

E-MAGAZINE **KONSTITUSI**

**THE DYNAMICS OF
THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF INDONESIA
2003 - 2020**

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Editorial Greetings

The Covid-19 pandemic has consequences for everyone, including the Constitutional Justices and the Secretary General of the Constitutional Court who delivered material related to matters of the Constitutional Court (MK) virtually witnessed by figures, academics, practitioners and the general public. Constitutional Justice Suhartoyo, for example, asked every lawyer to master the procedural law of proceedings. Procedural law is the most primary and core weapon for advocates. This was conveyed by Suhartoyo as a resource person for the "Special Education for Advocate Professionals (PKPA)" held by the Legal Aid and Consultation Institute (LKBH), Faculty of Law, Andalas University in collaboration with the Branch Leadership Council of the Indonesian Advocates Association (DPC Peradi) Padang on July 24, 2020.

Meanwhile, Constitutional Justice Arief Hidayat reminded the importance of legal culture for the participants in regional head elections (pilkada). In order to seize power, democracy should be based on the principles of divine values. If there is fraud, it means that it violates the principles of Divine values, law, ethics and morals. This was revealed by Arief when he was a resource person for the Online National Seminar "The Role of the Constitutional Court in Guarding People's Sovereignty through Regional Election Dispute Resolution" on August 14, 2020 in collaboration with the Constitutional Court (MK) with the Sharia Faculty of IAIN Kudus.

Furthermore, the Secretary General of the Constitutional Court, M. Guntur Hamzah, revealed the four phases of the development of the Constitutional Court decision, namely when Law no. 24 of 2003 was formed, then related to the authority of the Constitutional Court to handle the results of regional head elections. In the third phase, the Constitutional Court's decision states that the handling of dispute cases over the results of the elections is not within the Court's authority. The fourth phase, re-inserting the authority of the Constitutional Court to handle cases of dispute over the results of the elections. Its status becomes additional authority. Guntur conveyed this in the "17th Year of the Constitutional Court Public Discussion: Reorientation of Paradigm and Institutional Reorganization" on August 18, 2020 organized by KoDe Initiative, an independent research institute in the field of constitutional law and democracy.

The August 2020 edition of the Constitutional Magazine also delivers courtroom news about various judicial judgments. Such as the judicial review of the Corruption Eradication Commission (KPK) Law, the Election Law, the Manpower Law, the Infectious Disease Outbreak Law and others. Others, as usual, we present the typical rubrics of the Constitutional Magazine, ranging from Editorials, Actions, Overview of Decisions, Variety of Figures, Libraries, and so on, which we summarize nicely, both from the aspects of writing, photography and magazine layout.

On this occasion, we also want to convey the 17th Dirgahayu of the Constitutional Court of the Republic of Indonesia (MKRI) which falls on August 13, 2020. At a relatively young age, various achievements and achievements have been obtained by the MKRI, a number of landmark decisions, organizing activities with the Court The constitutions of various countries and so on. Hopefully the MKRI can continue to be a modern and trusted judicial institution, as the guardian of the constitution and democracy. Hopefully the MKRI can continue to provide a sense of justice for justice seekers and protect the constitutional rights of citizens.

That's the editor's introduction. Finally, we wish you a happy reading!



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MENGAWAL KONSTITUSI

GAIT 17 YEARS OF THE CONSTITUTIONAL COURT

In 2020, the Constitutional Court (MK) will turn 17 years old. Like a teenager, the Constitutional Court is entering its adulthood, whose role in maintaining the pulse of the constitution and democracy cannot be underestimated.

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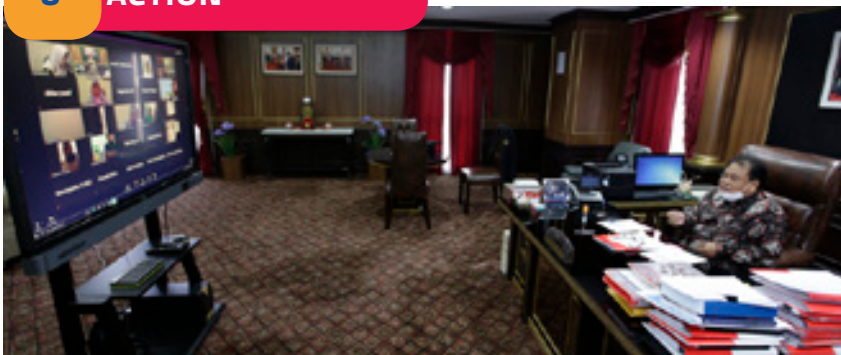
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THE LEGAL CULTURE OF REGIONAL HEAD ELECTIONS MUST BE IMPROVED

LONG LIVE, OUR COURT!

August, to be precise on the 13th of this year, the Constitutional Court (MK) will turn 17 years old. Like a teenager, Constitutional Court is at a crucial moment, sweet seventeen. That said, for someone, 17 years of age is a point of transition from unstable to adulthood. For the Constitutional Court this means that this birthday is not like the previous ones. Not just a ceremony to repeat the same date and month in different years. Nor is it just remembering the day the Court started taking part. This sweet seventeen momentum needs to be interpreted as much more essential.

If it is true that 17 years is a point of transition from unstable to adulthood, then this is the right time not only to commemorate, but to warn of their identity. Over a period of 17 years, apart from making many notes on the dynamics of the state, the Constitutional Court recorded itself about what has been through. Apart from the 17-year record of keeping the pulse of constitutionalism and hoisting the flag of constitutional civilization aloft, it cannot be denied that there are a few dark notes of the Constitutional Court. The row is small, but it scars deep with a noticeable mark.

Now, at point 17 right now, the experiences and lessons learned by the Constitutional Court from the various records should have revived the burning spirit why this institution was thought of, debated to exist, until then finally it was truly born holy with high hopes for organize and tidy up the ways this country is constituted. In the past, the amenders of the Constitution dreamed of the Constitutional Court as a wise figure who resolves state problems elegantly under the logic of statesmanship. After 17 years, did that dream come true? Admittedly, the pendulum is directed and has led to it. Even though it hasn't reached the portal of arrival at the dream terminal.

Following a 17-year journey, led alternately by 6 Chairmen, with the formation of Constitutional Justices who came and went due to periodization, the Constitutional Court encountered challenges at each time. Simply put, each leadership brings a certain style, style, strategy, priority choice, and prominence. This was then recorded by the public memory, becoming the history of the Constitutional Court and the history of this nation. Time will continue to roll, historical pencils will continue to be etched, as a seismograph records every ground shaking,

and the public will continue to capture Constitutional Court's steps, such as CCTV which is always on 24 hours.

At the age of 17, a long route and a white canvas stretched out before the Constitutional Court, along with the fate and future of the nation's constitutionalism. What kind of route will be taken, what color will it be filled, is entirely an opportunity for the Court. Hopefully, Constitutional Court is able to fill it with the best choice of steps and the most beautiful color combinations. One of the forms is how the Constitutional Court faces eternal challenges of all time, namely keeping the verdict always as the crown of the Constitutional Court. The history of the Constitutional Court will be determined significantly by the decision, among others. At this point, all efforts should be made without being lax in the aspect of maintaining the quality of decisions. Another thing, it should be secondary. Must be guided, the Constitutional Court's decision is built from the logic of legal considerations of the decision, which in essence is the basis and reason when the Court answers a constitutional problem.

There are a number of important things with regard to the legal considerations of decisions to maintain the quality of the Constitutional Court decisions (Fajar Laksono, 2018), namely (1) built through the process of utilizing legal knowledge supported by control of the constitution and state administration, so that it wins when debated by anyone, (2) is professional respect from constitutional judges as the best legal experts from the dialectic results of legal knowledge and trial facts to maintain constitutional values, (3) explaining at what point the constitutional problems of the norms of the law are tested as well as guiding how decisions are implemented, and (4) becoming a room for evidence that decisions are the result of the process of making use of legal and constitutional knowledge, not relying on freedom of discretion.

On that basis, it is always fully realized, that the Constitutional Court decision is not just a pile of papers or ordinary letters that can be clicked and sent via email, but is a building of values and a strong constitutional logic and will be legally, morally, academically accountable to public and especially to God. This 17 year old is a "warning" for himself, not just a reminder. Happy 17th birthday Constitutional Court. Longevity. Long live our Court. Greetings of the Constitution!



GAIT 17 YEARS OF THE CONSTITUTIONAL COURT

“The speed and accuracy of the Constitutional Court also deserves our appreciation. The Constitutional Court also continues to improve governance and increase the use of electronic services to serve the public in seeking justice. The Constitutional Court has succeeded in accelerating the period for completing cases of judicial review from the completion time of 101 working days per case in 2017 to an average of 59 working days per case. Throughout 2019 to early 2020, the Constitutional Court has completed 122 cases of judicial review.

(President Joko Widodo in the Annual Session of People’s Consultative Assembly, People’s Representative Council, Regional Representative Board on Friday, 14 August 2020)

In 2020, the Constitutional Court (MK) will turn 17 years old. Like a teenager, the Constitutional Court is entering its adulthood, whose role in maintaining the pulse of the constitution and democracy cannot be underestimated.



Since its establishment on August 13, 2003, the Constitutional Court has the authority based on Article 24C of the 1945 Constitution in the form of four powers and one obligation. Article 24C paragraph (1) of the 1945 Constitution states, “The Constitutional Court has the authority to judge at the first and last levels whose decisions are

final to test the law against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Basic Law, decide the dissolution of parties, politics, and decide on disputes about the results of general elections”. Meanwhile, Article 24C paragraph (2) of the 1945 Constitution states, “The Constitutional Court is obliged to issue a decision on the opinion of the House of Representatives regarding alleged violations by the President and / or Vice President according to the Constitution”. “ ‘

During its 17 years of existence, the Constitutional Court has exercised its three powers, namely judicial review (PUU), disputes over the authority of state institutions (SKLN), and dispute over general election results (PHPU). Meanwhile, with regard to the authority to dissolve political parties and give decisions in the impeachment process for the president / vice president, the Constitutional Court has never exercised this authority.

In its development, based on Article 236C of Law no. 12 of 2008 concerning the Second Amendment to Law no. 32 of 2004 concerning Regional Government, the Constitutional Court was also given the mandate to try the case of PHPU Head of Region (PHPU Kada) which was previously at the Supreme Court (MA). The signing of the Minutes of the transfer of authority to try the PHPU Kada case from the Supreme Court to the Constitutional Court was then carried out on 29 October 2008 by the Chief Justice of the Constitutional Court Moh Mahfud MD and the Chief Justice of the Supreme Court Bagir Manan.

This authority again “transferred” after the Constitutional Court issued Decision Number 97 / PUU-XI / 2013 on May 19, 2014 ago.

In this decision, the Constitutional Court emphasized that regional head elections were not part of the Election regime so that the Constitutional Court did not have the authority to examine and decide them. In addition, in this decision, the Court emphasized that in order to prevent legal uncertainty and the vacuum of the institution authorized to resolve disputes over the results of regional head elections because there is no law regulating this matter, the settlement of disputes over the results of regional head elections remains the authority of the Court.

Then, in Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors (Pilkada Law) regulates that the handling of election disputes is still handled by the Constitutional Court until the formation of a special judicial body. This is regulated in Article 157 paragraph (1), paragraph (2), and paragraph (3) of the Election Law. For this reason, since the 2015 Pilkada, registration of pilkada cases at the Constitutional Court is no longer categorized as a dispute over general election results, but in a dispute over the election results for governors, regents and mayors.

Since its establishment on August 13, 2003, overall, the Constitutional Court has registered 2,776 cases. If described, data is obtained, namely as many as 1,389 cases of judicial review; 26 cases of disputes over the authority of state institutions; 1,077 cases of disputes over the results of general elections (legislative, presidential, and DPD);



and 284 cases of disputes over the results of regional head elections. Of the 2,720 cases, the Constitutional Court decided 2,674 cases with details, namely 1,333 judicial review decisions; 26 decisions on disputes over the authority of state institutions, 1077 cases of disputes over the results of general elections (legislative, presidential, and Regional Representative Council); and 284 cases of disputes over the results of regional head elections.

Testing the Law

One of the main powers of the Constitutional Court is to test the law against the 1945 Constitution. Through this authority, the Constitutional Court not only

seeks to be the guardian and sole interpreter of the Constitution, but also endeavors to uphold and protect constitutional rights (protector of the citizen's constitutional rights) and guarantees the rights of citizens (protector of human rights).

Judicial review itself is classified into two types, namely testing the content of statutory material or legal norms (commonly called material testing) and testing of statutory law formation procedures (commonly called formal testing). In practice, the material testing and formal testing can be carried out simultaneously by the same Petitioner.

During its 17 years of existence, taken from the www.mkri.id page as of August 13, 2020, the

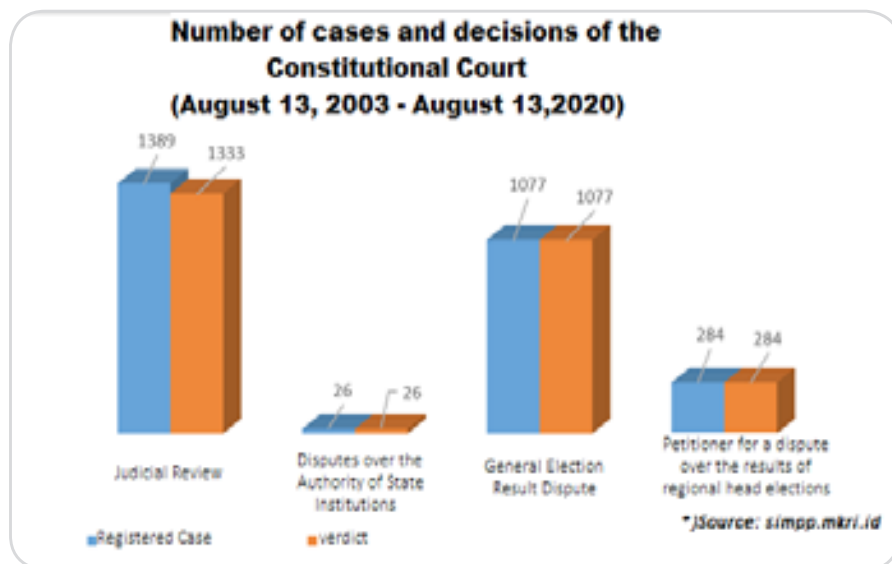
Constitutional Court has registered 1,389 cases of judicial review. Then the Constitutional Court has issued verdicts and judicial review decisions totaling 1,333 cases.

Disputes over the Authority of State Institutions

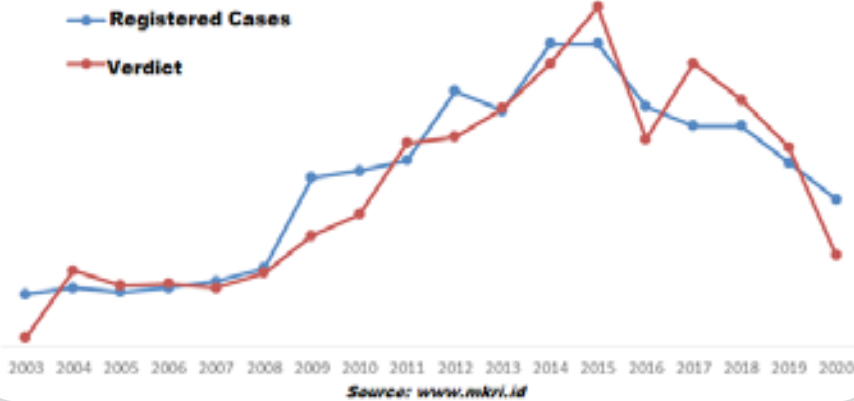
Quoted from the "Constitution and Constitutional Amendments" by the Chief Justice of the Constitutional Court for the 2003 - 2008 period Jimly Asshiddiqie, the amendments to the 1945 Constitution resulted in changes in the position and relations of several state institutions, the abolition of certain state institutions, and the formation of new state institutions. This has implications for improving the position and authority of each state institution in order to improve the system of mutual control and balance (checks and balances).

Of course, this mutually controlling and balancing relationship opens the possibility of disputes between state institutions, particularly those related to constitutional authority. Therefore, according to Jimly Asshiddiqie, the Constitutional Court is needed to examine and decide disputes over constitutional authority between state institutions.

During its 17 years of existence, the Constitutional Court has received 26 requests related to disputes over the authority of state institutions with 26 decisions.



Judicial Review (August 13, 2003 - August 13 2020)



Disputes over the Authority of State Institutions (August 13, 2003 - August 13, 2020)



General Election Result Dispute

In the four general elections (elections) that were held in Indonesia (2004, 2009, 2014, and 2019), one of the new things that was discovered was the availability of a complaint mechanism for the election results announced by the General Election Commission (KPU). Lawsuits of this kind were unknown in previous elections. This mechanism is regulated in the third amendment to the 1945 Constitution, especially Article 24C paragraph (1), which states that the Constitutional Court has the authority to judge at the first and last levels whose decisions are final to decide disputes over the results of general elections (elections). On the one hand, this authority is expected to be able to control the performance of the General Election Commissions as the election organizer and to guarantee the principle of fairness in elections. Overall, in holding four general elections (2004, 2009, 2014, 2019), the Constitutional Court registered 1,077 applications submitted by political parties and candidates for DPD members as well as pairs of presidential and vice presidential candidates. ■

LULU ANJARSARI



HUMAS MKGABRIE

THE LEGAL CULTURE OF REGIONAL HEAD ELECTIONS MUST BE IMPROVED

Constitutional Justice Arief Hidayat was the guest speaker at the Constitutional Court Online National Seminar with the Sharia Faculty of IAIN Kudus, Friday (14/8) at the Constitutional Court Building. Public Relations Photo / Gani.

Constitutional Justice Arief Hidayat was a resource person for the Online National Seminar “The Role of the Constitutional Court in Guarding People’s Sovereignty through Pilkada Dispute Resolution” on Friday (14/8/2020) afternoon. This activity was held in collaboration with the Constitutional Court (MK) and the Sharia Faculty of IAIN Kudus.

At the beginning of the seminar, Arief explained the constitutional basis for the administration of the Republic of Indonesia which has three principles. The first principle is the principle of theocracy. Then the second is the principle of democracy, sovereignty is in the hands of the people. The third principle is the principle of nomocracy. The principle of democracy must be built on the principle of nomocracy or based on law. Because democracy, if it is not

limited in the corridor of law, what will happen is chaos and anarchy.

“The highest law is the Constitution. The Indonesian state is a combination of these three principles, so that it is called a godly constitutional democracy. Or another term, a democratic rule of law based on the One Godhead,” added Arief.

Arief said that in general, countries in the world only adhere to the principles of democracy and nomocracy. State affairs are secular or secular in nature.

Indonesia also adheres to the principles of theocracy. However, the theocracy principle in Indonesia is different from the theocracy of religious states. Indonesia adheres to the universality of divine values, not based on one particular religion. All Indonesians embrace any religion and belief living in Indonesia.

“The goal of the Republic of Indonesia is for material and immaterial

welfare. Well-being that is intact, physical and mental well-being,” said Arief.

Likewise, in law, continued Arief, there are two main things, namely making laws and enforcing the law. When making laws, for example making laws, there must be the sentence “By the grace of God the Almighty”. It is the order that is used by law officially, in government regulations, the decisions of state officials, using such lines.

“Likewise, in enforcing the law, such as in the Constitutional Court, the direction is justice based on the One Godhead. That is what our country calls the system of the One Godhead. Not only being accountable to the people, homeland, and state, but also every movement of its implementation, all our behavior patterns are also responsible to Allah SWT,” said Arief. ■

NANO TRESNA ARFANA



HUMAS MKRIFA

ADVOCATES MUST BE ABLE TO DISCUSS GOOD ARGUMENTS

Constitutional Justice Saldi Isra became a guest speaker at the 10th Zoom meeting of Advocate Professional Special Education which was held by the Faculty of Law, Andalas University, Sunday (26/7) in Jakarta. Public Relations / Ifa Photo.

Public Relations - An advocate who does not have the ability to read with a good and complete understanding will be like a worker who does work without tools. Thus said the Constitutional Justice Saldi Isra quoting the amendment of the statement from Thomas Jefferson at the 10th Batch of the Advocate Professional Special Education (PKPA) activity. This activity was organized by the Legal Aid and Consultancy Institute (LKBH), Faculty of Law, Andalas University in collaboration with the Branch Leadership Council of the Padang Indonesian Advocates Association (DPC Peradi) on Sunday (26/7/2020) through the Zoom Meeting.

In this activity, with the theme "How To Be a Good Lawyer", Saldi invited the participants to understand earlier about the content of the Advocate Law in positioning the advocate profession. In the law, Saldi said that advocate is a profession that is free, independent, and responsible for enforcing the law. Thus, both directly and indirectly,

this norm requires an advocate to be a good advocate. Through the principle of law enforcement, continued Saldi, there should be an integrated process between the subsystems that will be formed starting from judges, prosecutors, police, to advocates so that the big responsibility in the context of law enforcement that has been integrated into this subsystem can be maximally realized.

As a concrete example, Saldi compared the legal education process in Japan with Indonesia. According to Saldi, between the two countries there are fundamental differences in the integrated education process of all elements of law enforcement. In Japan, Saldi saw an integration between legal education in the law faculty, education for advocate candidates, judges, prosecutors, and other elements of law enforcement. However, in Indonesia all are separate and not related to each other. Advocates with an educational pattern carried out by many bar associations, judges with their education, and others. In fact, the services provided

by an advocate are providing legal consultation, legal assistance, exercising power, representing, accompanying, defending, and taking other legal actions for the client's legal interests. "So, from the various services provided by an advocate, the main emphasis of all of them is the ideal concept of an advocate, namely behaving well, honestly, responsibly, fairly, and having high integrity. Such behavior is the main asset to become a law enforcer," until Saldi, who graduated from the Faculty of Law Unand in 1995 with the title Summa Cum Laude.

In connection with the importance of honest behavior from an advocate, Saldi shared his experience some time ago facing the Petitioners' power of not being honest. From the description of his experience, Saldi emphasized again to the webinar participants who are advocate candidates who must truly uphold the principles of good behavior, honesty, responsibility, fairness, and high integrity to become good and successful advocates. ■

SRI PUJANTI



Deputy Chairman Aswanto was the speaker in the webinar via the zoom application, Monday (27/7) in Jakarta. Public Relations Photo / M. Nur.

HANDLE REGIONAL HEAD ELECTIONS UNTIL A SPECIAL COURT IS FORMED

Since the beginning, the Constitutional Court (MK) has said that disputes over regional head elections (pilkada) are not the authority of the Court. This is because the Constitutional Court only has the authority mandated in Article 24C of the 1945 Constitution. This was conveyed by Deputy Chairman Aswanto in a webinar with the theme "Simultaneous Regional Election Arrangement in 2020" on Monday (27/7/2020) through the Zoom application.

In this activity, Aswanto said, the Constitutional Court had four powers and one obligation. He said that the election disputes were not the authority of the Constitutional Court, but as long as there was no special court, election disputes were still handled by the Court. "Because the Constitutional Court actually hopes that the court which has the authority to dispute the election is a special court. We have reminded friends, gentlemen in the DPR when a special court will be created to handle this election dispute," he said.

In addition, Aswanto continued, the Constitutional Court based on its past experience in handling election disputes, always made regulations that

became the basis for handling these elections. "For example, recently we renewed the Constitutional Court (PMK) regulation to become PMK Number 5 of 2020 concerning stages, activities and schedules for handling disputes over election results for governors, regents and mayors," he said.

According to Aswanto, even though there is a handling body at each stage in the elections, the Constitutional Court only has the authority at the final stage, namely when there are election participants who feel that what the organizers decide is incorrect.

Then, continued Aswanto, the Constitutional Court will still comply with the regulations governing who can submit a dispute over the results to the Court. He said, the law has determined that not all pairs of candidates can or have the right to submit a dispute over the results to the Constitutional Court. He explained that Article 158, for example, the Pilkada Law states that there is a certain percentage limit between those who are determined to be winners and those who lose who can propose.

For example, in areas with a population of up to 250 thousand, the maximum difference is only two

percent. If more than two percent, the candidate pairs do not have the authority or legal standing to submit the dispute. "However, considering the developments during the Constitutional Court handling of disputes, internal judges had a very intense discussion that the solution was that the parties in the election dispute were questioning differences. So, from the start we guarantee that what is determined by the General Election Commissions, namely a difference of more than two percent is not fair," said Aswanto in front of the Chairman of Commission II of the Indonesian House of Representatives Ahmad Doli Kurnia Tandjung, Chairman of General Election Commissions, Arief Budiman, Chairman of Bawaslu Abhan, and Chairman of General Election Organizer Honorary Council (DKPP). Muhammad who was also the guest speaker.

In addition, according to Aswanto, in the 2020 Pilkada, the Constitutional Court made a shift without intending to ignore Article 158 of the Pilkada Law. The shift in question is the difference or margin limit determined by law. He said that the Constitutional Court had to test this matter first, whether the difference was two percent or not. According to him, even though it did not meet the percentage limit, the Constitutional Court still brought it into the examination of evidence. According to him, the examination will prove whether it meets the requirements or not.

Aswanto said, the applicants, in this case the candidate pairs, could submit to the Constitutional Court three days after the General Election Commissions announced the results. However, within three days is always a problem. According to him, many applications could not be accepted by the Constitutional Court because the time for submission had passed the deadline. ■

UTAMI A



HUMAS MKKGANIE

UNIVERSITIES HAVE A ROLE IN SHAPING THE CHARACTER AND CHARACTER OF THE INDONESIAN NATION

The role of higher education institutions, both today and in the future, must be oriented to a constitutional philosophical foundation “to educate the nation’s life”. This must also be the basis for the implementation of education for higher education, which is not only aimed at developing academic abilities, but also shaping the character and character of Indonesia as a dignified nation. This was conveyed by Constitutional Justice Arief Hidayat in the context of the 38th Anniversary Ceremony of Soergijapranata Catholic University, Semarang with the theme “Ecological Integrity” on Thursday (6/8/2020) online.

In a scientific oration entitled “The Role of Higher Education in Building the Integrity of Humanity and Indonesian

Nationality”, Arief invited the event participants to look at one of the big challenges of higher education in the form of its role in answering national issues as well as being able to adapt to the times. Responding to this, he divided into two big ideas, namely the role of universities cannot be separated from the shift in state power which has implications for the role of universities; and efforts to restore the strategic role of tertiary institutions to build human and national integrity in accordance with the context of the contemporary era.

Regarding the actualization of the role of higher education institutions from a shift in state power, Arief assessed that this has been contained in Pancasila and is the duty of all components of the nation. This requires the role, collaboration and synergy of all

Constitutional Justice Arief Hidayat gave a scientific oration (online / online) in the framework of the 38th Anniversary Ceremony of Soergijapranata Catholic University, Semarang, Thursday (6/8) at the Constitutional Court Building. Public Relations Photo / Gani.

components of the nation and not only the efforts of the Government through its three branches of power, namely the executive, legislative and judiciary. However, there has also been the role of the press or the mass media, which have influenced the state’s policy-making authority.

“Based on the viewpoint of the Free Press Theory, the purpose of the press is to supervise the performance of the government. So this consequence makes the press a part of the Fourth Pillar of Power. In line with this, mass organizations or NGOs were also present which later reduced the authority of the three existing branches of state power in democratic governance,” said Arief at an event which was also attended by the Governor of Central Java, Ganjar Pranowo; Soergijapranata Unika Rector Ridwan Sanjaya; Chairperson, Secretary and Board of the Sandjoyo Foundation; the Chairmen and Members of the Soergijapranata Unika Senate ‘as well as the lecturers, lecturers, and students of Soergijapranata Unika. ■

SRI PUJIANI



Constitutional Justice Suhartoyo became a guest speaker through a webinar organized by SIP Corp's Legal Forum, Friday (7/8) at the Constitutional Court Building. Public Relations / Ifa Photo.

CHARACTERISTICS OF THE CONSTITUTIONAL COURT PROCEDURAL LAW

Constitutional Justice Suhartoyo was the guest speaker for an event organized by the SIP Corp's Legal Forum on Friday (7/8/2020) afternoon via a webinar. Suhartoyo delivered material "Constitutional Court Procedure Law" from his office in the Constitutional Court (MK).

"Today I will explain how the procedural law gestures of the Constitutional Court are expected to be useful for fellow lawyers who are later litigating at the Constitutional Court," said Suhartoyo in an event attended by lawyers, academics and the general public.

Suhartoyo said that the Constitutional Court Procedure Law was a fundamental tool to fight for the material law of all laws. "Talking about the procedural law of the Constitutional Court cannot be separated from the four powers, one obligation and one additional authority of the Constitutional Court," Suhartoyo explained.

The main authority of the Constitutional Court, said Suhartoyo, is

to examine laws against the Constitution. The Constitutional Court also has the authority to decide the constitutional authority of state institutions. The next powers of the Constitutional Court are to decide on the dissolution of political parties and decide on disputes over election results. Meanwhile, the obligation of the Constitutional Court is to give decisions on the opinion of the DPR regarding the alleged violation of the President or Vice President according to the 1945 Constitution.

"Then there is the additional authority of the Constitutional Court, namely resolving election disputes which are derived not from the Constitution, but which are derived from Law Number 10 of 2016 concerning Pilkada. This additional authority is temporary in nature until a special court is formed to handle election disputes," explained Suhartoyo.

Suhartoyo conveyed that examining laws against the Constitution is the core business of the Constitutional Court, as the main authority and most often carried out by the Constitutional Court. The most cases that have been

submitted to the Constitutional Court are cases of judicial review of the Constitution. Meanwhile, the number of cases of disputes over constitutional authority of state institutions is relatively small. Furthermore, for disputes over the election and regional election results the number of cases is quite large. As for the case of the dissolution of political parties and the case of impeachment of the President to this day, the Constitutional Court has never tried.

Talking about the Constitutional Court's procedural law associated with the four powers, one obligation and one additional authority of the Constitutional Court, has different juridical consequences between all the powers and obligations of the Constitutional Court.

"In the judicial review of the 1945 Constitution, there is a different character of the procedural law, there are no opposing parties, there are petitioners but there are no defendants, but there are parties from the Government and the DPR who are asked for information regarding the established law. The Constitutional Court summoned the Government and the DPR to explain the history, the original intent of the law being issued. In contrast to cases of constitutional disputes with state institutions, there are petitioners and defendants. Likewise with the case of the dissolution of political parties and disputes over the election results, there are petitioners and defendants," said Suhartoyo. ■

NANO TRESNA ARFANA



HUMAS MKCGANE

DISCUSSION ON LAW AND THE CONSTITUTION WITH EXPERTS

Constitutional Justice Suhartoyo was a resource person in the Advocate Professional Special Education webinar, Thursday at the Constitutional Court building. Photo of Public Relations / Hamdi.

Entering the 6th month of the pandemic, it has not yet shown a reduction in positive cases. However, this did not dampen the spirit of the Constitutional Court (MK) in sharing legal and constitutional knowledge. Through the use of technology, Constitutional Justices have become sources in various web seminars held by various universities.

Advocates Must Master Procedural Law

Every advocate must really master the procedural law of the trial. Procedural law is the most primary

and core weapon for advocates. If an advocate does not master procedural law, there will be wrong choices.

"When you are visited by a principal or a client who feels that civil rights, constitutional rights are harmed and asks to be defended by you, but you do not master procedural law, you cannot work without mastering procedural law," said Constitutional Justice Suhartoyo when he was a resource person for "Special Professional Education Advocates (PKPA)". This activity was organized by the Legal Aid and Consultation Institute (LKBH), Faculty of Law, Andalas University in collaboration with the Branch Leadership

Council of the Indonesian Advocates Association (DPC Peradi) Padang, on Friday (24/7/2020) afternoon through the Zoom application.

"No matter how strong the substance of the petition the principal has, if an advocate fights with the wrong procedural law, the petitioner's lawsuit will be ignored," continued Suhartoyo, who presented the material "Having a hearing in the Constitutional Court".

So what about the lawyers who are litigating in the Constitutional Court? "When all of you have litigation in the Constitutional Court but cannot describe and identify legal subjects who can file a petition at the Constitutional Court, it

is very unlikely that the substance of the petition can be considered by the Panel of Judges,” explained Suhartoyo.

Suhartoyo said that as an advocate, he must be able to represent legal subjects who have values who can file cases in the Constitutional Court with legal standing.

The examination of any laws, explained Suhartoyo, is the domain of the Constitutional Court. Judicial review is the real core business of the Constitutional Court. Judicial review at the Constitutional Court is referred to as “petition”; not “lawsuit” because there are no disputes between personal interests.

Suhartoyo explained that the Constitutional Court’s procedural law is not only about judicial review, but is also related to the procedure for dissolving political parties, disputes over the results of presidential and legislative elections and is obliged to decide the opinion of the DPR if the president and or vice president are suspected of committing violations of the law. In addition, based on Article 157 of the Regional Head Election Law, for the time being the Constitutional Court is given the authority to handle disputes over the results of regional head elections.

As is known, the Constitutional Court of the Republic of Indonesia has four powers, namely conducting judicial

review of the Constitution, resolving disputes over authority between state institutions, deciding the dissolution of political parties, resolving disputes over the results of presidential and legislative elections. Meanwhile, the obligation of the Constitutional Court of the Republic of Indonesia is to decide the opinion of the People’s Representative Council if the president and / or vice president are suspected of committing violations of the law or disgraceful acts.

“There are two judicial examinations in the Constitutional Court, namely material and formal. In material terms, judicial review with regard to material, the content of laws which are considered contrary to the 1945 Constitution. Material testing is also called substance testing. law on procedures, procedures for the formation of laws,” explained Suhartoyo.

Furthermore, those who can apply as a Petitioner at the Constitutional Court trials, first are individual citizens. Until now, said Suhartoyo, the Constitutional Court in an empirical and jurisprudential order had never given a legal position to foreign citizens. “Except for foreign citizens who represent the interests of public or private legal entities domiciled in Indonesia. With a note, foreign nationals are directors of the public or private legal entity concerned,” said Suhartoyo, who stated that there were

two types of petitions at the Court, namely offline or comes directly to the Constitutional Court and online.

Next, continued Suhartoyo, those who can apply as a petitioner at the Constitutional Court trial are customary law communities, public or private legal entities, and state institutions. Then regarding the granting of power for the trial at the Constitutional Court, the Petitioner and / or the Respondent can be accompanied by a power of attorney, while public or private legal entities can be accompanied by a proxy or appoint a power of attorney.

“Legal attorneys in the Constitutional Court trials do not have to be advocates, as long as they are well versed in the Court’s Procedural Law. In the Constitutional Court there are known companions, as long as they can help the principal interests by making a certificate to the Constitutional Court,” said Suhartoyo who also explained the format of judicial review which consists of the identity of the applicant, the authority of the Court, legal position, posita, petitum. ■

NANO TRESNA ARFANA



LONGEVITY, 17TH INDONESIAN CONSTITUTIONAL COURT

On August 13, 2020, the Constitutional Court (MK) has entered the age of 17 years. The 17th anniversary of the Constitutional Court was carried out by holding a virtual ceremony on Thursday (13/8/2020). The ceremony was chaired directly by the Chief Justice of the Constitutional Court Anwar Usman and attended by all employees and employees in the Registrar's Office and the Secretariat General of the Constitutional Court using the Zoom application to prevent the spread and transmission of Covid-19.

In the event, Anwar said that the birthday ceremony and celebration this time was different from before due to the Covid-19 pandemic because the number of participants in the field was limited and some of them followed online in a short time. According to him, this was carried out in order to prevent the spread of the virus as well as implement health protocols. However, continued Anwar, this did not eliminate the solemn nature and gratitude in carrying out the ceremony.

Furthermore, Anwar said, 2019 was a very worrying political year for the Constitutional Court. "In 2019, this was the first simultaneous election that we did with such fierce political competition. However, despite all the shortcomings and weaknesses in its implementation, we succeeded in resolving 262 cases of dispute over the election results," he said in front of the ceremony participants. According to him, many parties gave appreciation and appreciation for the Constitutional Court decision. However, this should not be a matter of mere pride, in order to remain introspective to remain solid in work and with full integrity and professionalism in carrying out their duties and mandates.

"At the end of this year, regional head elections will be held simultaneously in 270 regions, with details of the election for Governors and Deputy Governors in 9 (nine) provinces, elections for Mayor and Deputy Mayor in 37 (thirty seven) cities, and election for Regent and Deputy. Regents in 224 districts. We continue to make various preparations. Among them are

the preparation of PMK on handling election disputes, as well as technical guidance which is likely to be conducted online. In essence, we must continue all preparations in order to guard the constitutional democracy process in regional head elections," he added.

On this occasion, Anwar also congratulated the Satya Lencana Karya Satya award given to employees who received it, both those who have served 10 years and 30 years. The award, according to him, is the state's appreciation for the service of employees as state civil servants who have dedicated their dedication to the nation and state. In addition, congratulations are also conveyed to the employees and exemplary employees who have been selected this year. Hope Anwar, for employees who have received awards and are selected as employees and exemplary employees, will always be an example and role model for employees and other employees. ■

UTAMI ARGAWATI



THE COURT RECEIVES THE FINANCIAL AUDIT RESULT REPORT FROM AUDIT BOARD OF THE REPUBLIC OF INDONESIA

Chief Justice of the Constitutional Court (MK) Anwar Usman received the Audit Result Report (LPH) submitted by Member III of Audit Board of the Republic of Indonesia Achsanul Qosasi, Thursday (13/8) in the Delegation Room, Fl. 15 The Constitutional Court Building. Public Relations Photo / Gani.

Chief Justice of the Constitutional Court (MK) Anwar Usman directly received the Audit Result Report (LPH) of the Constitutional Court Financial Report by the Supreme Audit Board of the Republic of Indonesia (BPK RI) on Thursday (13/8) in the Constitutional Court Delegation Room. The report was submitted by Member III of BPK Achsanul Qosasi who was accompanied by Main Auditor for State Finance III Bambang Pamungkas along with two other BPK officials.

On this occasion, Achsanul mentioned that the Constitutional Court

as a state institution from the start has consistently maintained its commitment in providing the best possible report. This, continued Achsanul, was proven by the Constitutional Court by winning an unqualified award (WTP) 14 times in its institutional report. On this occasion, Achsanul hopes that in the future the Audit Board of the Republic of Indonesia (BPK) and the Constitutional Court can both provide performance reports that are getting better in accordance with the constitutional mandate.

Welcoming Achsanul's statement, Anwar also hopes that the synergy of institutions in financial management needs to be well established. Especially

in the current conditions, where the Government is struggling to manage funding to overcome Covid-19.

Anwar, who was part of the financial manager during his tenure prior to the Constitutional Court, instilled the principle that even if one rupiah is from state money, it must be accountable. "So the Constitutional Court through its authority must be able and participate in securing the nation and state," said Anwar, who received the delegation along with the Ethics Council of the Constitutional Court Achmad Sodiki, Secretary General of the Constitutional Court M. Guntur Hamzah, and other MK officials. ■

SRI PUJIANTI

Selection of Social Media Specialist Non-State Government Officials (PPNPN)

Candidates

In order to improve the quality of social media management, the Constitutional Court (MK) conducted a selection for the acceptance of Non Civil Servant Government Employees (PPNPN) Social Media Specialists in the Registrar's Office and the Secretariat General of the Court.

In the 1st test which was held on Monday (10/8/2020), Head of Public Relations and Domestic Cooperation, Fajar Laksono Suroso, told the applicants that the Court manages 4 (four) social media accounts, namely Instagram, YouTube, Facebook, and Twitter. The four social media accounts were considered effective in disseminating the activities and performance of the Constitutional Court. According to him, the management of social media has been trying as well as possible, but if it is compared with other social media accounts, the appearance and content of the MK social media needs to be optimized.

In addition, Fajar said, applicants take the exam to create social media content with actual themes related to the trial or other themes related to the Constitutional Court. This exam is intended to determine and ensure competence as well as creativity and originality of applicants' ideas in creating social media content within a certain time limit. The theme is determined by the selection committee and submitted to applicants just before the exam is held.

Meanwhile, Interview I was conducted to provide an assessment of at least a number of technical aspects including (1) personnel, (2) ideas,



Final selection of admissions for Social Media Specialist Non Civil Servant Government Employees (PPNPN) at the Constitutional Court (MK), Tuesday (18/8) at the Constitutional Court Building. Public Relations Photo / Gani.

creativity, and competence, (3) results of work as evidenced in the attached portfolio. Appraiser Interview I consisted of 5 (five) people consisting of the Head of Public Relations and KSDN, Head of Public Relations, Head of Sub Division of Human Resources Development, Head of Sub Division of Foreign Cooperation, and Public Relations Staff.

Next, on Tuesday (11/8/2020) the Constitutional Court (MK) again carried out the Phase 1 test of the second batch of selection for the admission of Social Media Specialist Government Employees (PPNPN) within the Registrar's Office and the Secretariat General of the Constitutional Court. On this occasion, Head of the Public Relations Subdivision, Mutia Fria Darsini, told the applicants that today's applicants should be 7 people, but only 4 were confirmed. In addition, Mutia said, applicants are invited to tour the Center for History and the Constitution (Puskon) to find a theme for social media content aimed at testing on the spot.

After going around the Center for History and the Constitution, applicants are given time to do the on the spot test. Furthermore, applicants are interviewed by a selection committee. Interview I was conducted to provide an assessment of at least a number of technical aspects including (1) personnel, (2) ideas, creativity, and competence, (3) work results as evidenced in the attached portfolio. The assessors for

Interview I consisted of 5 (five) people consisting of the Head of Public Relations and KSDN Fajar Laksono, Head of Subag of Public Relations Mutia Fria Darsini, Head of Sub Division of Human Resources Development Andi Hakim, Head of Sub Division of Foreign Cooperation Immanuel Hutasoit, and Public Relations Staff Tiara Agustina.

Furthermore, on Tuesday (18/8/2020) afternoon, the final selection for the acceptance of Social Media Specialist Non-Civil Servant Government Employees (PPNPN) at the Constitutional Court (MK) was held on the 11th floor of the Constitutional Court Building. Through interview sessions, the five candidates who had passed the selection presented their work. "Alhamdulillah, all of you are in the top five after passing the selection of 2,758 applicants who registered," said the Secretary General of the Constitutional Court M. Guntur Hamzah accompanied by the Head of the Public Relations and Protocol Bureau Heru Setiawan, Head of the Human Resources and Organization Bureau (SDMO) Constitutional Court Teguh Wahyudi.

For information, the final selection results for the Constitutional Court Social Media Specialist PPNPN admission will be announced on August 24, 2020 via the MKRI website.

(UTAMI ARGAWATI / NANO TRESNA ARFANA)

Development Phase of the Constitutional Court Decision

SECRETARY General of the Constitutional Court (MK) M. Guntur Hamzah was the resource person for “17 Years of the Constitutional Court Public Discussion: Paradigm Reorientation and Institutional Reorganization” on Tuesday (18/8/2020) afternoon through a web seminar (webinar). This activity was organized by KoDe Inisiatif, an independent research institute in the field of constitutional law and democracy.

“Regarding the authority of the Constitutional Court. We informally call it 5 + 1 which is 5 main powers and 1 additional authority. Handling cases of regional head elections is an additional authority of the Constitutional Court. Of the five main powers of the Constitutional Court that have not been used are the authority to decide the dissolution of political parties and to decide the opinion of the DPR if the President and / or the Vice President violate the law,” said Guntur Hamzah, who presented the material “Developments in the Exercise of the Authority of the Constitutional Court”.

The authority of the Court to conduct judicial review of the Constitution, said Guntur, is the core business of the Court. Judicial review of the Constitution consists of formal and material testing. Regarding the injunction of the Constitutional Court’s decision also experienced developments because the Court had accommodated conditionally constitutional and conditionally unconstitutional.

“Including those that are now the center of public attention, based on the Constitutional Court Decision Number 138 / PUU-VII / 2009 there are three parameters. First, there is an

urgent need to resolve legal problems quickly under the law. Second, the law that is needed is not yet in place so that there is a legal vacuum, or there is a law but it is not sufficient. Third, this legal vacuum cannot be resolved by making laws in the usual procedure because it will take a long time. Meanwhile, this urgent situation needs certainty to be resolved,” explained Guntur who also said that the disputes over the results of the general election have experienced significant developments.

The development of the Constitutional Court’s decision for 17 years, said Guntur, there were four phases. The first phase when Law Number 24 of 2003 concerning the Constitutional Court was formed, the Constitutional Court was given five main powers which continued until the second phase when Jimly Asshiddiqie became the first Chief Justice of the Constitutional Court, there was a decision related to the review of the Regional Government Law which included the authority to handle the results of the incoming regional head elections or regional elections. so the election regime.

“In the third phase under the leadership of Hamdan Zoelva, the Constitutional Court issued a decision that the handling of dispute over regional election results was not under the authority of the Constitutional Court. Furthermore, in the fourth phase

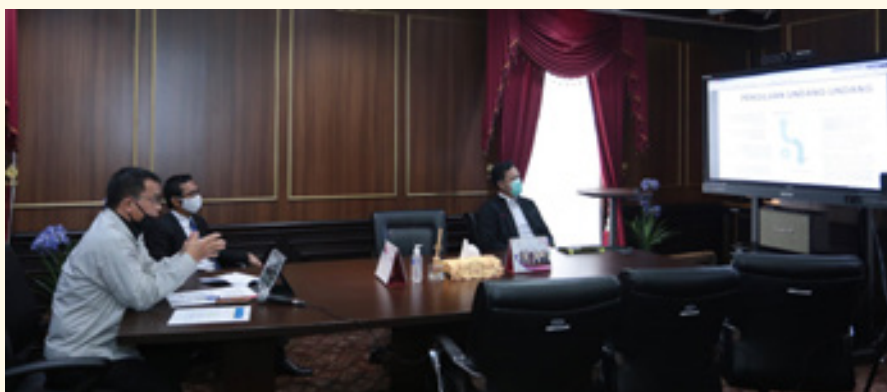
under the leadership of Arief Hidayat, he re-entered the authority of the Constitutional Court to handle disputes over the results of the elections. The status is an additional authority,” said Guntur.

Currently, continued Guntur, the Constitutional Court can be said to be in a transitional period because in fact the handling of disputed cases over the results of the elections should be carried out by a special court. “As long as the special court has not been formed, it is still in transition,” said Guntur.

Another thing and no less important is that the Constitutional Court has two main supporting systems, namely the Registrar’s Office of the Court as support for judicial administration, and the Secretariat General of the Court as support for general administration. “These two systems must be solid in order to provide support to the Constitutional Court,” added Guntur.

In addition, the Constitutional Court has carried out institutional strengthening, starting from strengthening the Ethics Council of the Constitutional Court Procedural Law, the idea of budget independence, annotating decisions, monitoring and evaluation, and e-minutation.

(NANO TRESNA ARFANA)



Secretary General of the Constitutional Court, M. Guntur Hamzah, was a resource person for the activities organized by the Initiative Code through a webinar, on Tuesday (18/8) at the Constitutional Court Building. Public Relations / Ifa Photo.

Wealth of State-owned Enterprises in the Constitutional Court Decision

THE issue of assets of State Owned Enterprises (BUMN) is always a matter of debate. On the one hand, some see it as separated wealth. On the other hand, it is a national wealth. "This indeed creates a dilemma. However, there are also directors, commissioners involved in making decisions in a state-owned enterprise. Moreover, if it has the status of a limited liability company, this will further add to the dilemma," said M. Guntur Hamzah as a resource person for the event "BUMN Company, Business Judgment Rule or State Losses?" held by Hasanuddin Law Study Center (HLSC), Faculty of Law, Hasanuddin University (Unhas) on Friday (21/8/2020) virtually.

"First, I want to say that my position here is not as Secretary General. But as a member of the Unhas Faculty of Law. Although it cannot be separated from my position as a lecturer, from me as the Secretary General," said Guntur who delivered the material "SOE Wealth in the Constitutional Court Decision".

Referring to the provisions of Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN Law) and Law Number 17 of 2003 concerning State Finance (State Finance Law), according to Guntur, creates a different paradigm in seeing the perspective of BUMN wealth. The BUMN Law states that BUMN assets are separated assets. Meanwhile, the State Finance Law emphasizes that BUMN assets are part of the state assets.

Guntur said, Article 1 paragraph (1) of the BUMN Law states, "State-Owned Enterprises, hereinafter referred to as BUMN, are business entities whose entire or most of the capital is owned by the state through



M. Guntur Hamzah was a guest speaker at the virtual Hasanuddin Law Study Center (HLSC) Faculty of Law, Hasanuddin University (Unhas), Friday (21/8) at the Constitutional Court Building. Public Relations Photo / Gani.

direct participation originating from separated state assets." But it needs to be understood, it turns out that the perspective of the State Finance Law sees state money that comes from taxes, natural resources, all of which are state assets regulated in the State Finance Law. This is stated in Article 2 of the State Finance Law which states, "State finances as referred to in Article 1 point 1, include: (g) state assets / regional assets managed independently or by other parties in the form of money, securities, receivables, goods, as well as other rights that can be valued in money, including assets separated from state / regional companies; "

Guntur said that there were two decisions by the Constitutional Court regarding state assets. This can be used as a reference for academics, practitioners. The decisions referred to are the Constitutional Court Decision Number 48 / PUU-XI / 2013 and the Constitutional Court Decision Number 62 / PUU-XI / 2013. The Constitutional Court Decision Number 48 / PUU-XI / 2013 states that the definition of state finances in Article 1 number 1 of the State Finance Law uses a broad and comprehensive definition with the aim of securing state assets that actually come from public money obtained through taxes, levies or non-tax revenue.

"According to the Constitutional Court, the provisions of Article 2 letter g and letter i of Law 17/2003 aim that the state can oversee the management

of state finances in an open and responsible manner for the greatest prosperity of the people in accordance with the mandate of Article 23 of the 1945 Constitution. that SOEs in the form of limited liability companies or other entities that use facilities provided by the government or use state assets must be monitored as a consequence of good and accountable forms of state financial management," explained Guntur.

The Constitutional Court emphasized that BUMN finance is state finances, but the Court also stated that the paradigm of state financial supervision in BUMN must be based on the Business Judgment Rules (BJR) paradigm, not only based on the paradigm of state financial supervision in government administration or Government Judgment Rules (GJR). The Constitutional Court leaves it to the legislators to determine the nature of this different oversight. The BJR which has been mandated in the Constitutional Court's decision acts as a standard of assessment. BJR principles are used as an element for assessing the responsibilities of the board of directors, both in investigations and in court examinations. Meanwhile, GJR in BUMN must also be applied with principles, including transparency, accountability, responsibility, independence, and fairness.

(NANO TRESNA ARFANA)

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