraph (1) letter a, Article 28, Article 29, Article 46, Article 66 paragraphs (1) and (2), Article 75, Article 77, Article 78,

Article 79, Article 81, and Article 82 of the PSDN Law. At the hearing chaired by Constitutional Justice Daniel Yusmic P. Foekh, legal counsel Muhammad Busyrol Fuad said that the provisions of Article 4 paragraphs (2) and (3) and Article 29 of the PSDN Law had created legal uncertainty, thus violating Article 1

paragraph (3), Article 28D paragraph (1), and Article 30 paragraph (2) of the 1945 Constitution. The legal uncertainty due to Article 4 paragraphs (2) and (3) and Law 23/2019 *mutatis mutandis* has also led to the ambiguity of Article 29 of the PSDN Law, which regulates the mobilization of reserve components



against military and hybrid threats.

“In fact, Article 7 paragraph (2) of Law No. 3 of 2002 on State Defense has explicitly provided limitations of reserve components and supporting components that can only be mobilized against military threats,” Busyrol said.

According to Busyrol, Article 17, Article 28, Article 66 paragraph (2), Article 79, Article 81, and Article 82 of the PSDN Law violate Article 30 Paragraph (2), Article 28G Paragraph (1), and Article 28H Paragraph (4) of the 1945 Constitution. He further said that the mention of natural resources, artificial resources, and national facilities and infrastructure as elements of supporting components and reserve components in those articles had blurred the meaning of the main power and supporting power as referred to in Article 30 paragraph (2) of the 1945 Constitution when the article’s norm in Article 30 Paragraph (2) of the 1945 Constitution is limiting in nature.

“The drafters of the Constitution have explicitly stated ‘the Indonesian National Armed Forces and the National Police of the Republic of Indonesia, as the main power, and the people, as the supporting power. The drafters of the Constitution have never even mentioned non-human elements (natural resources, artificial resources, and national facilities and infrastructure) as part of the main or supporting powers of state defense,” he said virtually.

In their petition, the petitioners also mentioned that

Article 18, Article 66 paragraph (1), Article 77, Article 78, and Article 79 of the PSDN Law were in violation of Article 30 Paragraph (2) of the 1945 Constitution and Article 28E Paragraph (2) of the 1945 Constitution in relation to the Principle of Conscientious Objection. Further, Article 18 and Article 66 paragraph (1) of the PSDN Law violate Article 30 Paragraph (2) of the 1945 Constitution and the principle of conscientious objection (the people’s right to refuse based on their beliefs), which are cardinal principles in the involvement of civilians in state defense, which is acknowledged by many countries and the international communities, as well as part of the international human rights law.

The petitioners said that the principle of conscientious objection is basically an implementation of Article 18 of the Universal Declaration of Human Rights (UDHR) and Article 18 of the International Covenant on Civil and Political Rights (ICCPR), which have been ratified in the Indonesian national law through Law No. 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights, which regulates freedom of thought, conscience, and religion, which is also mandated by Article 28E paragraph (2) of the 1945 Constitution.

Therefore, in order to prevent any violation of the Petitioners’ constitutional rights due to the enactment of the PSDN Law, they requested the Panel of Constitutional Justices to issue an interlocutory decision that declares that the enactment of the PSDN law, especially

those related to the recruitment of the reserve components is delayed until the judicial review in the Court is completed.

Threat Limitation

Regarding this petition, the DPR believes that the State Defense Law not only limits military and nonmilitary threats, as argued by the Petitioners. This is reflected in Article 4 of the State Defense Law. Habiburokhman, on behalf of the DPR, said that the Law on State Defense defines a broader scope of threats than what the Petitioners have argued. This is because the Law does not only regulate the scope of military and non-military threats. In fact, it also mentions multidimensional threats that can stem from ideological, political, economic, social, cultural and security issues related to international crimes, including illegal immigration, narcotics, and so on.

Habiburokhman also explained the provision on hybrid threats, which he believes does not lead to legal uncertainty but completes the scope of threats referred to in the State Defense Law, which has not regulated threats that are a combination of military and non-military ones.

He added that the effort to build state defense is impossible to do without the support of natural resources, artificial resources, and national facilities and infrastructure.

“How is it possible to defend or protect Indonesia’s vast territorial waters without using fuel or natural resources, ships, airplanes, communication equipment, maritime

navigation devices, or infrastructure? If the use of natural resources, artificial resources, and national facilities and infrastructure as elements of supporting components are not regulated in the a quo law, it can actually weaken Indonesia's national defense," he explained.

Habiburokhman also said that the provisions of Article 30 paragraph (5) of the 1945 Constitution had mandated other matters related to national defense and security, and security is regulated by laws, which were then realized in the State Defense Law and the a quo law. Articles 17 and 28 of the a quo law are in line with Article 1 of the State Defense Law.

Open Legal Policy

On the same occasion, Bambang Eko said on behalf of the Government said that the national goal is to protect all Indonesian people and the entire land of Indonesia from all threats. The 1945 Constitution does not specifically define the threats. Article 7 paragraph (2) letter c of the PSDN Law does not lead to legal uncertainty but, in fact, completes the scope of threats referred to in Law No. 3 of 2002 concerning the State Defense, which has not defined threats that are a combination of military and nonmilitary ones, which are called hybrid threats.

The Government states that the conditions when the State Defense Law was passed differed from those when the a quo law

was passed in 2019. Thus, Article 4 paragraphs (2) and (3), and Article 29 of the a quo law have actually created legal certainty, so it does not conflict with Article 1 paragraph (3), Article 28D paragraph (1), and Article 30 paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

The government believes that Article 17, Article 28, Article 66 paragraph (2), Article 79, Article 81, and Article 82 of the a quo Law concerning the use of natural resources, artificial resources, and national facilities and infrastructure as reserve components for mobilization do not conflict with Article 30 Paragraph (2), Article 28G Paragraph (1), and Article 28H Paragraph (4) of the 1945 Constitution.

The PSDN Law is a requirement for limiting human rights issues, especially regarding conscientious objection to protect security. Thus, the Government believes that Article 18, Article 66 paragraph (1), Article 77, Article 78, and Article 79 of the a quo law do not conflict with Article 30 paragraph (2) and Article 28E paragraph (2) of the 1945 Constitution as well as the principle of conscientious objection of the people's right based on their beliefs.

Meaning of Power in the 1945 Constitution

At the hearing of the Petitioner's expert, which was held on October 25, 2021, constitutional law expert Aan Eko Widiyanto mentioned

Article 30 Paragraph (2) of the 1945 Constitution contains two norms. First, state defense and security are carried out through the system of Universal People's Defense and Security. Second, state defense and security are carried out by one main power consisting of the National Armed Forces (TNI) and the Indonesian National Police (Polri). The nomenclature or terms used in the 1945 Constitution are the main power and the supporting power.

"So the main power is TNI/Polri and the supporting power is the people. The main power and supporting powers are not mixed. The two are separated and components are also different," Aan said.

Based on its components, TNI and Polri are the main power in state defense and security. At the same time, the people are the supporting power, as contained in the meaning of the norms of Article 30 paragraph (2) of the 1945 Constitution. The provision is regulated in Article 7 paragraphs (2) and (3) of Law No. 3 of 2002 on State Defense. This provision is consistently regulated in Article 7 paragraph (2) and paragraph (3) of Law Number 3 of 2002 on National Defense (State Defense Law).

Aan believes the PSDN Law has negated Article 30 paragraph (2) of the 1945 Constitution, which stipulates that TNI and Polri are the main power in defense and security by mixing the main and supporting powers. All provision on the reserve

component (komcad) in the PSDN Law contradicts Article 30 paragraph (2) of the 1945 Constitution.

International Humanitarian Law

Meanwhile, another expert for the petitioner, Bhatara Ibnu Reza, said the PSDN Law does not explicitly state that reserve components are members of the TNI. Still, they are prepared to be mobilized to reinforce the main component in facing military and hybrid threats as regulated in Article 29 of the PSDN Law. Bhatara referred to a fundamental distinction principle in international humanitarian law between civilians and combatants in this situation.

According to him, the reserve component is not combatants and can be further categorized as “illegitimate combatants.” This certainly will lead to a loss for citizens because when they join a battle, they will be regarded by enemies as civilians.

Considering this, Bhatara believes the reserve component is civilians and cannot be categorized as members of any group, ministry, agency, or equivalent, or the same as TNI soldiers, which means they are not included in the jurisdiction of Law Number 31 of 1997 concerning Military Court. In addition, the ambiguous status of the reserve component will also harm its members in obtaining protection, either as civilians or as combatants, who have privileges. This means it also leads to constitutional losses,

particularly in relation to Article 27 paragraph (1) in conjunction with Article 28D paragraph (1) of the 1945 Constitution and the principle of equality before the law.

In the event of international armed conflicts, the status and main duties of members of TNI and Polri are clear. Police are not trained to be combatants and cannot be used as legitimate targets during such conflicts to become combatants and cannot be used as legitimate targets. International humanitarian law guarantees the protection of Polri members in accordance with Article 1 paragraph (1) of Additional Protocol I and II of 1977, even when the country has been occupied by the enemy, Article 54 of the Geneva Convention of 1949.

“Based on this explanation, I believe that placing Polri members as a supporting component as referred to in Article 30 paragraph (1) of the PSDN Law is inappropriate and contrary to Article 30 paragraph (2) of the 1945 Constitution,” Bhatara said.

Village Chief's testimony

At the hearing chaired by Chief Justice Anwar Usman, two Petitioner's witnesses were present, namely the former chiefs of Wiromartan Village, Mirit Subdistrict, Kebumen Regency, Central Java, Widodo Sunu Nugroho and Manoe Viegas Carrascalao. They said that the Urutsewu land had always been managed by the community. However, the National Armed Forces (TNI) made a unilateral

claim on the coastal land, especially after its usufruct certificate was issued by the National Land Agency (BPN). He asserted that the claim was not transparent, groundless, inconsistent, and accompanied by dispossession, destruction, and violence by the Army (TNI AD), who came to Urutsewu in 1972 and borrowed the land as a training ground. Sunu said that at that time, the community accepted and supported it because they viewed it as a contribution to the state

“However, the reality is different, TNI claimed the land, and the people only realized it in 2007 when TNI AD expanded their land from 500 square meters to 1,000 square meters,” he said in a hearing held on December 14, 2021.

Meanwhile, another witness, Manoe Viegas Carrascalao, talked about the violence he and his family experienced in 1999 in Dili, Timor Leste. He revealed that he received an attack because he had let hundreds of people take refuge in his house. Hundreds of these people fled from the militia forces. “All of these refugees who had fled said that any terror by the militia must have the military behind it,” he said.

He also said that the militia's actions were wrong, but they felt vindicated because they received permission from the Indonesian government, military, and police. This incident happened before the referendum. ■

(UTAMI ARGAWATI)

JUDICIAL REVIEW DECISIONS IN SEPTEMBER 2022

No.	Case Number	Case Subject	Petitioners	Decision	Date	Decision Link
1	60/PUU-XX/2022	Formal and Material Judicial Review of Law Number 8 2022 concerning South Kalimantan Province against The 1945 Constitution of the Republic of Indonesia	H. Ibnu Sina, S.Pi., M.Sc., (Mayor of Banjarmasin City) and H. Harry Wijaya, S.H., M.H., (Chairman of the House of Representatives Regional People of Banjarmasin City)	withdrawn	September 29, 2022	Click Decision
2	79/PUU-XX/2022	Judicial Review of Law Number 18 of 2003 concerning Advocates against the 1945 Constitution of the Republic of Indonesia	Zico Leonard Djagardo Simanjuntak	dropped	September 29, 2022	Click Decision
3	81/PUU-XX/2022	Judicial Review of Law Number 37 of 2008 concerning Ombudsman of the Republic of Indonesia against the 1945 Constitution of the Republic of Indonesia	Moch Ojat Sudrajat S.	withdrawn	September 29, 2022	Click Decision
4	37/PUU-XIX/2021	Judicial Review of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 on Mineral and Coal Mining as partially amended by Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia	1. The Indonesian Forum for the Environment (WALHI), as Petitioner I; 2. East Kalimantan Environmental group Mining Advocacy Network (JATAM East Kalimantan), as Petitioner II; 3. Nurul Aini, as Petitioner III; and 4. Yaman, as Petitioner IV.	Granting the Petitioner's request partially	September 29, 2022	Click Decision

5	58/PUU-XX/2022	Formal Judicial Review of Law Number 8 2022 concerning South Kalimantan Province against The 1945 Constitution of the Republic of Indonesia	Banjarmasin City Chamber of Commerce and Industry (KADIN Kota Banjarmasin), represented by Muhammad Akbar Utomo Setiawan (Chairman of the Banjarmasin City Chamber of Commerce and Industry), Syarifuddin Nisfuady, Ali, Hamdani, and Khairiadi.	Denied in its Entirety	September 29, 2022	Click Decision
6	59/PUU-XX/2022	Judicial Review of Law Number 8 2022 concerning South Kalimantan Province against The 1945 Constitution of the Republic of Indonesia	Banjarmasin City Chamber of Commerce and Industry (KADIN Kota Banjarmasin), represented by Muhammad Akbar Utomo Setiawan (Chairman of the Banjarmasin City Chamber of Commerce and Industry), Syarifuddin Nisfuady, Ali, Hamdani, and Khairiadi.	Denied in its Entirety	September 29, 2022	Click Decision
7	71/PUU-XX/2022	Judicial Review of Law Number 23 of 2006 concerning Population Administration against the 1945 Constitution of the Republic of Indonesia	Emir Dhia Isad, S.H., Syukrian Rahmatulūla, S.H., and Rahmat Ramdani, S.H.	Unacceptable	September 29, 2022	Click Decision

LIST OF VERDICTS

8	72/PUU-XX/2022	Judicial Review of Law Number 7 of 2020 concerning Third Amendment to Law Number 24 of 2003 on the Constitutional Court against the 1945 Constitution of the Republic of Indonesia	Prof. Dr. Zainal Arifin Hoesein, S.H., M.H. (Petitioner I), Fardiaz Muhammad, S.H. (Petitioner II), and Resti Fujianti Paujiah, S.H. (Petitioner III)	Unacceptable	September 29, 2022	Click Decision
9	73/PUU-XX/2022	Judicial Review of Law Number 7 of 2017 concerning General Elections against the 1945 Constitution of the Republic of Indonesia	Prosperous Justice Party (PKS)	Denied in its Entirety	September 29, 2022	Click Decision
10	78/PUU-XX/2022	Material Judicial Review of Law Number 7 of 2017 concerning General Elections against the 1945 Constitution of the Republic of Indonesia	Labor Party	Denied in its Entirety	September 29, 2022	Click Decision
11	76/PUU-XX/2022	Judicial Review of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition as partially amended by Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia	Ir. Barid Effendi (Petitioner I), Dedy Sani Ardi, S.E., M.E. (Petitioner II), and Riris Munadiya, S.E., M.E., (Petitioner III)	Rejected	September 29, 2022	Click Decision
12	77/PUU-XX/2022	Judicial Review of Law Number 14 of 2005 concerning Teachers and Lecturers against the 1945 Constitution of the Republic of Indonesia	Ahmad Amin	Unacceptable	September 29, 2022	Click Decision

13	83/PUU-XX/2022	Judicial Review of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection against the 1945 Constitution of the Republic of Indonesia	Leonardo Siahaan	Unacceptable	September 29, 2022	Click Decision
14	84/PUU-XX/2022	Judicial Review of Law Number 7 of 2014 concerning Trade as partially amended by Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia	Rizky Puguh Wibowo, Zainal Hudha Purnama, and Minggu Umboh	Rejected	September 29, 2022	Click Decision
15	85/PUU-XX/2022	Judicial Review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to Become Laws against the 1945 Constitution of the Republic of Indonesia	Perludem	Granted	September 29, 2022	Click Decision



QUESTIONS PROVISION ON SALARY AND ALLOWANCE RAISE IN TEACHER AND LECTURER LAW

THE CONSTITUTIONAL Court (MK) held a material judicial review hearing of Law Number 14 of 2005 concerning Teachers and Lecturers (Teacher and Lecturer Law) on Monday, August 22. Case Number 77/PUU-XX/2022 was filed by Ahmad Amin, a Civil Servant (PNS). At the hearing chaired by Constitutional Justice Saldi Isra along with Constitutional Justice Suhartoyo and Daniel Yusmic P. Foekh, the Petitioner argued that Article 16 paragraph (2), Article 53 paragraph (2), Article 55 paragraph (2), and Article 56 paragraph (1) of the Teacher and Lecturer Law contradicts the 1945 Constitution.

Ahmad, who appeared before the Court without any legal counsel, said that the a quo articles were considered to have duplicated PNS salary that was

his right into a professional allowance equal to one time of basic salary, a special allowance equivalent to one time of basic salary, and honorary allowance for professors equal to twice of basic salary. Therefore, Petitioner believed the norms intervened and dictated the Government/President's authority in planning and implementing state finances in the limited APBN (state budget) and personnel management. This, he added, had intervened with the president's sovereignty in state finance management, so the Government was reluctant to increase the basic salary and make a policy of the 14th salary.

Such reluctance by the Government harmed the Petitioner's right to guarantees, protection, and fair legal certainty because the Petitioner's low basic salary had resulted in low old-age savings due to low contributions at 3.25% of the basic salary, thus resulting in low pension due to low contribution at 4.75% of the basic salary. Welfare would decrease because the basic salary cannot keep up with inflation rates and national economic growth.

As the executive power, the president prepares the state financial expenditure plan but is, in fact, intervened by the legislature through the norms of the Teacher and Lecturer Law.

In response to the petition, Constitutional Justice Suhartoyo provided several notes for the Petitioners as revision. He highlighted the contents of *posita*, which he believed had not shown a causal relationship between the enactment petition of the norm challenged against the loss of the Petitioner's constitutional rights. He advised the Petitioner to explain his loss due to the enactment of the Law to assert his legal standing in the case.

Meanwhile, Constitutional Justice Saldi Isra gave recommendations and advised the Petitioner to clarify the subject matter related to the challenged Teacher and Lecturer Law. The Petitioner was expected to have the petition revised in the next 14 workdays after the hearing. (Sri Pujianti/Lulu Anjarsari P)



LABOR PARTY CHALLENGES THE REQUIREMENTS OF FACTUAL VERIFICATION

THE PRELIMINARY hearing of the judicial review of Law No. 7 of 2017 on General Elections (Election Law) was held at the Constitutional Court (MK) on Monday, August 29, 2022. Case Number 78/PUU-XX/2022 was filed by the Labor Party, represented by Said Iqbal (President of the Labor Party) and Ferri Nuzarli (Secretary General of the Labor Party). Said Salahudin, as the Petitioner's legal counsel, explained the main point of the Petitioner's petition. The Petitioner challenged Article 173 paragraph (1), Article 177 letter f, Article 75 paragraph (4), Article 145 paragraph (4), and Article 161 paragraph (2) of the Election Law.

Salahudin then explained the arguments of the petition. Starting from the Court's Authority, the Petitioner's legal standing as a public legal entity, its

constitutional impairments, and so on.

Regarding the subject matter of the petition, Petitioner felt harmed by the enactment of Article 173 paragraph (1) and Article 177 letter f of the Election Law along the phrase "citizens in each regency/city" as well as Article 75 paragraph (4), Article 145 paragraph (4), and Article 161 paragraph (2) along the phrase "shall consult with the DPR."

He said Article 173 paragraph (1) of the Election Law contradicts the principle of people's sovereignty in the 1945 Constitution. The consequence of Article 1 paragraph (2) of the 1945 Constitution is the transition from an unconstitutional democratic process to a constitutional democracy. On that basis, people's sovereignty cannot be exercised by the subjectivity of certain institutions but based on the Constitution

In his advice, Constitutional Justice Saldi Isra reminded the Petitioner that Article 173 paragraph (1) of the Election Law is no longer complete, as it has been amended by the Constitutional

Court's decision "We will not question the substance, but Article 173 paragraph (1) of the Election Law is no longer complete, as the Constitutional Court's decision has amended it. You question the new article following the Constitutional Court's interpretation," he said. He also requested the Petitioner highlights its argument on the phrases "citizens in each regency/city" and "shall consult with the DPR."

Meanwhile, Constitutional Justice Arief Hidayat added several recommendations. Among other things, related to the petition, which mentions the material judicial review of the articles challenged by the Petitioner. "Article 173 paragraph (1) of the Election Law has been interpreted by the Constitutional Court in Decision No. 55/PUU-XVIII/2020 on May 4, 2021. So, If you insist on this subject without the Court's interpretation, the object of the petition is nonexistent," he said. (Nano Tresna Arfana/Nur R)



PERLUDEM QUESTIONS THE PROVISION OF ELECTORAL DISTRICTS FOR NEW AUTONOMOUS REGIONS IN THE ELECTION LAW

THE CONSTITUTIONAL Court (MK) held the preliminary hearing of the judicial review of Law No. 7 of 2017 on General Elections (Election Law) on Thursday, September 1, 2022, in the panel courtroom of the Constitutional Court. The Association for Elections and Democracy (Perludem) filed Case Number 80/PUU-XX/2022. Fadli Ramadhani, as one of the legal counsels, states that Article 187 paragraph (1), Article 187 paragraph (5), Article 189 paragraph (1), Article 189 paragraph (5), and Article 192 paragraph

(1) of the Election Law contradicts the 1945 Constitution. Fadli, on behalf of Petitioner, conveys an argument that the urgency of preparation of electoral districts must fulfill the principles of people's sovereignty and direct, public, free, confidential, honest, and fair elections. According to the Petitioner, he added, general elections are a means to embody the principle of people's sovereignty as stipulated in Article 1 paragraph (2) of the 1945 Constitution. Therefore, the preparation of electoral districts is one of the important stages at the beginning of the process of general elections. This is to ensure the principle of representation that is carried out through the general election process in accordance with the principles of honest, fair, proportional, and democratic elections.

In his advice, Constitutional Justice Wahiduddin Adams stated that the Petitioner needs to include its statute/bylaw (AD/ART), which states that

the chairman and treasurer may represent the association in and out of the court in order to show that the person concerned is still currently in office to confirm their legal standing. He also recommended that the petitioner elaborates on the specific constitutional impairment they experienced because it is already in it, but the explanation is not concrete.

Meanwhile, Constitutional Justice Saldi Isra advised the Petitioner to refer to the loss of their constitutional rights when elaborating on their legal standing because they must distinguish between constitutional rights and the constitutional basis for assessing the constitutionality of the norms. "So, the Petitioner must look carefully at the reasons to file the petition, whether all the articles being challenged really contradict the norms," he said. (Sri Pujianti/Lulu Anjarsari P)



THE REVISION OF THE P3 LAW IS CONSIDERED INELIGIBLE

THE CONSTITUTIONAL Court (MK) held a formal judicial review hearing of Law No. 13 of 2022 concerning the Second Amendment to Law No. 12 of 2011 on the Formation of Legislation (Lawmaking/P3 Law) on Monday, September 5, 2022. The petition with case Number 82/PUU-XX/2022 was filed by five Petitioners consisting of Islamil Hasani and Laurensius Arliman (lecturers), Bayu Satria Utomo (university student), the Congress of Indonesian Unions Alliance (KASBI), and the Indonesian Legal Aid Foundation (YLBHI).

Constitutional Justice Wahiduddin Adams chaired the hearing along with Constitutional Justice Arief Hidayat and Constitutional Justice Suhartoyo. At the hearing, the Petitioners, through legal counsel Shevierra Danmadiyah conveyed several backgrounds to the petition. They said the second amendment to the Lawmaking Law (P3 Law) did not meet the requirements for a cumulative open bill. This is because it was not the follow-up on the Constitutional Court Decision No. 91/PUU-XVIII/2020, which did not assert that the Lawmaking Law was contrary to the 1945 Constitution or unconstitutional. The Government and the House of Representatives (DPR) should have amended the problematic Job Creation Law, especially Article 64 paragraph (1) letter b, Article

72 paragraph (1) letter a, Article 73 paragraph (1), and Article 96 paragraph (3).

Constitutional Justice Arief Hidayat commented on the completeness of the signatures of the Petitioners' 33 legal counsels. He also asked the Petitioners to reiterate the legal standing of individual petitioners and group ones. He also asked them to pay attention to the articles used as the basis for the judicial review. "The Court review laws against the 1945 Constitution. It would be funny if the old Lawmaking Law is used as a standard," he said.

Meanwhile, Constitutional Justice Wahiduddin Adams advised the Petitioners to include arguments of the petition filed since it has not included the Petitioners' constitutional impairment. (Sri Pujianti/Nur R)



E-BOOK AND TRADING ROBOTS BUSINESS OWNERS CHALLENGE TRADE LAW

THE CONSTITUTIONAL Court (MK) held a preliminary hearing of the judicial review of Law No. 7 of 2014 concerning Trade (Trade Law) as amended by Law No. 11 of 2020 on Job Creation on Tuesday, September 6, 2022. The petition with case number 84/PUU-XX/2022 was filed by Rizky Puguh Wibowo, Zainal Hudha Purnama, and Minggu Umboh, who are entrepreneurs. They question Article 1 point 5, and the elucidation of Article 9 of the Job Creation Law.

Eliadi Hulu explained in a concrete case where the Petitioners had been declared suspects and undergone a trial on August 1, 2022, with the agenda of reading out the charges by the public prosecutor (JPU). The Petitioners were charged with violating Article 105 of the Trade Law by running a

business, not from the sale of goods. The question was whether trading robots and e-books are not goods as defined in Article 1 point 5 of the Trade Law. Therefore, according to the public prosecutor, the Petitioners have fulfilled the element of “business activities that are not the result of the sale of goods.”

However, according to the Petitioners, trading robots and e-books are included in the category of goods as there was an account for the purchase transaction, which contained the identity of the members and the means of trading. They explained that e-book ownership could also be traced through the payment access code. They compared the ownership of trading robots to that of Instagram, Tiktok, and Facebook accounts, which can be traded if they have many followers.

The Petitioners also argued about the pyramid scheme in trade. They are founders and owners of PT Trust Global Karya, which since 2020 has been producing educational e-books and software that serve as trading robots,

and have obtained a business or trade license. The Petitioners’ business, which relates to technology development, helps the public make an analysis before investing. Eliadi said trading robots have great potential in developing Artificial Intelligence (AI). This is in line with the Government’s program to promote the use of technology and digitization. Even many people consider trading robots as futures trading advisors.

In his advice, Constitutional Justice Arief Hidayat said that the contradiction between the articles being petitioned and Article 1 of the 1945 Constitution was too farfetched, so the Petitioners would find it difficult to elaborate their *posita*. For this reason, he advised them to find a basis or touchstone that is more closely related to those articles. “For example, Article 28 probably can be used as a basis or touchstone for this petition. Article 1 of the 1945 Constitution is too farfetched to be used as a basis or touchstone,” he said. (Sri Pujianti/Lulu Anjarsari P



OMBUDSMAN'S DUTIES AND AUTHORITIES CHALLENGED

THE CONSTITUTIONAL Court (MK) held a material judicial review hearing of Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia (UU ORI) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution) on Tuesday, September 6, 2022. The petition with case Number 81/PUU-XX/2022 was filed by Moch. Ojat Sudrajat S., a resident of Banten Province and Chairman of the Indonesian Maha Bidik Association. He challenges Article 10 of the Ombudsman Law. The Petitioner appears before the Court virtually. He said he had sent an administrative objection letter to the chairperson of the Ombudsman regarding the final results of the complaint report

of 3 maladministration acts in the appointment of regional heads. He had also sent a complaint over alleged abuse of power to the Criminal Investigation Agency (Bareskrim), which allegedly occurred because the Ombudsman continued to receive reports of complaints about the appointment process of the acting regional heads and settled the complaint from the civil society coalition.

He claimed to have experienced potential loss as the Ombudsman had issued a letter to declare that it was processing all of those complaints currently under investigation at PTUN Jakarta. He had sent an administrative objection letter to the chairperson of the Ombudsman and made a complaint regarding the alleged Abuse of Power allegedly committed by the Ombudsman to the Criminal Investigation Agency (Bareskrim) for the results of the complaint of 3 maladministration acts.

He also emphasized the Ombudsman's use of Article 10 of the Ombudsman Law, which reads, "In executing its duties and jurisdiction, the Ombudsman shall not be arrested, detained, interrogated, prosecuted, or sued before the court," which had violated statutory regulations and right to justice and equality before the law.

Constitutional Justice Emy Nurbaningsih advised the Petitioner to elaborate on his status as well as possible. "Are you here as an individual or on behalf of the Maha Bidik Indonesia association? Please elaborate on this since in the petition you mention yourself sometimes as an individual and other times as chairman of the Maha Bidik association. If you represent the association, there must be a basis for it. Is there a statute/bylaw (AD/ART), and what are the association's community service activities? Please elaborate," she said. (Utami Argawati/Nur R).



CHILD ADOPTION OF DIFFERENT RELIGIONS, IS IT OK?

THE CONSTITUTIONAL Court (MK) held a preliminary hearing of the judicial review of Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection (Child Protection Law) against the 1945 Constitution on Wednesday, September 7, 2022. The petition with case number 83/PUU-XX/2022 was filed by Leonardo Siahaan. He challenges Article 39 paragraph (3) of the Child Protection Law, which reads, "Candidate adoptive parents must be of the same religion as the child who is to be adopted."

At the hearing that Constitutional Justice Enny Nurbaningsih chaired along with Constitutional Justice Arief Hidayat and Constitutional Justice Saldi Isra, Leonardo Siahaan (Petitioner) argued that Article 39 paragraph (3) of the Child Protection Law had violated the provision which reads, "Each person has the right to establish a family and

to generate offspring." He feels that his constitutional right will potentially be harmed if he intends to adopt a child whose religion differs from his. He argued that the norm contradicted Article 28B and Article 28D paragraph (1) of the 1945 Constitution.

Child adoption is a necessity for some married couples who have not been blessed with a child. This is a common reason for couples to adopt children. Couples may adopt children from low-income families, neglected children, and orphaned children. According to the Petitioner, it would be legally problematic and peculiar if adoption is prioritized based on the same religion as prospective adoptive parents. It might hinder people who genuinely care about neglected children and orphans regardless of religion. The Petitioner asserted that the condition of the same religion between the child and the adoptive parents should not be an issue.

The Petitioner argued that in the future, there should be a particular reason for the same religion in adoption and the solution if there are no prospective adoptive parents of

the same religion. Adoption, regardless of religion, should be allowed since it is for the child's best interest and welfare. The requirements for it should not hinder that aim. Therefore, in his petition, the Petitioner requested that the Constitutional Court declare Article 39 paragraph (3) of the Child Protection Law contradicts the 1945 Constitution and is not legally binding.

In response to the petitioner's request, Constitutional Justice Arief Hidayat advised the Petitioner to state his legal standing and prove his citizenship by resident identity card (KTP). He also said that the Petitioner must be able to prove the constitutional impairment due to the enactment of Article 39 paragraph (3) of the Child Protection Law. This must also be included in the legal standing. Meanwhile, Constitutional Justice Saldi Isra said that he had not found an explanation for the Petitioner's constitutional impairment that the Petitioner had experienced or could potentially experience. (Utami Argawati/ Nur R)



PERLUDEM REQUESTS REGIONAL HEAD ELECTION DISPUTES BE TRIED BY THE CONSTITUTIONAL COURT

THE CONSTITUTIONAL Court (MK) held a judicial review hearing of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 Concerning the Election of Governors, Regents, and Mayors to Become Law (UU Pilkada), on Thursday, September 8, 2022. The petition with case Number 85/PUU-XX/2022 was filed by the Association for Elections and Democracy (Perludem), represented by Khoirunnisa Nur Agustyati (Chairperson of the Perludem Foundation) and Irmalidarti (Treasurer of the Perludem Foundation). They challenge Article 157 paragraph (1), paragraph (2), and paragraph (3) of the Pilkada Law.

Constitutional Justice Enny Nurbaningsih chaired the panel session along with Constitutional

Justices Arief Hidayat and Constitutional Justice Suhartoyo. Legal counsel Fadli Ramadhanil on behalf of Perludem (Petitioner), asserted that an effective, efficient, just and fair electoral results settlement system is essential in administering an effective, efficient, fair and just election of governors, regents, and mayors.

Fadli emphasized the importance of such a system because of the competition and potential conflict in the process of political contestation in the election of governors, regents, and mayors. A lot of interests are banked on the electoral process. Election participants and organizers, as well as citizens involved in the election either directly or indirectly, try to achieve victory, one of which is through pilkada results dispute resolution.

“We believe the provision of the a quo Law would result in chaotic pilkada results dispute resolution since it wouldn’t be possible to prepare a special judicial body in a short time before the start of the stages of the national simultaneous regional election. Until today, there is no clarity on the form of institution and its authority, mechanism, and institutional existence.

With these provisions and situation, in our opinion as the Petitioner, it has resulted in the threat to an important stage of the regional election process, namely the finalization of the election,” he said.

The existence of the a quo provision, which still regulates a special judicial body related to the pilkada results dispute resolution, has made the a quo provision contradicts the 1945 Constitution because it is within the Constitutional Court’s jurisdiction. It has also led to legal uncertainty where the Constitutional Court had declared pilkada to be within the general election regime, and its implementation can be simultaneous with the election of the president, the House of Representatives (DPR), the Regional Representatives Council (DPD), and the Regional Legislative Council (DPRD). The Constitutional Court left it to the legislature to design the simultaneity of the elections, as long as they followed strict prerequisites as mentioned by Constitutional Court in Decision Number 55/PUU-XVII/2019.

In response to Perludem’s petition, Constitutional Justice Arief Hidayat advised the Petitioner to revise the petition. He also urged the Petitioner to complete the Constitutional Court’s authority, strengthen their legal standing as a private legal entity, and show the constitutional impairment they had experienced. “Where is the constitutional impairment as a private legal entity?” he said.

Meanwhile, Constitutional Justice Enny Nurbaningsih advised the Petitioner to build a solid argument in the background of the petition. At the end of the hearing, she announced that the Petitioner had 14 workdays to revise the petition and submit it by Wednesday, September 21, two hours before the session commences. (Utami Argawati/ Nur R)



UNABLE TO FIND JUSTICE FOR PARENT'S DEATH, THE HEIR CHALLENGES CRIMINAL CODE

THE CONSTITUTIONAL Court (MK) held a judicial review hearing of the Criminal Code (KUHP) filed by Robiyanto, an entrepreneur. The petition with case Number 86/PUU-XX/2022 took place on Monday, September 12, 2022. In his petition, Petitioner alleged that Article 78 paragraph (1) number 4 of the Criminal Code contradicts the 1945 Constitution or is unconstitutional.

At the hearing, the Petitioner revealed that his father, Taslim, died on April 14, 2002, after being brutally murdered at the Balai Night Market, Karimun Village, Tebing Subdistrict, Karimun Regency, Riau Islands Province. He reported it to the Karimun Resort Police. Two people were detained as suspects and sentenced to 15 years

for the crime, while the other five were on the wanted list (DPO). However, the investigation of the two court-ruled suspects was terminated by the Police of the Republic of Indonesia on the ground of the expiration of the statute of limitation as contained in Article 78 paragraph (1) point (4) of the Criminal Code.

Further, Jhon Asron Purba, one of the Petitioner's legal counsels, said the unfairness of the expiration of the statute limitation could potentially lead the perpetrators to be acquitted despite their serious, heinous, and vicious crime that would warrant a death sentence or life imprisonment. Purba added that the a quo article could also potentially harm the Petitioner's constitutional right to recognition, guarantee, protection, fair legal certainty, and equal treatment before the law. This is because the expiration of the statute of limitation for the perpetrators of crimes that warrant the death penalty or life imprisonment (in this case 20 years) only expires in

18 years. In addition, the Petitioner has the potential not to obtain legal certainty of his father's death for the five suspects that are still on the wanted list and at large.

Based on these reasons, in his Petition, the Petitioner requested the Constitutional Court grant the Petitioner's petition in its entirety and declares that the content of Article 78 Paragraph 1 Number (4) contradicts the 1945 Constitution and is conditionally not legally binding insofar as it is not interpreted "in more than eighteen years and/or 36 years for all crimes upon which capital punishment or life imprisonment is imposed."

In response to the petition, Constitutional Justice Wahiduddin Adams advised the Petitioner to include an explanation of the subject matter that had not been described in it so that the petition was complete according to its standard format as per the Court's procedural law. He also advised the Petitioner to elaborate his concrete case in general so that it not only related to the cases experienced by the Petitioner but to all citizens in the same predicament, given that the nature of the Constitutional Court's decision applies to all citizens.

Meanwhile, Constitutional Justice Suhartoyo advised the Petitioner to elaborate on his legal standing, which still needs to be further explored to show the impairment of his constitutional rights and contrast it with the norm petitioned for judicial review. He announced that the Petitioner had 14 workdays to revise the petition and submit it by Monday, September 26 to the Registrar's Office of the Constitutional Court. (Sri Pujianti/Lulu Anjarsari P)

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Constitutional Justices Discusses the Constitutional Court's Procedural Law, the Constitution, and Human Rights

From the end of August to mid-September 2022, Constitutional Justices attended the discussion rooms of students virtually and in person at various universities in Indonesia. For example, Constitutional Justice Enny Nurbaningsih appeared before students of the Faculty of Law of Balitar Islamic University in Blitar. She delivered a public lecture on "The Constitutional Court and the Protection of the Citizens' Constitutional Rights." So, How's the excitement of the other constitutional justices and the students discussing various topics on the constitution and human rights? Let's take a look at the following portraits.

Human Rights and Protection of Citizens' Constitutional Rights



Constitutional Justice Enny Nurbaningsih visited the Faculty of Law (FH) of Balitar Islamic University in Blitar on Saturday, August 20, 2022. Enny encourages students to understand the "Constitutional Court and the Protection of Citizens' Constitutional Rights."

The Urgency of Constitutional Protection During a Pandemic



Constitutional Justice Manahan MP Sitompul discussed the latest developments in constitutional law and the Constitutional Court at a public lecture at the Faculty of Social Sciences and Humanities of the Muhammadiyah Education University of Sorong, West Papua (FISHUM UNIMUDA) on Thursday, August 25, 2022.

Constitutional Court's Procedural Law



Constitutional Justice Suhartoyo was a speaker at the Special Education of Professional Advocates (PKPA) Batch VI. The event was organized virtually by the Faculty of Law of the Christian University of Indonesia (FH UKI) and the East Jakarta Branch Leadership Council (DPC) of the Indonesian Advocates Association (Peradi) on Thursday evening, August 25, 2022.

The substance of the Social Security Administrative Body



Constitutional Justice Suhartoyo was a speaker at PT Taspen National Work Meeting activities. He delivered a presentation on "Social Security System in the Interpretation of the Constitution," which is associated with several Constitutional Court Decisions that are in line with PT Taspen as one of the organizers of social security. The event was held in Jakarta on Wednesday, September 7, 2022.



Founding Fathers' Example for Indonesia in Society 5.0



A song by Yenny Sucipto named "One for Indonesia" (Satu Untuk Indonesia) performed by Dirly Idol opened the public lecture delivered by Constitutional Justice Arief Hidayat. The Faculty of Law of Tanjungpura University (FH Untan), Pontianak, West Kalimantan organized the event on Friday, September 9, 2022.

The Nature of Human Rights and Citizen's Basic Rights in the Life of the State



Deputy Chief Justice of the Constitutional Court Aswanto and Constitutional Justice Daniel Yusmic P. Foekh were the keynote speakers in the book review of *Perlindungan, Penghormatan, dan Pemenuhan Hak Asasi Manusia Domestik dan Internasional* (Protection, Respect, and Fulfillment of Domestic and International Human Rights). This event was organized by the Faculty of Law of Bengkulu University at the university's International I Room on Friday, September 9, 2022.

Procedural Law in Constitutional Court



Constitutional Justice Suhartoyo was a speaker at the Special Education of Professional Advocates (PKPA) Batch XI. The Faculty of Law of As-Syafi'iyah University and the West Jakarta Branch Leadership Council (DPC) of the Indonesian Advocates Association (Peradi) organized the event on Saturday, September 10, 2022.

Legal Analyst and Majelis Adat Kerajaan Nusantara Studying Law and Constitution

Every citizen is expected to understand more about the constitutional rights guaranteed by the constitution. Therefore, the Constitutional Court, through Pancasila and Constitution Education Center (Pusdik), encourages various parties to understand the nature of the meaning of law and the constitution for citizens. In this September issue of the Konstitusi Magazine, let's take a look at the portraits of the learning programs organized by the Constitutional Court for legal analysts and Majelis Adat Kerajaan Nusantara.

The Importance of Constitutional Rights



Chief Justice of the Constitutional Court (MK) Anwar Usman, along with the Head of the Center for Analysis and Evaluation of National Laws Yunan Hilmy and Acting Head of Pancasila and Constitution Education Center Imam Margono at the opening of the technical assistance program for Legal Analysts Batch II at the Pancasila and Constitution Education Center, Cisarua, Bogor, on Tuesday, August 23, 2022,



Mass organization is a pillar of democracy



Chief Justice of the Constitutional Court Anwar Usman, accompanied by Constitutional Justice Arief Hidayat, opened the technical assistance program (*bimtek*) on election result dispute resolution (PHPU) Batch II for the Alumni Association of the Indonesian National Student Movement (PA GMNI) at the Pancasila Education Center and Constitution (*Pusdik MK*), in Cisarua, Bogor, on Friday, September 2, 2022.

Not All State Agencies' Authorities Come from Constitution



The Constitutional Court (MK), through its Pancasila and Constitution Education Center (*Pusdik MK*), held a technical assistance program (*bimtek*) for the management and members of the Indonesian Advocates Association (Peradi). This event was officially opened by the Deputy Chief Justice of the Constitutional Court, Aswanto, on Monday afternoon, September 5, 2022, at Pusdik MK, Cisarua, Bogor, West Java.

The Awareness of Constitutional Rights



The Constitutional Court (MK) held an activity to improve the Awareness of Citizens' Constitutional Rights for Majelis Adat Kerajaan Nusantara (MAKN) at the Pancasila and Constitutional Education Center, Cisarua, Bogor, on Monday evening, September 19, 2022. Chief Justice of the Constitutional Court Anwar Usman delivered a speech before opening the event.

ELECTIONS IN INDONESIA

DR. WILMA SILALAH, S.H., M.H.

Substitute Registrar of the Constitutional Court of the Republic of Indonesia and Lecturer of the Faculty of Law, University of Tarumanegara, Jakarta.

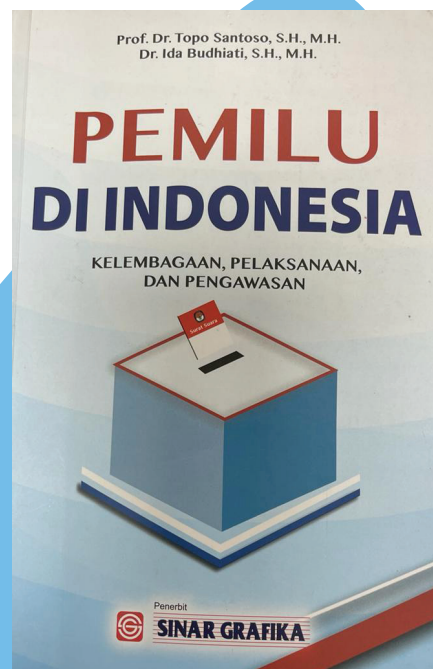
The book **“Pemilu di Indonesia: Kelembagaan, Pelaksanaan, dan Pengawasan”**

(Elections in Indonesia: Institutions, Implementation, and Supervision) focuses on elections in Indonesia. It discusses the Elections in Indonesia in three stages: (1) the 1955 election, which was the early and first election, known as the most democratic election before the 1999 elections; (2) the Elections under the New Order (1971-1977), the election in this era did take place continuously; however, it suspected of containing so much fraud; and (3) elections in the reform era (1999-2014), known as democratic elections. Elections during the era of the New Order could not be considered a measure of democratic elections.

This book describes the definition of democracy from many experts, including Robert A. Dahl, Arend Liphart, and Miriam Budiardjo. There is a long list of Democracies in Indonesian history, among others: constitutional democracy, parliamentary democracy, liberal democracy, guided democracy, Pancasila democracy, people’s democracy, and so on. All of those use the term democracy, which

means: ‘government or rule by the people.’ Constitutional democracy emerged due to reactions and criticisms of the absolute power of kings based on the idea of social contra. This school was founded by John Locke from England (1632-1704) and Montesquieu

from France (1689-1755) in an effort to break the foundations of absolute government and establish the political rights of the people. John Locke argued that political rights include the right to life, the right to freedom, and the right to own property (life, liberty,



BOOK TITLE: ELECTIONS IN INDONESIA: INSTITUTIONS, IMPLEMENTATION, AND SUPERVISION

AUTHOR : TOPO SANTOSO AND IDA BUDHIATI

PAGES: 318

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and property). While Montesquieu established a system that could guarantee political rights known as the *Trias Politica*.

The ideas of the *du contract social* figures appeared through the French Revolution and the American Revolution against England. At the end of the 19th century, the idea of democracy had become a concrete form of a political program and system. At this stage, democracy is purely political and bases itself on the principles of individual freedom, equal rights, and universal suffrage.

The authors explained democracy, elections, and democracy in Indonesia in a well-expressed manner. The implementation of the 1955 election was a democratic experiment that was praised by many. This book also discusses the implementation of elections clearly and coherently from the early election (1955), related to the election organizers; voter registration, members' candidacy, and the electoral system; election campaign; implementation of voting and fraud that occurred; 1955 election results; as well as provisions regarding election crimes and the resolution. Second, the elections under the New Order (1971-1997): the absolute victory of the authorities, related to setting: historical, political, and social aspects; legal framework; parties in the New Order era: parties contesting in the 1971 election, two political parties and one Golkar in the 1977-1997 election; election implementation: election organizers, including LPU, PPI, and Panwaslak; voter

registration, members' candidacy, and election system; election campaign and the fraud that occurred; the implementation of voting and the fraud that occurred; new order election results; as well as provisions regarding election crimes and the resolution.

Third, election in the reform era (1999): The 1999 election was the first election held after the collapse of the New Order under the reign of Suharto; related to setting: historical, political, and social aspects; legal framework, consisting of the 1945 Constitution, MPR Decree Number XIV/MPR/1998, Law Number 3 of 1999; implementation of the 1999 elections, consisting of General Elections Commission (KPU), the Elections Supervisory Committee, voter registration, member' candidacy, and election systems, election campaigns, voting and vote counting; 1999 election results; provisions regarding election crimes and resolution. Fourth, the 2004 election: when the President was directly elected, related to the background; General Elections Commission (KPU); Elections Supervisory Committee; voter registration and candidacy; candidacy for DPR, Provincial DPRD and Regency/Municipal DPRD; candidacy of DPD members; presidential and vice presidential candidacy; campaign method; methods of voting and counting votes.

Fifth, the 2009-2014 elections: many election organizers developed in this era, related to the 2009 election, and regarding the General Elections Commission (KPU); Elections Supervisory

Body; voter registration and candidacy; campaign method; voting and counting methods; the 2014 elections and regarding the General Elections Commission (KPU); Elections Supervisory Body; the Honorary Council for General Election Organizers (DKPP); voter registration and candidacy; campaign method; methods of voting and counting votes. Sixth, 2019 election: simultaneous elections with five boxes, related to: the legal framework for the 2019 elections; election organizers; election participants; stages of election; the settlement regarding violations, criminal acts, and disputes in the election, concerning: violations of the election organizers' code of ethics, election administrative violations, election disputes, election state administration disputes, election criminal acts, election result disputes.

This book also explains that the 2019 election is the first election to be held simultaneously to elect members of the DPR, DPD, President and Vice President, as well as members of the Provincial DPRD and Regency/Municipal DPRD. The framework of the 2019 election uses the legal basis of Law Number 7 of 2017 concerning the General Election (UU 7/2017). Law 7/2017 has included the substance of three laws—the Presidential and Vice-Presidential Election Law, the General Election Law for members of the DPR, DPD, and DPRD, as well as the Election Organizers Law, into a single manuscript, codified into Law 7/2017. Therefore, it is hoped that Law 7/2017 provides more consistency in regulating,

can minimize conflicts between norms, can prevent duplication (redundancy) of regulations, and ultimately prioritize legal certainty, as well as facilitating the parties or election stakeholders in understanding and implementing it.

Furthermore, the most noticeable change in Law 7/2017 is a shift in the status, duties, and powers of the General Elections Commission (KPU), the General Election Supervisory Body (Bawaslu), and the Honorary Council for General Election Organizers (DKPP). KPU's responsibilities and authorities in resolving administrative violations were reduced, while the duties and authority of Bawaslu increased.

Similarly, Bawaslu's duties and authority in resolving disputes in the election stages (disputes in the process) are strengthened. DKPP, as a permanent institution, is no longer ad hoc or temporary and is part of the election organizer. In addition, the responsibility to accredit election observers is transferred from KPU to Bawaslu.

The authors discuss election participants for the general election of members of the DPR, Provincial DPRD, and Regency/Municipal DPRD are political parties that have passed the verification by the KPU and have met the requirements. Political parties can become election participants by submitting registration to become candidates for election contestants to the KPU with a letter signed by the general chairman and secretary general or another name on the central management of the political party and accompanied by complete required documents. The decision of political parties as election participants is carried out in the plenary session of the KPU no later than 14 months

before voting day. While the sequence number of political parties as election participants was carried out by lot in an open KPU plenary session attended by representatives of political parties contesting in the election.

Law 7/2017 regulates the possibility of political party management disputes. Management of political parties at the central level that participates in elections and can register candidate pairs and candidates for members of the DPR, candidates for members of the provincial DPRD, and candidates for members of the regency/municipal DPRD are the management of a political party at the central level who have obtained a decree from the party court or another name and registered as well as court decisions that have received permanent legal force and are stipulated by decision of the minister who administers government affairs in the field of law and human rights for a maximum of 30 work days from the establishment of the new management and must be stipulated by a ministerial decree that administers government affairs in the field of law and human rights no later than seven working days after the requirements approved.

This book further describes the order of the political parties contesting in the 2019 legislative election, the requirements for presidential and vice presidential candidates, and the 'political dowry.' On the subject of 'political dowry,' Article 228 of Law 7/2017 states that political parties are prohibited from receiving compensation in any form during the process for the president and vice president's candidacy. In the case where a political

party is proven to have received compensation, that political party shall be banned from nominating any candidates in the next election. A verdict of a court with permanent legal power must prove this. Also, Any individual or institution is prohibited from receiving any form of compensation when it comes to nominating a presidential and vice presidential candidate. In addition, this book also describes the vision and mission of the presidential and vice presidential candidates and the stages of implementation of simultaneous elections in 2019.

The authors also discuss that Law 7/2017 regulates election violations and disputes, which are grouped into six types: Violations of the Election Organizer Code of Ethics, Election Administration Violations, Election Process Disputes, Disputes Election State Administrative Disputes, Election Crimes, and Election Result Disputes.

This book is highly recommended for teachers of political science, constitutional law, state administrative law, government science, students, legal practitioners, and the general public as a reference, especially those who want to enrich their knowledge about elections. Don't miss it.

Happy reading!
“Science will develop along with the development of human life. Nothing can hinder self-development. Others cannot choose our style but us. Don't allow others to control the direction of our life.”

Relations between Pancasila and the Articles of the 1945 Constitution

LUTHFI WIDAGDO EDDYONO

Researcher at Constitutional Court

The existence of Pancasila as the foundation of the state and the nation's ideology is crucial to implement. Otherwise, the relationship between philosophical and regulatory values becomes inconsistent. Such thinking was also discussed in the process of amending the 1945 Constitution.

Jokob Tobing chaired the Introduction to the Fractional Deliberation agenda at the 3rd PAH I BP MPR Meeting on December 6, 1999. On that occasion, the speaker's order was based on the factions within the MPR.

Hobbes Sinaga, on behalf of the F-PDI Perjuangan (The Indonesian Democratic Party of Struggle faction), conveyed that the Preamble to the 1945 Constitution also contained the foundation of the state or state ideology—Pancasila. He believed that the state ideology serves as a philosophical basis in the life of society, nation, and the state and a normative basis for the entire legal order that applies to the state. He also elaborated on the principles of Pancasila in relation

to the amendments to the 1945 Constitution.

1. The relation between the first principle, “Belief in the One and Only God,” and Article 29 Paragraph (2) is about the position of religions in Indonesia and the extent of the government’s authority over these religions.
2. The relation between the second principle, “just and civilized humanity,” and Article 27, Article 28, Article 30, Article 31. I do not need to read all the articles. I think we all know. In the case of a just and civilized humanity, should the articles on Human Rights be added and completed?
3. The relations between the third principle, “The Unity of Indonesia,” and:
 - a. Article 1 paragraph (1): “The State of Indonesia shall be a unitary state, with the form of a Republic.”
 - b. Declaration of a unitary state and Indonesia’s diversity includes the archipelago, class, regional ethnicity, customs, political culture, and religion.
4. The relation between the fourth principle, “democratic rule that is guided by the strength of wisdom resulting from deliberation/representation,” and the position of MPR power, position and powers of the DPR, position and powers of the President, position and powers of the Audit Board of the Republic of Indonesia.
5. The relation between the fifth principle, “social justice for all the people of Indonesia,” and:
 - a. Article 31: “Each citizen has the right to an education,” Paragraph (2): “The government organizes and implements a national education system, to be regulated by law.”
 - b. Article 32: “The state shall advance Indonesia’s national culture.”
 - c. Article 33 paragraph (1): “The economy is

to be structured as a common endeavor based on familial principles,” paragraph (2): “Production sectors that are vital to the state and that affect the livelihood of a considerable part of the population are to be controlled by the state,” paragraph (3): “The land and the waters, as well as the natural riches therein, are to be controlled by the state to be exploited to the greatest benefit of the people.”

- d. Article 34: “Impoverished persons and abandoned children are to be taken care of by the state.”

Hobbes Sinaga further explained by linking Pancasila and several articles in the body of the 1945 Constitution; it would further expand the thinking on matters that still need to be regulated in the 1945 Constitution.

“We had experienced the government under the New Order for decades. All people of Indonesia were banned from discussing Pancasila, especially or even making its interpretation. The discussion only applies to the P4 level, where the interpretation was carried out by and for the authorities. When criticisms came from other countries about human

rights violations in Indonesia, the government at that time just said that Indonesia is a country based on Pancasila and human rights in Indonesia is based on Pancasila.”

Thus, Hobbes Sinaga believes that in the era of openness and reform, there is already freedom to explore the philosophical values of Pancasila, which can be used to complement the provisions regarding the rights and obligations of citizens and human rights into the 1945 Constitution. Another opinion from Asnawi Latief on behalf of the Daulatul Ummah Party (F-PDU) faction is also quite relevant. In the same meeting, Asnawi Latief explained the following matters:

“The pillars of the state can be distinguished between philosophical and political pillars. Philosophical pillars are Pancasila, while the pillars of state politics include the pillars of democracy, the foundations of a state based on law, social justice, and others. These pillars must be contained explicitly in the Body of the Constitution, not only in the Preamble. These will not be objects of change in the future.”

Willy Decapry Tasirileleu, in his writing “Penjabaran Pancasila dalam Pasal-Pasal NRI 1945” (Elaboration of Pancasila in the Articles of the 1945 Constitution

of the Republic of Indonesia), explained the relationship between Pancasila and the Articles in the 1945 Constitution. He said the philosophical teachings of the Indonesian nation-state, which are framed in a state ideology called Pancasila, are the main foundation of all Indonesian state administration systems. Further, he explained that law as a product of the state could not be separated from its state philosophy. Similarly, it means that the philosophy of law also cannot be separated from its state philosophy.

Willy then quoted Moh. Mahfud MD (Pancasila Congress I, 2009). He explained that in establishing a state based on the rule of law, Pancasila must establish guiding principles in making legal politics or other state policies: (1) public and legal policies must maintain the integration or integrity of the nation both ideologically and territorially, (2) public and legal policies must be based on efforts to build democracy (people’s sovereignty) and nomocracy (state based on the rule of law) and, (3) public and legal policies must be based on efforts to build social justice for all the people of Indonesia, (4) public and legal policies must be based on principles of civilized religious tolerance.

Alternative Recruitment of Constitutional Justices

LUTHFI WIDAGDO EDDYONO

Peneliti Mahkamah Konstitusi

The People's Consultative Assembly (MPR) issued a very important Decree on August 18, 2000. Under the leadership of Prof. Dr. H.M. Amien Rais, the People's Consultative Assembly of the Republic of Indonesia issued a Decree Number IX/MPR/2000 of 2000 on the Appointment of the Working Body of the People's Consultative Assembly of the Republic of Indonesia to Prepare Draft Amendments to the 1945 Constitution of the Republic of Indonesia.

In the section Considering the Decree of People's Consultative Assembly (TAP MPR), it was stipulated that the Constitution is the fundamental law of a country. Therefore, making an amendment requires a deep, thorough, careful, and comprehensive discussion. It was also mentioned that the People's Consultative Assembly of the Republic of Indonesia had stipulated the First Amendment to the 1945 Constitution of the Republic of Indonesia in the General Session of the People's Consultative Assembly of the Republic of Indonesia from 14 - 21 October 1999 and the

Second Amendment to the 1945 Constitution of the Republic of Indonesia in the Annual Session of the People's Consultative Assembly of the Republic of Indonesia from 7 - 18 August 2000.

Thus, in the Considering Section, the People's Consultative Assembly of the Republic of Indonesia still considered it necessary to proceed with the amendments to the 1945 Constitution of the Republic of Indonesia by incorporating more of the dynamics and aspirations of the people, so it is deemed necessary to assign the Working Body of the People's Consultative Assembly of the Republic of Indonesia to prepare draft amendments to the 1945 Constitution of the Republic of Indonesia.

The Decree of the People's Consultative Assembly (TAP MPR) consisted of four articles. Article 1 is to Assign the Working Body of the People's Consultative Assembly of the Republic of Indonesia to prepare Draft Amendments to the 1945 Constitution of the Republic of Indonesia. Article 2 is to execute the tasks referred to in Article 1; the Working Body of the People's Consultative Assembly of

the Republic of Indonesia uses the material Draft Amendments to the 1945 Constitution of the Republic of Indonesia prepared by the 1999-2000 Committee Working Body of the People's Consultative Assembly of the Republic of Indonesia as contained in the appendix, which is an integral part of the Decree.

Article 3 is the proposed amendment that must be discussed and ratified by the People's Consultative Assembly of the Republic of Indonesia in the Annual Session of the People's Consultative Assembly of the Republic of Indonesia 2002 at the latest. Article 4 is the Decree shall take effect on the date of stipulation.

Interestingly, the material for the draft amendment to the 1945 Constitution of the Republic of Indonesia prepared by the Committee Working Body of the People's Consultative Assembly of the Republic of Indonesia 1999-2000 became an integral part of the Decree. In the Appendix, the proposals related to the existence of the Constitutional Court are as follows:

Article 25B

- (1) Within the Supreme Court, a Constitutional Court was established.
- (2) The Constitutional Court has the authority to conduct material judicial review of law against the Constitution, to judge conflict between laws;(Alternative 1: to adjudicate authority disputes of state institutions, between the central government and regional government, and between the regional governments. Alternative 2: not necessary), and carry out other authorities regulated by law.
- (3) The Constitutional Court shall have the authority to make final decisions in cases of first and last instance.
- (4) Alternative 1:
The Constitutional Court shall have nine members of constitutional court justices to be appointed and dismissed by the MPR, of whom three are proposed by the President, three by the Supreme Court, and three by the DPR.
Alternative 2:
The Constitutional Court's members shall be appointed and dismissed by the MPR on the recommendation of the Supreme Court, whose structure and the number of members shall be regulated by law.
- (5) The Constitutional Court's members are comprised of statespersons who fully understand the Constitution and state administrative matters and do not hold a position as a state official, as well as fulfilling other requirements regulated by law.

Source: *Appendix to the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX/MPR/2000 of 2000 on the Appointment of Committee of Working Body of the People's Consultative Assembly of the Republic of Indonesia to Prepare Draft Amendments to the 1945 Constitution of the Republic of Indonesia.*

The forerunner to the provisions of Article 24C of the 1945 Constitution that determined the existence of the Constitutional Court had been discussed since 2000 and was finally decided in 2001. Based on the Draft Amendment to the 1945 Constitution of the Republic of Indonesia prepared by the Committee of Working Body of the People's Consultative Assembly of the Republic of Indonesia 1999-2000, The Constitutional Court is still part of the Supreme Court and its authority is also still alternative, including the appointment and dismissal of members of the Constitutional Court.

According to the Comprehensive Manuscript on Amendments to the 1945 Constitution of the Republic of Indonesia, Background, Process,

and Discussion Results from 1999-2002, Book VI Judicial Power (Jakarta: Secretariat General and Registrar of the Constitutional Court; Revised Edition, July 2010), in the early stages of discussion meetings on PAH I BP MPR RI during the 2000 session, the topic of the Constitutional Court Justices have become the members' attention. Some suggestions have been given and submitted by PAH members. This was revealed in the Appendix to MPR Decree No.IX/MPR/2000, the draft of the Constitutional Court Justices, has two alternatives.

Alternative 1:

"The Constitutional Court shall have nine members of constitutional court justices to be appointed and dismissed by the MPR, of whom three are proposed by the President, three by the

Supreme Court, and three by the DPR."

Alternative 2:

"The Constitutional Court's members shall be appointed and dismissed by the MPR on the recommendation of the Supreme Court, whose structure and the number of members shall be regulated by law."

The appendix also revealed that the Constitutional Court's members comprised of statespersons who fully understand the Constitution and state administrative matters and do not hold a position as state official as well as fulfilling other requirements regulated by law.

In the context of judges, according to the Comprehensive Manuscript, three main issues became the topic of debate during the discussion of PAH I of the People's Consultative Assembly of the Republic of Indonesia—the number of judges, the requirements for judges, and the process of recruiting judges. Regarding the number of judges, from the beginning, it was proposed to consist of 9 people, and most of the PAH I MPR RI fractions agreed upon this without further debate.

In the end, in 2001, it was stipulated Article 24C paragraph (3) of the 1945 Constitution which reads, "The Constitutional Court shall have nine members of constitutional court justices to be appointed by the President, of whom three are proposed by the Supreme Court, three by the House of Representatives, and three by the President." Article 24C paragraph (6) of the 1945 Constitution stated, "The appointment and dismissal of constitutional judges, procedural law, and other provisions regarding the Constitutional Court shall be regulated by law."



CONSTITUTIONALITY OF TWO OFFICE TERMS FOR REGIONAL HEAD OR DEPUTY REGIONAL HEAD WITHIN THE SAME POSITION

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Substitute Registrar of the Constitutional Court of the Republic of Indonesia and Lecturer of the Faculty of Law, University of Tarumanegara, Jakarta

Governors, Regents, and Mayors, respectively, as heads of provincial, regency, and regional municipal governments, are democratically elected as mandated by Article 18 paragraph (4) of the 1945 Constitution. Regional heads and deputy regional heads elections (Pilkada) is the implementation of political decentralization in the practice of regional government administration. Pilkada is an essential instrument for democratization efforts in the regions as it is instrumentally directed to open opportunities for the public in the regions to be involved in decisions concerning development in their regions, including participation in the mechanism for filling the positions of regional heads.

Jimly Asshiddiqie said that the local government or the regional executive branch is the organizer of the regional government along with the DPRD and holds the highest administrative authority for the regional government. The local government uses the principle of decentralization and assistance in carrying out regional administration. This decentralization principle is the basis for transferring government authority from the central

government to the autonomous government. Conceptually, local government is run by the regional head (executive) as the executor of the rules (rule application). Meanwhile, the main task in government administration is to execute or carry out what has been agreed upon or decided by the legislature (DPRD) as a rulemaking as well as by the judiciary (rule adjudication), or it can also be said as implementing all policies that the legislature and judiciary have decided.

The role of regional heads (Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors) is important, both in administrative and political authorities, as well as in representing their region. Thus, a regional head and deputy regional head have duties, responsibilities, and leadership behavior. In addition, regional heads and deputy regional heads have a very strategic role in developing a democratic and just life, equity, community welfare, maintaining a harmonious relationship between the central and regional governments, as well as between regions in order to maintain the integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945

Constitution. Thus, it is necessary to regulate the limited terms of office for the regional head and deputy regional head.

The term limit for the regional head and deputy regional head in the government system is a very important issue in order to avoid abuse of power and authority, leadership regeneration, and other matters. The issue of the term of regional heads and deputy regional heads has been submitted to a judicial review to the Constitutional Court and has been decided by the Constitutional Court through Constitutional Court Decision Number 22/PUU-VII/2009, dated November 17, 2009.

Constitutional Court Decision Number 22/PUU-VII/2009

Constitutional Court Decision Number 22/PUU-VII/2020, dated November 17, 2022, filed by Petitioners Prof. Dr. drg. I Gede Winasa and H. Nurdin Basirun, S.Sos. They asserted that their constitutional rights as individual Indonesian citizens or private legal entities had been harmed by the enactment of the norms of Article 58 letter o and the Elucidation of Article 58 letter o Law 32/2004, which contradicted Article 28D paragraph (1) and paragraph (3),

as well as Article 28G paragraph (1) of the 1945 Constitution.

In its legal considerations, the Court advised the Petitioner to elaborate on their legal standing as both individual Indonesian citizens and private legal entities and prove their impaired constitutional rights by the enactment of the articles reviewed. So, the Petitioners' prima facie have fulfilled legal standing requirements in the a quo petition.

The Petitioners argue about the unconstitutionality of the norms of Article 58 letter o and Elucidation of Article 58 letter o of Law 32/2004. The Petitioners elaborated the arguments of the petition as follows:

1. Concerning the Constitutional Court Decision Number 006/PUU-III/2005 and Decision Number 11/PUU-V/2007, it is evident that constitutional right and/or authority is aggrieved by a prevailing law as referred to in Article 51 paragraph (1) of the Constitutional Court Law because the Petitioners are no longer able or hindered from running for re-election as a Candidate Regent in the 2010 General Election of Regional Head/Deputy Regional Head of Jembrana Regency due to the provision "which fulfill the requirement of not holding the position of the regional head or deputy regional head for 2 (two) consecutive times within the same position" in Article 58 letter o Law 32/2004. Thus, it is evident that the Petitioners' constitutional rights have been harmed by the Article 58 letter o Law 32/2004;
2. That Petitioner I cannot be qualified as having two consecutive times held the position of Regional Head of Jembrana Regency because the Petitioner was appointed as Regent of Jembrana based on: Kepmendagri

Number 131.61-388 and Kepmendagri Number 131.61-98, which have fundamental differences from the point of view of the election mechanism. Appointment of the Petitioner as Regent of Jembrana based on Minister of Home Affairs Decree Number 131.61 388 was carried out through an indirect election mechanism in DPRD Jembrana Regency. This indirect election mechanism is not the mechanism to elect the Regional Head/Deputy Regional Head as stipulated in Article 56 paragraph (1) of Law 32/2004. Meanwhile, the appointment of the Petitioner as Regent of Jembrana based on Kepmendagri Number 131.61-987 was carried out as a result of direct election in the General Election of Regional Heads and Deputy Regional Heads of Jembrana Regency in 2005, in which the mechanism was implemented though direct general election that is regulated in Article 56 paragraph (1) Law 32/2004. Due to the differences in the election mechanism, the Petitioner cannot be subject to the provisions "never appointed a regional head or deputy regional head for 2 (two) terms of office within the same position" as stipulated in Article 58 letter o Law 32/2004;

3. That Petitioner II also cannot be qualified as having two consecutive times held the position of Regional Head of Karimun Regency with a different appointment mechanism, namely Petitioner II, who was initially Deputy Regent and then was appointed as Regent of Karimun based on the recommendation of the Acting Governor of the Riau Islands [Kepmendagri Number 131.30-326]; and was reappointed as Regent of Karimun for his success in becoming the Elected Candidate

Regent in the Direct Regional Head/Deputy Regional Head General Election [Kepmendagri Number 131.21-111];

4. That with the ambiguity of whether Article 58 letter o of Law 32/2004 and Elucidation of Article 58 letter o Law 32/2004 have a "direct regional head general election system," so this ambiguity has caused potential harm to Petitioner I and Petitioner II. Thus, Petitioner I and Petitioner II have the right to fight for their constitutional rights before the Constitutional Court, which is the guardian of the constitution and the sole interpreter of the constitution;

According to the Court, that Court once ruled on judicial review of Article 58 letter o Law 32/2004 and its Elucidation related to the term of office of the Regional Head—the Decision of the Constitutional Court Number 8/PUU-VI/2008 and has limited the terms of office for regional heads. The said limitation can be implemented by law, namely: (a) two consecutive restrictions on the same position; (b) two non-consecutive restrictions on the same position; or (c) two consecutive restrictions on the same position in different regions. In Decision Number 8/PUU VI/2008, Drs. H.M. Said Saggaf, M.Sc., had served as regional head not consecutively and in different regions. He served as regent in Bantaeng Regency, South Sulawesi Province, from 1993 to 1998 and as regent in Mamasa Regency, West Sulawesi Province, from 2003 to 2008. Nevertheless, he was subject to restrictions twice in the same position in different regions.

The Petitioner with Case Number 8/PUU-VI/2008, namely Drs. Said Saggaf served as Regent

for the second period from 2003 to 2008, which means that he experienced the effective period of Law 22/1999 and Law 32/2004. This is also counted for one term of office. Even though the term of office was based on two different laws (UU 22/1999 and UU 32/2004). However, the count of one term was not hindered due to amendment to the law. Thus, the count of two terms of office was also not hindered due to amendment to the law.

In its consideration, the Court stated that if the term of office for the first period is less than half of the term of office because the Petitioner replaces a Regent/Mayor Officer who has resigned permanently, for example, Petitioner II served as Regent of Karimun for the first term for less than one year (less than half of the term of office), while Related Party I held the position of Surabaya Mayor for two years and nine months or more than half of the term of office. The Elucidation of Article 38 PP 6/2005 states that the counting of two terms of office is effective from the time of appointment. The Elucidation does not distinguish whether one has a full term of office or not. The Court considered that it was unfair for someone who held office a position for less than half of the term of office to be made equal to ones who held more than half or more of the term of office. Therefore, based on the principle of proportionality and a sense of justice, as mentioned in Article 28D paragraph (1) of the 1945 Constitution, which reads, "Each person has the right to recognition, security, protection, and certainty under the law that

shall be just and treat everybody as equal before the law." Therefore, the Court asserted that half of the term of office or more is considered as one term of office. This means that if someone has served as Regional Head or as an Acting Regional Head for half of or more than half of the term of office, then the person concerned is counted as holding the position for one term.

According to the Court, in essence, Law 22/1999, Law 32/2004, and PP 6/2005 have regulated the same matter about the term of office of the Regional Head, which is five years. The differences in the regional head election system, both indirect [Article 40 paragraph (1), paragraph (2), and paragraph (3) of Law 22/1999] or direct (Article 15 PP 6/2005), do not mean that the indirect regional head election system is not or less democratic than the direct system, and vice versa. Both are state policies on the regional head election system that is equally democratic in accordance with Article 18 paragraph (4) of the 1945 Constitution. Even after gaining experience in implementing the direct regional head election system (based on Law 32/2004) and indirect regional head elections (based on Law 22/1999) with all its consequences, a new idea is now emerging to re-enact indirect elections.

The Court considered the impaired constitutional of Petitioner I (Prof. Dr. drg. I Gede Winasa) was hindered by Article 58 letter o Law 32/2004 and its Elucidations because he had held the term of office twice despite the direct or indirect method of

election. Period I (2000-2005) with an indirect election system based on Law 22/1999 and Period II (2005-2009) with a direct election system based on Law 32/2004. Court asserted that, in essence, Law 22/1999 and Law 32/2004, as well as Government Regulation Number 6 of 2005, has stipulated the same thing regarding the term of office of the Regional Head, which is five years. The differences in the regional head election system, both indirect [Article 40 paragraph (1), paragraph (2), and paragraph (3) of Law 22/1999] or direct (Article 56 Law 32/2004 and Article 15 PP 6/2005) do not mean that the indirect regional head election system is not or less democratic than the direct system, and vice versa. Both are laws forming policies on the regional head election system that is equally democratic in accordance with Article 18 paragraph (4) of the 1945 Constitution. Petitioner I is considered to have served full terms of office twice in the same region despite the direct or indirect method of election. The success of Petitioner I in leading the Jembrana region is reasonable and expected. However, such success is not an excuse to violate the term limit of the regional head as regulated by law. In fact, after gaining experience implementing the regional head election system directly and indirectly with all the consequences, a new idea is now emerging to re-enact indirect elections.

Petitioner II (H. Nurdin Basirun S.Sos.) is the Acting Regent of Karimun who was not directly elected because he previously served as a Deputy Regent who was later appointed

as Regent based on the Decree of the Ministry of Home Affairs Number 131.30-326, due to the permanent absence of the regent he replaced. He was continuing the previous Regent's term of office for nine months for the sake of the smooth administration of the Karimun Regency. In the following period (2006-2011), Petitioner II was directly elected based on Law 32/2004. The Court believes that it is necessary to consider whether the nine months period when Petitioner II served as Regent was counted as one term of office or not. In this case, the Court considered the opinion of Expert Indria Samego, who suggested an amendment to Article 58 letter o of Law 32/2004, that is, whether half or more than half of the term of office as one period, while less than two and a half years or less than half do not count as one. Similarly, Expert Mustafa Fahri questioned the same matter on whether someone previously served as a Deputy Regent who was later appointed as Regent due to the permanent absence of the regent he replaced and acting as regent for nine months is counted as one term of office. The court argued that the Law a quo does not explicitly regulate this matter. Although the Court does not have the authority to amend Article 58 letter o Law 32/2004, the Court is required to choose one of these alternatives because of the need for law enforcement to be filled immediately with a Court Decision to fill the vacant law (judge-made law). This is in line with the Court's consideration that the term of office of Petitioner II for nine months, based on the principles of proportionality, balance (balancing), and the principle of properness, was not

counted as one term because it was less than two and a half years or less than half of one term of office. Thus, the first term of office of Related Party I (Drs. Bambang Dwi Hartono) is counted as one term of office because the first term of office is more than half the term of office, i.e., two years and nine months. Meanwhile, the term of office of Related Party II (Gabriel Manek, M.Sc.) is not counted as one term of office because the first term of office of Related Party II is nine and a half months. After all, it is less than half of the term of office.

The Court asserted that the Petitioners, as citizens, have the constitutional right to participate in government in casu of becoming Regent/Mayor. Such constitutional rights can be limited according to Article 28J paragraph (2) of the 1945 Constitution, which states, *"In exercising of his rights and freedom, every person shall abide by the limitations to be stipulated by the laws with the purpose of solely guaranteeing the recognition as well as respect for the rights and freedoms of others and in order to comply with just demands in accordance with considerations for morality, religious values, security, and public order in a democratic society."*

The Court believed the ambiguity of Article 58 letter o Law 32/2004 has raised fears and questions for Petitioner I and Petitioner II whether they can still participate as a future regent/mayor candidates, which the Petitioners consider to have violated their rights guaranteed by Article 28G paragraph (1) of the 1945 Constitution which states, *"Every person is entitled to protection of self, his family, honor, dignity, the property he owns, and*

has the right to feel secure and to be protected against threats from fear to do or not to do something that is part of basic rights." Even though Article 28G paragraph (1) of the 1945 Constitution guarantees that a person is to be protected against threats from fear, it does not mean that what the Petitioners experienced or the concern they have of not being able to become candidates are not fears as referred to in Article 28G paragraph (1) of the 1945 Constitution because this is a normal thing that is subjectively experienced by anyone who will become a regional head candidate. Thus, the Petitioners' petition in so far as it relates to Article 28G paragraph (1) of the 1945 Constitution is groundless and must be ruled out.

In the Decision, the Court concluded that: (1) Article 58 letter o of Law 32/2004 did not violate Article 28D paragraph (1) and paragraph (3), and Article 28G paragraph (1) of the 1945 Constitution; (2) the count of the term of office was not hindered by the enactment of two different laws; (3) and half of the term of office or more shall be counted as one term of office.

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