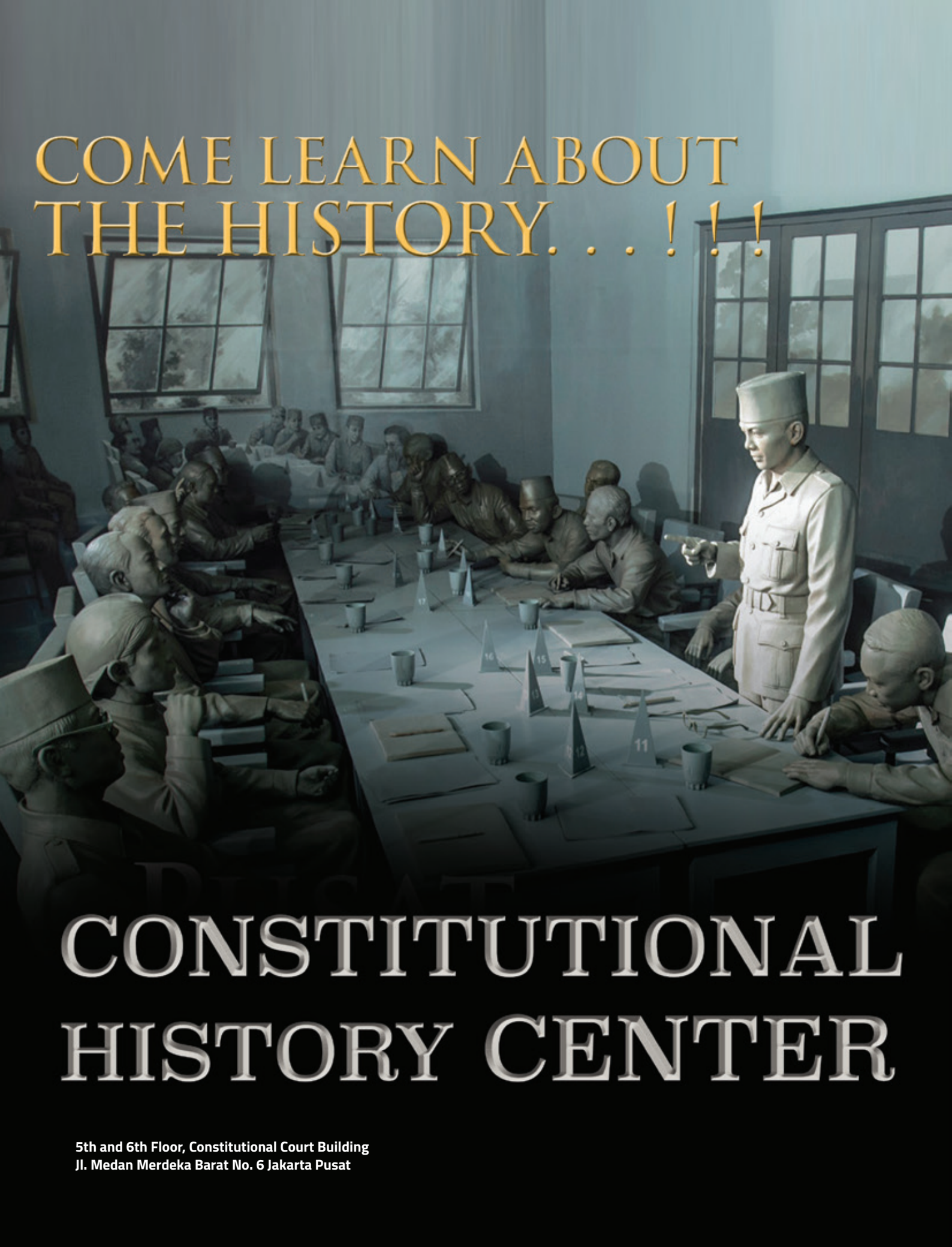
NO. 171 - Mei 2021 - ISSN: 1829 7692

E-MAGAZINE

KONSTITUSI

LIMITING THE AUTHORITY OF BOARD OF SUPERVISORS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Number 171 ▪ May 2020

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Editorial Greetings

Hello to all the readers of Konstitusi Magazine. We meet you again in this May edition, which is still surrounded by the atmosphere of Eid Mubarak. Happy Eid Mubarak 1442 H. Minal Aidin Wal-faizin. The "Headline" of May 2021 Edition is the issue of the decision on the Corruption Eradication Commission (KPK) judicial review of the law. This news attracts the most public attention and even causes pros and cons among various parties.

As we know, the Constitutional Court (MK) granted the petition for judicial review of Law Number 19 of 2019 on the Corruption Eradication Commission (KPK), which was petitioned partially by Fathul Wahid et al. (Plaintiff for Case 70/PUU-XVII/2019). The Constitutional Court's decision stated that the Constitutional Court's Supervisory Board did not have the authority to grant permits, including wiretapping, searches, and/or confiscations carried out by the Corruption Eradication Commission (KPK). Thus, one of the points of legal consideration of the Constitutional Court's decision related to the judicial review of Law Number 19/2019 on the Corruption Eradication Commission (KPK). The verdict was read out on Tuesday, May 4, 2021.

Other interesting information is the news of the 2020 Regional Head Election Results Dispute (PHPKada), which become the spotlight of the editorial team of Konstitusi Magazine. Although the Constitutional Court has decided at the end of March 2021, the Constitutional Court is still responsible for the follow-up hearing of the further Regional Head Election Results Dispute (PHPKada) concerning the results of the Re-Voting (PSU) in May 2021.

Many regions have to hold a re-voting (PSU) at several polling stations due to allegations of fraud and violations by the winners of the Regional Head Election. The Court finally decided on several Regional Head Election Results Dispute (PHPKada) petitions. For example, the petition for the Election Results Dispute (PHP) from the Mayor of Banjarmasin filed by Candidate Pair No 4 Ananda-Mushaffa Zakir (Plaintiff for Case 144/PHP.KOT-XIX/2021). The a quo petition was ultimately not accepted by the Constitutional Court (MK) because the Petitioner had no legal standing.

Another information is about the Election Results Dispute (PHP) petition filed by the Regent of Rokan Hulu. The Constitutional Court granted the repeal of the 2020 Rokan Hulu Regent Election Dispute (PHP) petition filed by Candidate Pair No 3 Hafith Syukri and Erizal (Case No. 140/PHP.BUP-XIX/2021). Thus, the decision of the Constitutional Court, which Plenary Chair Anwar Usman delivered along with other Constitutional Justices in the hearing for pronouncing the verdict.

This is the editorial introduction. Finally, we wish you enjoy reading!

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TABLE OF CONTENTS

6 MAIN REPORT

THE NUMBER OF RULES IN UNCONSTITUTIONAL KPK LAW

On May 4, 2021, the Constitutional Court (MK) finally reads out the verdict for seven cases on the judicial review of Law Number 19 of 2019 concerning the Corruption Eradication Commission/ KPK (UU 19/2019). Several important points became the main highlight regarding the judicial review of several articles in the decision.

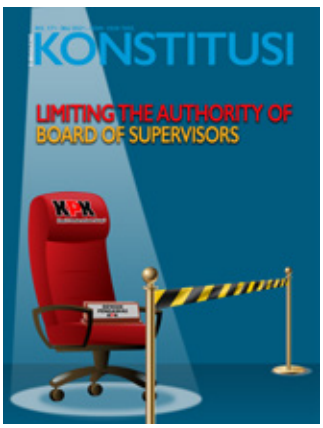
40 ACTION

ANALYZING COURT PROCESS AND PROCEDURAL LAW OF REGIONAL HEAD ELECTION IN CONSTITUTIONAL COURT

NEW SIGN OF AUTHORITY OF KPK SUPERVISORY BOARD

One of the significant points of the Constitutional Court's Decision in the judicial review of Law 19/2019 (Law of Corruption Eradication Commission/KPK Law) is related to the authority of the KPK Supervisory Board. In its verdict, the Constitutional Court affirmed the boundary "lines" of constitutional law on the authority of the KPK Supervisory Board in the acts of wiretapping, searches, and/or confiscations carried out by the Corruption Eradication Commission (KPK) must receive written permission from the Supervisory Board.

According to legal considerations, the Constitutional Court interestingly stated in advance about the position of the KPK Supervisory Board in the 19/2019 Law system. First, the Supervisory Board is inherently an internal part of the Corruption Eradication Commission (KPK). Second, the Supervisory Board has the responsibility and authority to oversee the implementation of the duties and authorities of the KPK. Third, the position of the Supervisory Board is not within the same hierarchy as the KPK leaders. Thus, in the grand design of eradicating corruption, they do not supervise each other, but they work together to form synergy in conducting their respective functions. Fourth, they are not superior and subordinate to each other. Fifth, the Supervisory Board is not an element of law enforcement officials.



Based on these legal considerations, the provision requiring the KPK to seek permission from the Supervisory Board before conducting wiretapping cannot be considered the implementation of checks and balances. The reason is that the Supervisory Board is not a law enforcement officials and does not have the authority like the KPK leaders. Therefore, they do not have the authority related to pro-Justitia. In this case, the Supervisory Board oversees the implementation of the KPK's duties and authorities to eliminate the possibility of abuse of power in carrying out their duties and as long as they are not related to the authority of pro-Justitia. Thus, the Constitutional Court emphasized that the obligation of the KPK leaders to obtain permission from the Supervisory Board to conduct wiretapping is a form of intervention against law enforcement officials by an external party. It is also a tangible form of overlapping authority in law enforcement, especially the pro Justitia authority, which should only become the authority of law enforcement agencies and officials.

The Constitutional Court also explained that wiretapping is closely related to a person's right to privacy. It must be under strict supervision, which means that KPK cannot conduct wiretaps without control or supervision even though it is not in the form of permission that connotes intervention in law enforcement by the Supervisory Board to the KPK Leaders or as if the KPK Leaders are subordinate to the Supervisory Board. Therefore, the Constitutional Court stated that KPK could conduct wiretaps without permission from the Supervisory Board. However, it is necessary to notify the Supervisory Board.

In addition to wiretapping, the Constitutional Court also emphasized the intersecting role of the Supervisory Board and the searches and/or confiscations by the KPK. It has the same principle, which does not require the approval of the Supervisory Board. As a result, if initially, the KPK leaders had to account for its pro-Justitia actions to the Supervisory Board, then the Constitutional Court replaces it with the meaning notified to the Supervisory Board.

In order to avoid any abuse of authority related to wiretapping, searches, and/or confiscation by the KPK in association with the supervisory function carried out by the Supervisory Board, the Constitutional Court reads out the provision (1) wiretapping; the KPK only notifies the Supervisory Board no later than 14 (fourteen) working days after conducting the wiretapping. Meanwhile, related to the search and/or confiscation, it is notified to the Supervisory Board no later than 14 (fourteen) working days after completing the search and/or confiscation, (2) search; permission from the Supervisory Board is not required. However, the provisions stipulated in the Criminal Procedural Law apply. It includes the permission required from the Chief Judge of the local district court. Under the emergency, a search can be done first before notifying and receiving approval from the Chief Judge of the local district court, as regulated by Article 33 and Article 34 of the Criminal Procedural Law, (3) confiscation; based on a strong suspicion and sufficient preliminary evidence, the KPK may confiscate without the permission of the Chief Judge of the District Court.

Therefore, the urgent homework after the Constitutional Court's Decision is that it is necessary to immediately arrange a mechanism for KPK leaders to notify the Supervisory Board related to the wiretaps within a maximum of 14 days after conducting the wiretaps. Likewise, KPK should inform the Supervisory Board related to search and/or confiscation no later than 14 days after completing the said action.

Indeed, through this decision, everything is clear. The Constitutional Court laid down the proper construction and systematic flow of legal and institutional thought regarding the relationship between the KPK leaders and the Supervisory Board. In essence, there is now a new sign in the form of a ban on the Supervisory Board from interfering with the judicial authority/pro-Justitia owned and carried out by the KPK leaders. This affirmation does not have the same meaning and should not be interpreted as a form of the Constitutional Court 'taking down' the authority of the Supervisory Board. If there is still such an understanding, it is definitely a misconception that needs to be corrected. Therefore, it is necessary to re-read and understand the Constitutional Court's Decision as a whole. Don't make a habit of only read the headlines or fragments of the news that are often partial and incomplete. Long Live The Constitution!

Window

BOB DYLAN AND HIS NOBEL

I D.G.Palguna

"To live outside the law, you must be honest."
(Agar dapat hidup tak terjamah hukum, anda mesti jujur)
Bob Dylan

This is a story about Dylan, not Dilan. He was born in May 1941 in Minnesota, United States. His parents named him Robert Allen Zimmerman. He decided to run away from his parent's home at a young age—even though he studied for a year at the University of Minnesota—Zimmerman is determined to choose a life as a troubadour. One day, Zimmerman, who has loved poetry since childhood, accidentally stumbled upon a piece of poetry by the poet Dylan Thomas. Since then, he decided to change his name to Bob Dylan. With this name, in a span of more than 60 years, he has voiced out social protest through his songs, both while still having a folk-ballad style and after being "transformed" into rock-ballad.

One of his songs, Blowin' in the Wind, is treated as if it's the "unofficial national anthem" in the world of anti-war activists of the 1960s. For these anti-war activists, Blowin' in the Wind is not enough just to be known but also "must" be sung when they marched to the streets;

"... How many times must a man look up, before he can see the sky/ How many ears must one man have Before he can hear people cry/how many deaths will it take 'til he knows That too many people have died... The answer, my friend, is blowin' in the Wind."

Meanwhile, his other song, The Times They Are A-Changin', which is more than six minutes long with heavy lyrics and tends to be "naughty" and cynical, is considered by observers as a portrait of the socio-political upheaval that occurred in the 1960s and had a significant impact on people's perspective on society.

"... Come writers and critics/Who prophesize with your pen/And keep your eyes wide/The chance won't come again/And don't speak too soon/For the wheel's still in spin/....For the loser now/ Will be later to win/For the times they are a-changin'/...Come senators, congressmen/Please heed the call/ Don't stand in the doorway/Don't block up the hall/For he that gets hurt/Will be he who has stalled/The battle outside ragin'/Will soon shake your windows/ And rattle your walls/For the times they are a-changin'/..."

Less than a month after Dylan recorded this song, President John F. Kennedy was assassinated in Dallas, Texas, in November 1963. The following night after the assassination, Bob Dylan opened his concert with the song The Times They Are A-Changin'. To Anthony Scaduto, his biographer, Dylan said he was worried that people would throw stones at him during the opening concert by singing that song. "But I had to do it because it's the starting point of all my concerts. Apparently, something had gotten so tangled up in this country. They applaud that song. I really don't understand why they clapped or why I wrote that song. I don't understand anything. For me, it's really crazy," Dylan said.

Literary critic, Christopher Ricks, called Dylan's song beyond all the political obsessions at the time. Although Dylan admits that he wrote the song as a deliberate and earnest attempt to create an anthem for change at the time, he refuses to interpret the song as a reflection of the generation gap and political division that characterized American culture at the time. "Those are the only words I can find to separate life (aliveness) and death (deadness). It has nothing to do with age," said Dylan. According to Dylan, the song's lyrics should be seen as an expression of feelings, not a statement. Bob Dylan is undeniably an

icon of American social change through his work and career even though he rejects the idea, "I'm just doing what everyone should be doing," he said.

His tendency to portray the dark side of social life is expressed in the song's lyrics, which is often pierced, but poetic, making Dylan dubbed "the dark poet." Indeed, when performing the songs in the recording studio and especially on stage, Dylan looks more like someone humming a poem rather than singing a song.

In 2016, Bob Dylan was awarded the Nobel Prize in literature and became the first composer to receive this prize. Despite many criticisms of this decision, the Nobel Committee has based its decision on the consideration that "Dylan having created new poetic expressions within the great American song tradition. Dylan himself was not present at the award ceremony. His speech, which is a condition for receiving this prize, is read out by the United States Ambassador to the Kingdom of Sweden, Azita Raji.

In his speech, he apologized beforehand for not being able to attend in person. Dylan said that he absolutely never imagined that he would receive the prize. From a young age, he was familiar with the works of great poets such as Rudyard Kipling, George Bernard Shaw, Thomas Mann, Pearl Buck, Albert Camus, and Ernest Hemingway. The works of these great authors are taught in the classroom, live in libraries around the world, and spoken in a respectful tone. "That now my name was on the same list with those great people is something that is beyond the reach of words," Dylan said in his speech.

Dylan revealed that if someone had told him that he had a slight chance of winning the Nobel Prize, he would have thought that it's as peculiar as if he was standing on the moon. In fact, Dylan said, "at the time when I was born and for many years after, no one in the world was deemed worthy enough to win this Nobel Prize. Thus, at least I admit that I am in a rare group."

On the other hand, Dylan says, when he started writing songs as a teenager, and even when he started to receive some sort of fame for his abilities, his aspirations for the songs just vanished. He said the songs can be heard in coffee shops or bars, and later maybe in places like Carnegie Hall and London Palladium. "If I really dream big, maybe I can imagine making a

record and then listening to my songs on the radio. In my mind, that's really a great honor. Making a record and then hearing your songs play on the radio means you reach a wide audience, and so you are probably going to keep doing what you have started."

Dylan expressed his gratitude that his works have a special place in people's hearts from diverse cultures. "Right now, I have been and am still working on what I started over a long period of time. I have made dozens of records and played thousands of concerts around the world. However, my songs are the central point of everything I do. The songs seem to have found their place in the lives of many people from different cultures, and I'm really grateful for that."

In regards to the attention and evaluation of the Nobel Prize Committee for his works, he stated, "However, there is one thing I must say. As a performer, I've performed in front of 50,000 people, and I've also performed in front of 50 people. I can tell you that it is much more difficult to play in front of 50 people. Fifty thousand people have a single person. However, it is a different thing with 50 people. Each person has an individual and separate identity, one world for them. They can see things more clearly. Your honesty and how it relates to the depth of your talent. They will judge you. In fact, such a small Nobel Committee have their attention on me." Before ending his speech, Dylan said that never once in his life he has time to ask himself, "Are my songs literary works?." Therefore, he delivers his gratitude to the Swedish Academy for taking the time to consider this fundamental question and give a great answer.

Dear reader, if K.C. Wheare said that the constitution is the result of a parallelogram of various forces that exist in society. Thus, one of the indicators of that power is the works of literature. Reza Aslan, an Iranian-American writer, says, "Literature not only offers a window into the diverse cultures of different regions but it also to look at the society, to see politics; literature is the only place where we can explore ideas." Oh yes, don't forget how big the role of Uncle Tom's Cabin, the novel by Harriet Beecher Stowe that was able to influence people's perspective on slavery and against African Americans, culminating in the outbreak of the civil war that devastated the United States. But at the same time, it also ended slavery despite having to sacrifice one of the great and important figures: the assassination of President Abraham Lincoln, who was shot by an actor named John Booth who disliked Lincoln's actions to abolish slavery and fight for suffrage for African Americans. ■

THE NUMBER OF RULES IN UNCONSTITUTIONAL KPK LAW

WWW.KPK.GO.ID

On May 4, 2021, the Constitutional Court (MK) finally reads out the verdict for seven cases on the judicial review of Law Number 19 of 2019 concerning the Corruption Eradication Commission/KPK (UU 19/2019). Several important points became the main highlight regarding the judicial review of several articles in the decision.

The Court reads out the verdict for seven cases, including Case No 59/PUU-XVII/2019, which is filed by several advocates and postgraduate students of the As-Syafi'iyah Islamic University; Case Number 62/PUU-XVII/2019 filed by Gregorius Yonathan Deowikaputra as an individual Petitioner; Case Number 70/PUU-XVII/2019 filed by academics from the Islamic University of Indonesia (UII); Case Number 71/PUU-XVII/2019 filed by students from various universities; Case Number 73/PUU-XVII/2019 filed by Ricki Martin Sidauruk and Gregorianus Agung who are students; Case Number 77/PUU-XVII/2019 filed by Students Association; and Case Number 79/PUU-XVII/2019 filed by several KPK leaders from the 2015 – 2019 period.

Of the seven cases, Case Number 70/PUUXVII/2019 was partially granted. This case was filed by academics from the Islamic University of Indonesia (UII). The Court rejected five other cases, and one case was declared inadmissible.

Based on legal considerations, the Court reads out the opinions regarding the judicial review, both formal and material filed by the Petitioners. This article describes the legal considerations in these decisions (For the hearing process, you can download the June 2020 edition of KONSTITUSI Magazine).

KPK's Independence

One of the arguments delivered by the Petitioners—especially the Petitioner for Case Number 70/PUU-XVII/2019—is related to the existence of Article 1 Number 3 of Law 19/2019, which is considered to weaken the KPK's independence. This is because the Petitioner believed the position of the KPK is included in the executive branch. The position is deemed to be vulnerable because it weakens and affects KPK's performance in eradicating corruption.

Concerning this argument, the Court confirmed in the Constitutional Court's decisions, such as the Constitutional Court Decision Number 012-016-019/PUU-IV/2006 and the Constitutional Court Decision Number 36/PUU-XV/2017. These two decisions state that the KPK's independence and freedom from the influence of any power are related to the implementation of the duties and authorities of the KPK, which must not be based on influence, direction, or pressure from any party. The enactment of the phrase 'within the executive branch' in Article 3 of Law 19/2019. the Court believes that the article does not interfere with KPK's independence. This is because the KPK is not responsible to the holder of executive power—in this case, the President, as stated in Article 20 of Law 30/2002.

The report to the President does not mean that the KPK is responsible to the President. One of the characteristics of an independent state institution is it does not have any relationship to any holder of state powers in performing its duties and authorities, as explained in the elucidation of Article 3 of Law 19/2019. The phrase "any power" in the elucidation of Article 3 of Law 19/2019 refers to the powers that may influence the duties and authorities of the KPK or the commission's members individually from the executive, judicial, legislative, other parties that are related to corruption cases, or in any situation with any reason.

Supervisory Board Permission for Pro Justitia Authority

The Petitioner questioned the KPK's obligation to obtain permission from the Supervisory Board to exercise its pro-Justitia authority in his petition. Based on Article 12 Law 19/2019, wiretaps, search, and/or confiscation is the authority granted by law to KPK to implement the judicial process (pro Justitia).

At the beginning of the legal considerations related to this argument, the Court believed that the Supervisory Board is an inherent part of internal KPK, which has the responsibility to oversee and prevent abuse of authority. As one of the elements of the KPK, the Supervisory Board has the duty and authority to oversee the implementation of the KPK's duties and authorities. Therefore, the position of the Supervisory Board is not within the same hierarchy as the KPK leadership. Thus, in the grand design of eradicating corruption, they are not superior and subordinate to

Gregorius Yonathan Deowikaputra as the Principal Petitioner for Case Number 62/PUU-XVII/2019 after the examination hearing of the judicial review on Corruption Eradication Commission Law, Wednesday (10/30/2019) in the Plenary Session Room of the Constitutional Court Building. Photo: Public Relations/Gani.

each other, but they work together to form synergy in conducting their respective functions.

In Article 12B of Law 19/2019, which the Petitioner argues is unconstitutional. It states that the KPK is required to obtain permission from the Supervisory Board to conduct wiretaps. KPK is independent and free from the influence of any power in performing its judicial duties and authorities, including during wiretapping, which infringes on the right to privacy—which is a pro Justitia action.

The Court believed the provision requiring the KPK to obtain permission from the supervisory board before conducting a wiretap cannot be seen as part of the checks and balances mechanism because the supervisory board is not law enforcement officials, unlike the KPK. Therefore, they do not have pro Justitia authorities.

The Court also emphasized that the obligation of the KPK leaders to obtain permission from the Supervisory Board to conduct wiretapping is a form of intervention against law enforcement officials by an external party. It is also a tangible form of overlapping authority in law enforcement, especially the pro Justitia authority, which should only become the authority of law enforcement agencies and officials.

The Court stated that in a state based on the rule of law, it is prohibited to conduct any form of intervention to legal institutions. This includes no extra-legal/extra-judicial institutions that are given judicial/pro-Justitia authority because the existence of an extra-legal institution with such authority is a threat to the independence of law enforcement agencies, which can weaken the rule of law principle. The Court's legal considerations regarding wiretapping also apply mutatis mutandis to the Petitioners' argument on searches and/or confiscations.

Furthermore, the Court stated that the Supervisory Board does not have the authority to permit wiretapping, search, and/or confiscation by the Corruption Eradication Commission. The juridical consequences for the provisions of Article 37B paragraph (1) letter b of Law 19/2019, which also regulates provisions regarding the authority of the Supervisory Board to give permission for wiretapping, search, and/or confiscation is no longer relevant and must be declared unconstitutional.

14 Working Days

The Court also provides legal consideration to avoid abuse of authority related to wiretapping, search, and/or confiscation by the KPK associated with the supervisory function carried out by the Supervisory Board. According to the Court, the KPK only notifies the Supervisory Board no later than 14 (fourteen) working days after conducting the wiretapping. While the search and/or confiscation shall be reported to the Supervisory Board no later than 14 (fourteen) working days after completing the search and/or confiscation.

Furthermore, the Court also considered the decision based on the provisions of Article 38 of Law

19/2019 concerning searches, which apply provisions as regulated in Law Number 8 of 1981 on the Criminal Procedural Law (KUHAP). This provision stipulates that permission from the chief judge of the local district court is required and, under an emergency, a search can be conducted first before notifying and receiving approval from the Chief Judge of the District Court, as regulated by Articles 33 and 34 of Criminal Procedural Law. Therefore, the KPK's search and/or confiscation no longer requires permission from the supervisory board. Meanwhile, based on a solid suspicion of sufficient preliminary evidence, the KPK may confiscate without the permission of the Chief Judge of the District Court.

Employment Status of KPK employees as State Civil Apparatuses (ASN)

In Case Number 70/PHP-XVII/2019, the Petitioners also examined the constitutionality of Article 24 and Article 45A paragraph (3) letter a of Law 19/2019, which was considered contrary to Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution. The Petitioners argued that today, most KPK employees did not have the same opportunity to become state civil apparatuses, especially for those aged 35 years old. The enactment of the article is considered to cause the KPK employees to lose their job or at least can no longer develop his career in KPK. This article also has the potential to cause vacant positions in the KPK, which can hinder the KPK's performance. The Petitioners also feared that the KPK employees' appointment as state civil apparatuses (ASN) would lead to dualism in its supervision by the Civil Service Commission (KASN) and the supervisory board—which can lead to legal uncertainty and injustice.

The Court considers the General Provisions Article 1 number 6 of Law 19/2019 has determined the nomenclature of KPK Employees refers to the state civil apparatus as contained in the laws and regulations on the state civil apparatus. In addition, based on the Transitional Provisions of Law 19/2019, the implementation of the KPK employee transition process to become a state civil apparatus still has to make adjustments to the existing legal action arrangements or legal relationships based on the old law against the new law. Therefore, the Transitional Provisions in Article 69B and Article 69C of Law 19/2019 have determined the transitional design form in question to avoid problems for those affected and prevent the emergence of vacant positions in the KPK as argued by the Petitioners.

Because for those investigators or prosecutors and KPK employees who have not yet been registered as state civil apparatuses (ASN),

Examination Hearing of the judicial review on the KPK Law for Case Number 70, 71, 73/PUUXVII/2019 on Tuesday (11/19/2019) in the Plenary Session Room of the Constitutional Court Building. Photo: Public Relations/Gani.

Attorney Feri Amsari, when delivering the main points of the Petitioner's petition in the hearing of Case Number 79/PUU-XVII/2019 on Monday (9/12/2019) in the Panel Meeting Room of the Constitutional Court Building. Photo: Public Relations/Ifa.

they can be appointed as state civil apparatuses within a maximum period of 2 (two) years since the Law of 19/2019 effective. The appointment as state civil apparatuses must be in accordance with the provisions for KPK investigators or prosecutors who have attended and passed education in the field of investigation and prosecution according to the provisions of the legal regulations. The appointment of KPK employees is carried out in accordance with the provisions of the legislation (Law Number 5 of 2014 on State Civil Apparatus (Law 5/2014) and its implementing regulations).

The provisions of State Civil Apparatus also apply to employees from state institutions who also conduct law enforcement functions, such as the Supreme Court and the Constitutional Court. Employees in these two state institutions are ASN employees and do not affect the independence of the two institutions in carrying out their functions as law enforcement agencies. Furthermore, the status as State Civil Apparatus for KPK employees did not prevent them from associating and gathering as long as it is done according to statutory provisions and is intended solely to achieve the objectives of the KPK in eradicating corruption.

Age Limit 35 Years

The Court is also considering the argument on the age limit for KPK employees who have reached age 35 years old. The provisions referred to by the Petitioners, such as Article 23 paragraph (1) letter a of Government Regulation Number 11 of 2017 on Management of Civil Servants (PP11/2017), are applied to every Indonesian citizen who will apply as a civil servant or State Civil Apparatus. Meanwhile, KPK employees are legally ASN employees due to the enactment of Law 19/2019. In Law 19/2019, it is determined that the time for the adjustment of the transition to the KPK's employment status is no later than 2 (two) years after the Law is effective.

In relation to the adjustment mechanism, the Government has issued Government Regulation Number 41 of 2020 on the Transfer of Employees of the Corruption Eradication Commission (KPK) into State Civil Apparatus Employee (PP 41/2020). Thus, even if the KPK employees are aged 35 years or above, it does not mean that they will lose the opportunity to make adjustments to become PNS or PPPK. PP 41/2020 stipulated the provisions in the KPK Regulation to further regulate the working mechanism of the transfer so it can be realized more quickly in accordance with factual conditions. The KPK Regulation has determined the calculation on the service period in the rank levels before KPK employees become ASN.

Investigation and Prosecution

The Petitioners also argued that the phrase "whose investigation and prosecution is not completed by a maximum of 2 (two) years" as stated in Article 40 paragraph (1) of Law 19/2019 is contrary to the 1945 Constitution and in relation to the period of time it is contrary to Article 28D paragraph (1) of the 1945 Constitution. The Petitioner

argues that the phrase creates legal uncertainty because the investigation and prosecution are two different processes and because there is legal uncertainty concerning the start of the actions.

Such legal uncertainty may violate the suspect's constitutional rights. Moreover, Article 40 paragraph (1) of Law 19/2019 is not in accordance with the intent of Article 40 paragraph (4) of Law 19/2019. The article states that KPK may revoke termination of investigation and prosecution if new evidence is found. This new evidence can validate the reasons for stopping the investigation and prosecution or based on a pretrial decision. According to the Court, the provision of a two-year time limit for investigation and prosecution as regulated by Article 40 paragraph (1) of the KPK Law is a special authority granted to the KPK as an extraordinary body that is authorized to deal with corruption acts as extraordinary crimes.

KPK can use the authority to terminate an investigation and/or prosecution as a reason to determine suspects with solid evidence. Thus, based on legal reasoning, the two-year time limit starts after issuing a notice of commencement of investigation (SPDP). The counting of two years is accumulated since the investigation, prosecution, to transfer to trial. So, after two years, if the case is not transferred to trial and the KPK doesn't issue an investigation termination warrant (SP3), the suspect can file for a pretrial motion.

Concerning the investigation termination warrant (SP3), the Court, in previous decisions, believed that the KPK does not have the authority to issue an investigation termination warrant which is constitutional. However, the Court also considers the empirical facts that occurred at the KPK, that many cases have declared the perpetrators as criminals. However, the case has not been transferred to the Court. Thus, it causes legal uncertainty. Therefore, the Court stated if sufficient evidence is found, the KPK must revoke the reasons for stopping the investigation and prosecution so that the perpetrators must be brought to court.

In this case, the provisions of Article 40 paragraph (1) of Law 19/2019 must be seen as an encouragement for the KPK to work optimally in obtaining evidence so that someone who has been determined as a suspect must basically be brought to court. Therefore, the discretion to issue SP3 is not an option that makes it difficult for the KPK to eradicate corruption. ■

WRITER

Considerations for the Formal Judicial Review of KPK Law

The Constitutional Court (MK) considered the formal judicial review in deciding on the judicial review of Law Number 19 of 2019 concerning the Corruption Eradication Commission (KPK Law). This can be seen in the legal considerations of Decision Number 79/PUU-XVII/2019 filed by former KPK officials.

Agus Rahardjo, Laode Muhammad Syarif, and others are listed as Petitioners for Case Number 79/PUU-XVII/2019, which formally examines Law 19/2019. In their petition, the Petitioner believed that the process of discussing the KPK Bill (RUU) 19/2019 took place quickly and in a hurry for approval. Therefore, they believed that the discussion process in a short period of time contributes to the many formal flaws and ambiguity contained in the body of Law 19/2019. According to the Petitioners, the procedural flaws in the Bill of Law 19/2019 are part of an effort to weaken the KPK, which is structured, systematic, and massive. The efforts to weaken the authority of the KPK were conducted by slowly degrading them through the Bill of Law 19/2019, which was passed in a hurry and violated various procedural processes.

Listed in Prolegnas

Concerning this argument, the Court found the fact that the 19/2019 Bill was listed in the Prolegnas as follows:

1	List of Draft Bill of Laws of the 2015-2019 National Legislation Program (prolegnas), Bill on Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK)was listed at the 63rd place
2	Decree of the House of Representatives Number 4/DPR RI/III/2015-2016 on the National Legislation Program of the 2016 Priority Draft Bill of Laws and Bill on Amendments to the National Legislation Program of 2015-2019, the Bill on Amendments to Law Number 30 of 2002 on the Corruption Eradication Commission (KPK) was listed at the 37th place.
3	Decree of the House of Representatives Number 7/DPR RI/II/2016-2017 on the National Legislation Program of the 2017 Priority Draft Bill of Laws and Bill on Amendments to the National Legislation Program of 2015-2019, the Bill on Amendments to Law Number 30 of 2002 on the Corruption Eradication Commission (KPK) was listed at the 37th place
4	Decree of the House of Representatives Number 1/DPR RI/II/2017-2018 on the National Legislation Program Priority Draft Bill of Laws of the 2018 and Bill on Amendments to the National Legislation Program for 2015-2019, the Bill on Amendments to Law Number 30 of 2002 on the Corruption Eradication Commission (KPK) was listed at the 37th place
5	Decree of the House of Representatives Number 19/DPR RI/I/2018-2019 on the National Legislation Program Priority Draft Bill of Laws of the 2019 and Bill on Amendments to the National Legislation Program of 2015-2019, Appendix II List of Amendments to the National Legislation Program of 2015-2019, dated October 31, 2018, the Bill on Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK) was listed at the 63rd place
6	In the evaluation of the handling of the National Legislation Program (Prolegnas) Priority for the period of September 9, 2019, listed in the Bill will enter the stage of level I discussions as an Open Cumulative Bill at 5th place, which Baleg completed on September 03, 2019, and approved as a proposed Bill of the DPR at the Plenary Meeting on September 5, 2019.

CHRONOLOGY

DISCUSSION OF THE BILL ON THE SECOND AMENDMENT TO LAW NUMBER 30 OF 2002 CONCERNING THE CORRUPTION ERADICATION COMMISSION (KPK)

The bill proposed by several members from across factions is decided in a meeting of the Legislative Body as a Bill proposed by the Legislative Body to be submitted to the plenary session as a Bill proposed by the House of Representatives (DPR)

PLENARY MEETING OF THE LEGISLATIVE BODY (SEPTEMBER 3, 2019)

Plenary Meeting of Decision-making on the Bill on Second Amendment to Law Number 30 of 2002 concerning Corruption Eradication Commission (KPK) is a bill proposed by the Indonesian House of Representatives (DPR)

DPR RI PLENARY MEETING (SEPTEMBER 5, 2019)

Presidential Letter Number R-42/Pres/09/2019 Dated September 11, 2019, assigned the Ministry of Law and Human Rights of the Republic of Indonesia (Menkumham) and Ministry of Administrative and Bureaucratic Reform of the Republic of. Indonesia (Menpan RB) to carry out Discussion of the Bill on the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK)

Working Committee Meeting to Discuss the Bill on the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission

WORKING MEETING (RAKER) OF THE LEGISLATIVE BODY (SEPTEMBER 12, 2019)

2nd Working Committee Meeting on the Second Revision of the KPK Bill (September 16, 2019) Follow-up of Working Committee Meeting

Plenary Meeting of Decision Making of the Bill on the Second Amendment to Law Number 30 of 2002 concerning the KPK.

1ST WORKING COMMITTEE MEETING ON THE SECOND REVISION OF THE KPK BILL (SEPTEMBER 13, 2019)

Working Meeting with Menkumham and Menpan RB related to the discussion of the Bill on the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission

WORKING MEETING (RAKER) OF THE LEGISLATIVE BODY (SEPTEMBER 16, 2019)

Rapat Paripurna Pengambilan Keputusan RUU tentang Perubahan Kedua atas UU Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi

DPR RI PLENARY MEETING (SEPTEMBER 17, 2019)

Meanwhile, based on the DPR data, the Court finds the Chronology of the Discussion of the Bill on the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK).

Based on these legal facts, the Court believes that the KPK bill has been listed in the National Legislation Program (Prolegnas) and was listed in the Prolegnas priority several times. Meanwhile, the period needed for lawmaking is closely related to the substance of the Bill. The Court believed that the level of difficulty for the Bill could not be conveyed, especially to harmonize one Bill with another. Therefore, this is not related to the Petitioners' argument who believed that violation occurred in the process of lawmaking for approval. Moreover, the process of proposing amendments to the KPK Law has carried out long before the 2015-2019 Prolegnas. In addition, no provision regulates the time limit for how long a bill must be completed.

Refuse to be involved

The Petitioners also argued that the establishment process of Law 19/2019 had drawn massive rejection from the wider community. The establishment of Law 19/2019, including planning, drafting, discussing, ratifying or stipulating, and enacting, was not transparent and closed, especially the KPK as stakeholders were not included in the discussion at all. The Court considered the evidence of Appendix IX submitted by the DPR regarding the Series of Seminar and Public Discussion Activities, in Certificate Number 64/PU/XI/2019, and the evidence of Appendix X submitted by the DPR regarding the DPR RI Questionnaire Committee Report. CHAPTER III on the Facts, Data, and the investigation results, some activities have been carried out regarding the preparation of the KPK Bill 19/2019.

In this evidence, it is clear that the Legislative Body and the DPR's Questionnaire Committee have conducted a Working Meeting, RDP, RDPU, Working Committee Meeting, and other activities to accommodate the aspirations that develop in society, from community leaders, anti-corruption activists, Non-governmental organizations (NGOs), academics, legal experts of state administration and criminal law, the Audit Board of the Republic of Indonesia (BPK), the National Police of the Republic of Indonesia (Polri), the Ministry of Law and Human Rights (Kemenkumham), the Witness and Victim Protection Agency (LPSK), the Prosecutor's Office, to several witnesses who have been associated with handling corruption cases at the KPK. The Court found the fact that several times the KPK refused to attend discussions regarding the revision of the KPK Law. This means the allegation that the legislators (DPR and the President) do not want to involve the KPK groundless. The fact is that the KPK refused to be involved in the process of discussing the plan to revise the KPK Law.

Fictional Academic Manuscripts

Based on the Petitioners' argument, which stated that the legislators used fictional academic manuscripts and did not meet the requirements when drafting Law 19/2019, the Court argued that Article 1 number 11 of the P3 Law stated that Academic Manuscripts are documents from research or legal review and other research results on a particular problem, which can be scientifically justified regarding the regulation of the problem in a Draft Bill, Draft of Provincial Regulation, or Draft of Regional Regulation (Regency and City) as a solution to the issues and legal needs of the community. The difference is that the academic manuscripts used as evidence by the Petitioners are academic manuscripts with a cover and dated September 2019. Meanwhile, the academic manuscripts used as evidence attachments by the DPR do not have a cover and do not include the date. Based on these facts, it is not true that the academic text in question is fictitious. Therefore, the petitioners' arguments are groundless.

The Court refers to The Great Dictionary of Indonesian Language (p. 391 Fourth Edition of 2008), the word "fictitious" means "fiction" and "only exist in the imagination." Thus, the academic manuscript submitted as evidence is not fictional or imaginary. However, it is true that the dates listed on the cover do not correspond to the purpose or the use of the academic manuscript formation as stated on page 4 of the evidence submitted by the Petitioners and Appendix XII submitted by the DPR.

The Limitation of Formal Judicial Review Ruling

The Court also provides a time limit for formal judicial review. Based on the legal considerations of the Constitutional Court's decision Number 27/PUU-VII/2009, the basic argument is the Court provides a time limit for submitting a formal judicial review of the law, which is

no later than 45 (forty-five) days after the law is published in the State Gazette for reasons of legal certainty. Thus, the legal status can be known more quickly whether its status as a law has been made legal or not.

In the context of legal certainty, the Court considers it necessary to state that the Court requires a similar time limit in deciding the petition for formal judicial review of the law. In this case, the Court needs to emphasize that a maximum period of 60 (sixty) working days since the case is recorded in the Constitutional Case Registration Book (BRPK) is considered sufficient to complete the formal judicial review of the law.

The Court believes that the maximum time limit of 60 (sixty) working days since the case is recorded in the Constitutional Case Registration Book (BRPK) will not have major implications in the implementation of the law, especially in the case of preparing the laws and regulations ordered and needed in the implementation of the law, including other legal actions taken as a result of the promulgation of a law. In fact, for the purpose of certainty, including consideration of certain conditions, the Court may issue an interim decision as a form of priority action. It may split the judicial review process between the formal judicial review and material judicial review if the Petitioner combines the two judicial review in 1 (one) petition. In this case, if the Court deems it necessary to postpone the enforcement of the law for which a formal judicial review is requested.

Wahiduddin Adams Have Dissenting Opinions

Constitutional Justice Wahiduddin Adams expressed a dissenting opinion in the decision regarding the formal judicial review of Law 19/2019. He believes that the Court should have granted the request for a formal judicial review submitted by Agus Rahardjo et al.

Furthermore, according to the opinion of the former Chief Justice of the Supreme Court, Bagir Manan, in the hearing, Wahiduddin also argued that what was done by the legislators through Law 19/2019 is basically to establish "a new KPK Law," even though a quo Law looks as though it is limited to merely establishing "amendments to the KPK Law."

Wahiduddin delivered several changes to the provisions on the Corruption Eradication Commission (KPK) in Law 19/2019, which fundamentally changes the posture, structure, architecture, and function of the KPK. Wahiduddin also explained that this amendment was deliberately carried out in a relatively short period of time and at a specific momentum, including the results of the Presidential General Election (Pilpres) and the results of the Legislative General Election (Pileg) were known. Then it received mutual approval between the DPR and the President to be ratified by the President into law only a few days before the end of the term of service of the DPR RI members for the 2014-2019 period and a few weeks before the end of the first-period administration of President Joko Widodo.

According to Wahiduddin, the establishment of law carried out in a relatively very short period of time and at a specific moment that raises big questions does not necessarily cause the law to be unconstitutional and has no legal force.

"However, the short period of time for the establishment of the a quo Law clearly has a significant effect on the lack of participation by the public and lack of input given by the community sincerely and bottom-up as well as from the existing supporting systems from the President and the DPR. It also has a lack of impact analysis studies on parties (especially institutions) that will implement the provisions of the a quo Law (in casu KPK)," explained Wahiduddin.

In addition, Wahiduddin explained that the unsynchronized between the Academic manuscripts—which tends to be formation-oriented

"to the amendment of the KPK Law"—and the Bill, which from the start was oriented towards establishing "a new KPK law," also shows that there has been disorientation in the direction of the regulation regarding KPK institutions and efforts to eradicate corruption in law 19/2019. "The accumulation of the various conditions mentioned above causes very low levels, even leading to the absence of constitutional guarantees for the establishment of the a quo Law," said Wahiduddin.

The Time is too Short

Wahiduddin also revealed several specific indicators that caused Law 19/2019 to have very serious constitutionality and morality issues, including the fact from the statement of the legislators that the first Working Meeting was held on September 12, 2019, and the first Working Committee Meeting (Panja) was held on September 13. 2019. According to Wahiduddin, it is difficult for him not to conclude that the President prepares the problem inventory list (DIM) on the draft bill in less than 24 (twenty-four) hours. The extraordinary acceleration of the President's problem inventory list (DIM) preparation (along with its supporting system) has clearly led to a lack of public participation and a lack of input, which has generally been given sincerely and bottom-up from the existing supporting system. The short period of time also shows the lack of studies and impact analysis on the parties who will implement the provisions of Law 19/2019 (in casu KPK). According to Wahiduddin, overall, this certainly causes very low levels and even leading to the absence of guarantees for the constitutionality of the establishment of Law 19/2019.

"In this context, I do not find any argument and justification that can be accepted by common sense, that so many changes and fundamental to an institution as important as the KPK is prepared in the form of a problem inventory list (DIM) on the Bill for less than 24 (twenty-four) hours. Even though the time period that the President has to implement it is a maximum of 60 (sixty) days," said Wahiduddin.

Alternative Options of Ruling

Wahiduddin revealed several alternative options that could be taken by the Constitutional Court Justices to examine, adjudicate, and decide on the case. First, maintaining the Law 19/2019 by rejecting all the petitions. Second, revising some of the materials contained in Law 19/2019 by granting part of the petition (especially of the material judicial review petition) to ensure the law's constitutionality. Third, rolling the law back to pre-amended Law No. 30 of 2002 and declaring Law No. 19 of 2019 is contrary to the 1945 Constitution.

"Based on those three options of the ruling, I performed ijtihad to find 'the best middle course' that I believe in, that is, to declare that the establishment of the a quo law is contrary to the 1945 Constitution of the Republic of Indonesia so that the a quo law has no binding legal force," said Wahiduddin.

Wahiduddin argued that choosing the third option is "formally unconstitutional" rather than stating that Law 19/2019 is materially unconstitutional. It is hoped that it will imply a constitutional message to legislators and the public in general that materially, there are also some good ideas and material changes, and constitutional to the KPK in the law.

"Therefore, when it is established in a better method and procedure in a peaceful atmosphere, and in a more rational and proportional period of time, it is hoped that the KPK institutionally is better than the KPK which is based on Law Number 30 of 2002 on the Corruption Eradication Commission," said Wahiduddin. ■

QUESTIONING THE EXECUTION OF FIDUCIARY CERTIFICATES

LAW Number 42 of 1999 on Fiduciary Guarantee (Fiduciary Law) was examined before the Constitutional Court (MK). The Petitioner for Case Number 2/PUU-XIX/2021 is Joshua Michael Djami, who was present at the online hearing. Joshua examined Article 15 paragraph (2) of the Fiduciary Guarantee (Fiduciary Law) and the Elucidation of Article 15 paragraph (2) of the Fiduciary Guarantee (Fiduciary Law). Dora Nina Lumban Gaol as the attorney of the Petitioner, revealed that the Petitioner works in a finance company with the position of internal collector and has been certified as a billing specialist. The Petitioner has encountered many difficulties since the interpretation of the law related to the case. The problems that arise, including reduced income and the difficulty of executing fiduciary collateral due to fiduciary givers (debtors), often neglect their obligation.

According to the Petitioner's view, the case has had a significant impact on various parties, such as finance companies, law enforcement officers, consumers, and collectors' associations. Considering that the Constitutional Court's decision is *erga omnes*, the Petitioners strongly request a provision in order that the hearing is carried out until the stage of evidence. It is not directly a decision as stated in Article 54 of the Constitutional Court Law. Thus, the Petitioner can summon the affected parties to be witnesses in this case or invite them to become Relevant Parties in this case. Therefore, whatever the verdict will be, at least the sense of justice for all parties will be greater because their statements have been heard compared to being decided without hearing their statements. (Nano Tresna A)

AMBON-LEASE INDIGENOUS PEOPLE TESTING THE RULES OF INHERITANCE IN THE CIVIL CODE

WIELFRIED Milano Maitimu representing the Ambon-Lease indigenous people, filed a material judicial review of the Civil Code (KUHPer) against the 1945 Constitution. The hearing case registered Number 1/PUU-XIX/2021 was held by the Constitutional Court (MK) on Tuesday (20/4/ 2021). The Petitioner stated the provisions of Article 831, Article 832, Article 834, Article 849, Article 852, Article 852a, Article 857, Article 862, Article 863, Article 864, Article 865, Article 867, Article 869, Article 872, Article 913, Article 914, Article 916, Article 916a, Article 920, and Article 921 of the Civil Code are contrary to Article 18B paragraph (2) and Article 28 paragraph (3) of the 1945 Constitution. The Petitioner stated that these norms were contrary to the provisions of customary law on inheritance practiced by the Maluku customary law community unit, especially the Ambonese community. The reason is the customary law system that regulates inheritance cannot be used anymore because the courts in Indonesia in deciding an inheritance case refer to the Civil Code. As a result, the Petitioner who should have inheritance rights as a 'child of the house' in the form of a residence (or also called *Rumah Tua* in Maluku customary law) cannot have this right. For information, 'children of the house' are a hereditary system in Ambon. It refers to children who are not acknowledged by the paternal family but are still recognized by the maternal family and can continue the family line from the maternal family. In short, in a concrete case, after the death of the Petitioner's mother in 2018, the certificate of ownership of the old house (Rumah Tua) was in the unilateral control of the husband of his late mother. The house is about to be sold, and the proceeds from the sale will be distributed in accordance with the norms in the Civil Code. Meanwhile, according to the Petitioners, this action cannot be done in the customary provisions of the Maluku people. Therefore, in its petitum, the Petitioners request that the Court declares that the entire norm being tested is contrary to the 1945 Constitution and does not have binding legal force or is constitutionally conditional as long as it is not used to adjudicate disputes related to indigenous peoples. (Sri Pujianti)

JOB CREATION LAW IS SUED BY 662 WORKERS

A TOTAL of 662 workers are registered as applicants for the examination of Law Number 11 of 2020 concerning Job Creation (*UU Cipta Kerja*). The petition with Number 4/PUU-XIX/2021 is recorded as the request with the most petitioners in the history of judicial review at the Constitutional Court (MK).

This was revealed in the inaugural hearing for Case Number 4/PUU-XIX/2021. R. Abdullah as the General Chairperson of the Federation of Chemical, Energy, and Mining Trade Unions throughout Indonesia and 662 other appellants are listed as Petitioners for Case Number 4/PUUXIX/2021. The preliminary examination session was held by the Constitutional Court (MK) on Tuesday (20/4)/2021) afternoon.

The appellants for Case Number 4/PUU-XIX/2021 through their attorney team, submitted a formal and material review of the Job Creation Law. Formally, the appellants asked the Court to declare that the establishment of Law No. 11 of 2020 concerning Job Creation violated the provisions

for the formation of laws and regulations based on the 1945 Constitution and did not have binding legal force.

Materially, besides asking the Court to declare unconstitutional or conditionally unconstitutional on all the norms in question, the appellants also asked the Court to state that a number of articles in Law Number 13 of 2003 concerning Manpower are valid and have binding legal force. Therefore, the appellants from both cases requested that the Court declare that the Job Creation Act contradicts the 1945 Constitution and has no binding legal force (Nano Tresna A.).

JOB CREATION LAW IS CONSIDERED ELIMINATING THE RIGHTS OF PEOPLE WITH DISABILITY

PUTU Bagus Dian Rendragraha (Appellant I) and Simon Petrus Simbolon (Applicant II) are two people with disabilities who were testing Law Number 11 of 2020 concerning Job Creation (UU Ciptaker) to the Constitutional Court (MK). The appellants conducted a formal and material review of Article 24 point 4, Article 24 number 13, Article 24 number 24, Article 24 number 28, Article 61 number 7, Article 81 number 15, and the Elucidation of Article 55 point 3 of the Job Creation Law toward the 1945 Constitution.

The appellants as people with disabilities felt disadvantaged as a result of the enactment of the Job Creation Law. For example, the appellant lost special treatment and ease of building accessibility as a result of the enactment of Article 24 point 4 of the Job Creation Law that had abolished the provisions of Article 27 of Law Number 28 of 2002 concerning Buildings. Furthermore, the provisions of Article 61 number 7 of the Law that has amended the provisions of Article 29 paragraph (1) letter I of Law Number 44 of 2009 concerning Hospitals. The provisions of Article 81 point 15 of the Job Creation Law have amended the provisions of Article 59 paragraph (1) of Law Number 13 of 2003 concerning Manpower. The provisions of Article 55 point 3 which amend the provisions of the elucidation of Article 38 paragraph (2) of Law Number 22 Year 2009 concerning Traffic which still uses the phrase people with disabilities. According to the Petitioners, these norms are contrary to Article 27 paragraph (2), Article 28D paragraph (1) and paragraph (2), Article 28G paragraph (2), Article 28H paragraph (2), and Article 28I paragraph (2) of the 1945 Constitution.

According to the appellants, these norms have eliminated the rights of persons with disabilities in obtaining easy accessibility of buildings and lost special treatment and lost fair treatment from the state. In short, many buildings do not provide facilities and accessibility for people with disabilities. (Sri Pujianti)

FEDERATION AND INDUSTRIAL WORKERS REVIEW LEGISLATION PROCESS OF JOB CREATION LAW

FORMAL TESTING of Law Number 11 of 2020 concerning Job Creation (UU Ciptaker) was again submitted to the Constitutional Court (MK). At that time, the request came from Riden Hatam Aziz (Secretary General of the Federation of Indonesian Metal Workers Union/FSPMI/ Applicant I), Suparno (Chairman of the Branch Manager of the Automotive Machinery and Components Union of the Federation of Indonesian Metal Workers Union of Bekasi Regency/ City/Applicant II), Fathan Almadani (Contract Worker of PT Indonesi Epson Industry Cikarang/Applicant III), and Yanto Sulistianto (Permanent Employee of PT Mahiza Karya Mandiri Tangerang/Applicant IV).

In the hearing held at the Constitutional Court on Wednesday (21/4/2021), Said Salahudin as one of the attorneys for the appellants stated that based on the Constitutional Court's authority in reviewing laws toward the 1945 Constitution. The Court is obliged to explore legal values and a living sense of justice in society based on the 1945 Constitution. Thus, the Constitutional Court must see all parts of the law as a unified system that can't conflict with one another. In addition, the appellants in this case also contradicted the establishment of the Job Creation Law with other provisions stipulated in the applicable laws and regulations.

In addition, the appellants also considered that the formation of *a quo* norm must also be transparent and open. Thus, the entire community has broad opportunities to provide input in the formation of a legal norm. Meanwhile, in the formation of *a quo* norm, the Government is not willing to open access in its draft to the public. The government is very secretive and makes the Academic Manuscript and the Job Creation Bill as a secret document that must be kept out of the reach of the public. As a result, the public experienced restrictions on accessing the Job Creation Bill and providing input to the government. (Sri Pujianti)

GOVERNMENT EMPLOYEES OF DEPOK TEST PROVISIONS ON MALADMINISTRATION REPORTS IN OMBUDSMAN LAW

HENDRY Agus Sutrisno who works as a Government Employee of Depok City submitted a request for review of Article 36 paragraph (1) letter b of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia (UU Ombudsman) against the 1945 Constitution. The first hearing of case Number 7/PUU-XIX /2021 was held by the Constitutional Court (MK) on Tuesday (27/4/2021) in the Panel Meeting Room.

Hendry stated that based on this article, the Ombudsman can't accept public reports whose substance is being and has become the object of court examination, including pretrial, unless the report concerns maladministration in the court examination process, including pretrial. Meanwhile, the authority possessed by pretrial institutions is only limited to examining and deciding cases submitted from a formal aspect.

In fact, continued Hendry, based on Article 2 paragraph (2) and paragraph (4) of the Regulation of the Supreme Court Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decisions, the authority regarding the material aspects of the application of criminal articles to a criminal case is the full authority of the investigator. As a result, there is no institution other than an investigator who can correct the application of a criminal article to a criminal law being examined. Therefore, according to the appellant, this matter is very vulnerable to legal abuse and abuse of authority.

This was directly experienced in the case reported by the appellant to the Depok City Police Investigator. In short, from the appellant's report, the Depok Police Profession and Security only examined the report on the code of ethics.

Meanwhile, the appellant's report regarding the amendment to the article was not examined. Based on this case, the appellant suspected that there was maladministration by the Police. Thus, this is a clear example of the occurrence of legal irregularities and abuse of authority by Police investigators who have full authority to determine criminal article offenses that will be suspected of perpetrators suspected of committing criminal acts. However, the maladministration act can't be examined by the Ombudsman as reported by the Petitioner on October 7, 2020 and received by the Ombudsman on October 8, 2020. It is because the Petitioner's report has been examined by a pretrial institution as stated in the Ombudsman's letter Number B/1075/PV.02.03/ 9016.2020/XI/2020 on November 9, 2020.

Therefore, the Petitioners ask the Court to add the phrase to Article 36 paragraph (1) letter b of the Ombudsman Law, 'The Ombudsman rejects the report as referred to in Article 35 letter a in the event that: ... b. the substance of the report is and has become the object of court examination, unless the report concerns maladministration in the process of examination in court and or concerns material aspects of pretrial examinations' that when a citizen reports a case to the Ombudsman and a case investigation is also being carried out in court, the Ombudsman can't refuse the application submitted to him. (Sri Pujianti)

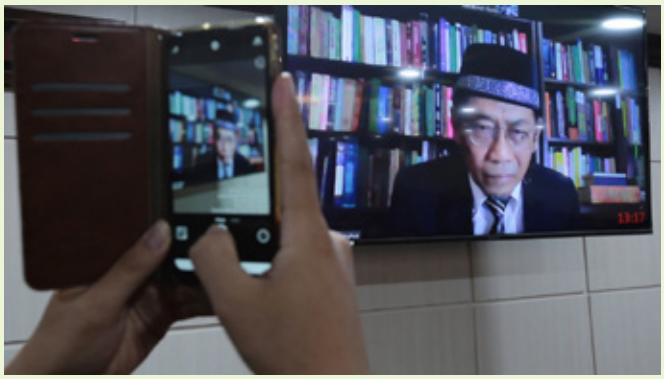
ONLY ATTORNEY WHO CAN INDICT IN BANKRUPTCY LAW AND POSTPONEMENT OF DEBT PAYMENT OBLIGATIONS

LAW Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Bankruptcy Law and PKPU) was tested to the Constitutional Court on Tuesday (27/4/2021). The case registered with Number 8/PUU-XIX/2021 was filed by Hendry Agus Sutrisno who works as a government employee in Depok City.

In the petition, the appellant argued that Article 7 paragraph (1) of the Bankruptcy Law and Postponement of Debt Payment Obligations which reads, "The application as referred to in Article 6, Article 10, Article 11, Article 12, Article 43, Article 56, Article 57, Article 58, Article 68, Article 161, Article 171, Article 207, and Article 212 must be submitted by an advocate." Based on Hendry, *a quo* article implies that only an advocate can take legal action. Meanwhile, other citizens, especially creditors or debtors who are not advocates, are considered to have no legal standing to litigate in court.

Hendry revealed he was a creditor who was fighting KSP Pandawa Mandiri Group debtors and Nuryanto at the Central Jakarta Commercial Court. He used the services of an advocate in filing the case, but then if the bankruptcy case ends and his party has not received payment. He must again use the services of an advocate to obtain the right.

Hence, the appellant requested the Court to declare Article 7 paragraph (1) of the Bankruptcy Law and Postponement of Debt Payment Obligations contrary to the 1945 Constitution and have no binding legal force as long as it is not interpreted as "The Petitioner as referred to in Article 6, Article 10, Article 11, Article 12, Article 43, Article 56, Article 57, Article 58, Article 68, Article 161, Article 171, Article 207, and Article 212 must be submitted by an advocate or a creditor and/or debtor with a law degree education background." (Sri Pujianti)



HIS HOUSE WILL BE AUCTIONED, A LECTURER EXAMINATED MORTGAGE LAW

SRI Bintang Pamungkas who works as a lecturer submitted a request for a review of Law No. 4 of 1996 concerning Mortgage on Land and Objects Related to Land (Mortgage Rights Law) toward the 1945 Constitution to the Constitutional Court (MK) on Tuesday (27/4) /2021). In the hearing of the case registered Number 10/PUU-XIX/2021, the Petitioner argued that Article 6, Article 14 paragraph (3), Article 20 paragraph (2) and Article 21 of the Mortgage Law contradict Article 28A, Article 28A paragraph (2), Article 28C paragraph (1), Article 28D paragraph (1) and paragraph (2) Article 28G paragraph (1), Article 28H paragraph (1) and paragraph (4), and Article 28I paragraph (2) of the 1945 Constitution.

In the description of the petition, the appellant stated that Article 14 paragraph (3) of the Mortgage Law must be declared contrary to the 1945 Constitution. According to him, *a quo* article only provides excessive legal protection to the mortgage holder and ignores legal protection for debtors and mortgage givers. For him, this is very discriminatory and violates the law, especially Article 27 paragraph (1) of the 1945 Constitution. In essence, the Petitioner assesses that as a result of the enforcement of these norms, his party loses the right to a decent life for humanity, to maintain life and to live with children and their families.

Furthermore, the appellant in the petition also implicitly describes that Article 21 of the Mortgage Law contains the notion that the debtor is at the same time the Giver of Mortgage Rights. In fact, not all debtors are at the same time the giver of mortgage rights. The arbitrariness intended by the Petitioner is increasingly visible if the mortgage provider is not always the debtor. Because, it often happens that the mortgage giver intends to help or assist the poor debtor in accordance with the principle of mutual cooperation in order to participate in improving the debtor's life as experienced by the appellant.

For information, the appellant in a concrete case in early December 2019 received a letter from the Star Auction Auction Hall dated November 13, 2019 stating that that Persil Merapi (the residence of the Petitioner) would soon be auctioned on January 14, 2020. In this regard, the appellant has made various legal efforts and visited the BCA Branch Office to discuss the problem of credit problems from the debtor. Long story short, after various efforts were made, the Petitioner still received a notification dated December 10, 2020 for the determination of the auction to be held on January 5, 2021 with the deadline for bidding until 13.00 WIB. Even in the letter, appellant was asked to vacate Persil Merapi that was his residence. Thus, in its Petitum, the Petitioners ask the Court to annul the validity of *a quo* Article. (Sri Pujianti)

PROPOSING TO CONDUCT JURIDICAL REVIEW ELECTION LAW, APPELLANT TESTED CONSTITUTIONAL COURT LAW

THE INAUGURAL session of the review of Article 60 paragraph (1) of Law Number 24 of 2003 as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court (UU MK) was held by the Constitutional Court (MK) on Tuesday (27/4/2021) afternoon. The applicant in case Number 11/PUU-XIX/2021 wa Herifuddin Daulay who was present online to submit his application. Herifuddin felt aggrieved by the enactment of Article 60 paragraph (1) of the Constitutional Court Law which states, "With respect to the content of paragraphs, articles, and/or parts of the law

that have been tested, re-examination can't be requested."

According to the appellant, *a quo* article has definitively limited the efforts to resubmit a judicial review of the constitution for which review has been proposed.

If there is a legal product that has been ratified, it turns out that it has content that can harm the national interest, both actual and potential and has been submitted for review, the law can no longer be submitted for review by citizens who have constitutional rights in the form of defending the country and truly care for the survival of the nation and state.

F the Petitioners are of the view that, because they are unable to submit an application for judicial review of a law, an opportunity is opened for the Petitioner or the Petitioner's descendants to experience colonialism and/ or be led by another nation. Thus, the Petitioner's choice is to take advantage of the right by law to file a petition for judicial review of the 1945 Constitution with the intention of having it abolished or declared null and void. This is because the Petitioners believe that the actions of the Petitioners in order to prevent the possibility of being colonized by other nations are an obligation to defend the state which is the constitutional right of the Petitioners.

Furthermore, the Petitioners argued that various violations occurred in the implementation of the 2019 General Election. The appellant wanted to examine Law Number 7 of 2017 concerning Elections. However, this effort was not carried out because it was hindered by the enactment of the provisions of Article 60 paragraph (1) of the Constitutional Court Law. It is understood by the Petitioner that he cannot take any action to defend the country (Nano Tresna A).

REGARDING TRANSFER OF RIGHTS TO ASSETS FUNDED BY SHARIA BANKING

REGA Felix, who works as an advocate, submitted a review of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) to the Constitutional Court (MK). The hearing of case Number 12/PUU-XIX/2021 was held in the Court's Panel Meeting Room on Wednesday (28/4/2021).

In a hearing chaired by Constitutional Justice Manahan M.P. Sitompul, Rega argued that Article 23 paragraph (1) of the BAL contradicted the 1945 Constitution. Rega, who was present without a attorney, explained that the two articles had an effect on the practice of sharia banking because in conducting sharia banking transactions, land could become the object of the transaction, either the transfer or the encumbrance of rights on the land as the underlying transaction. Thus, this provision also applies to carrying out transactions in Sharia banking. According to him, he has the right to use Islamic banking services as a form of his belief. Therefore, the Petitioner submitted a financing facility to a sharia bank based on the Murabahah Agreement. However, the existence of *a quo* norm, in Islamic banking, transactions requires the transfer of rights to the assets being financed.

As an illustration, Rega conveyed in a concrete case that he experienced when he applied for Murabahah financing for the purchase of land. For the development of his business, he also re-submitted to the bank for financing. For this, he must convert the contract that has been conducted previously. In this case, the Applicant must sell the land that has been purchased to the bank and then the bank will lease the land to him with the promise that at the end of the lease term it will be granted to the Applicant.

From this scheme, Rega saw a lot of transfers of ownership that occurred, even reaching 4 times the transfer of names in one transaction. It becomes a heavy burden because they have to bear high costs and a long process. Regarding this incident, the Petitioners consider that the state is obliged to guarantee that transactions carried out by Islamic banking have a strong legal basis so that their constitutional rights contained in Article 28D paragraph (1), Article 28E paragraph (1) and paragraph (2), as well as Article 29 paragraph (1) and paragraph (2) of the 1945 Constitution are not violated by the application of the a quo norm. (Sri Pujianti)

THE DECISIONS OF JURIDICAL REVIEW IN MAY 2021

No	Case Number	Case	Appellant	Decision
1	55/PUU-XVIII/2020	Material Examination of Law Number 7 of 2017 concerning General Elections toward the 1945 Constitution	Ahmad Rida Sabana and Abdullah Mansuri	1. Granting the appellantr's application in part; 2. Stating that Article 173 paragraph (1) of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) stating, "Political Parties Contesting in the Election have passed verification by General Election Commissions", is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted, "Political parties that have passed the verification of the 2019 General Election and have passed the provisions of the Parliamentary Threshold in the 2019 Election are still administratively verified but not factually verified, as for political parties that do not qualify/do not meet the provisions of the Parliamentary Threshold, political parties that only have representation at the Provincial/Regency/City Regional People's Representative Assembly level and political parties that do not have representation at the Provincial/Regency/City Regional People's Representative Assembly level, are required to be verified. back administratively and se factual method, this is the same as the provisions that apply to new political parties". 3. Rejecting the Petitioner's application. 4. Ordering the loading of this decision in the State Gazette of the Republic of Indonesia as appropriate.
2	104/PUU-XVIII/2020	Material of Juridical review Number 40 of 1999 concerning the Press toward the 1945 Constitution	Charlie Wijaya	Can't be accepted

3	79/PUU-XVII/2019	Application for Formal and Juridical Review Material of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission	1. Fathul Wahid, S.T., M.Si., Ph.D., 2. Dr.Abdul Jamil, S.H., M.H., 3. Eko Riyadi, S.H., M.H., 4. Ari Wibowo, S.H., S.HI., M.H., dan 5. Dr. Mahrus Ali, S.H., M.H.	In Formal Examination: Rejecting the petition of the appellants in its entirety; In examination material: 1. Granting the petition of the appellant partially; 2. Stating that Article 1 point 3 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) which originally reads "The Corruption Eradication Commission, hereinafter referred to as the Corruption Eradication Commission, is a state institution within the executive power clump that carries out the task of preventing and eradicating Corruption Crimes in accordance with this Law", contrary to the 1945 Constitution of the Republic of Indonesia and has no legally binding conditionally as long as it is not interpreted, "The Corruption Eradication Commission, hereinafter referred to as the Corruption Eradication Commission, is a state institution within the executive power clump which in carrying out the task of eradicating Corruption Crimes is independent and free from the influence of criminal acts of corruption. any power." 3. Stating that Article 12B, Article 37B paragraph (1) letter b, and Article 47 paragraph (2) of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (State Gazette of the Republic of Indonesia Year 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) is contrary to the 1945 Constitution of the Republic of Indonesia and it has no binding legal force;
				4. Stating that the phrase "accountable to the Supervisory Board" in Article 12C paragraph (2) of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement The State Gazette of the Republic of Indonesia Number 6409) is contrary to the 1945 Constitution of the Republic of Indonesia and it does not have conditionally binding legal force as long as it is not interpreted as "notified to the Supervisory Board". Thus, Article 12C paragraph (2) of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) that originally read "The wiretapping as referred to in Article 12 paragraph (1) which has been completed must be accounted for to the Head of the Corruption Eradication Commission and the Supervisory Board no later than 14 (fourteen) working days as of the completion of the wiretapping", became in full reads "Wiretapping as referred to in paragraph (1). referred to in Article 12 paragraph (1) that has been completed must be accounted for to the Head of the Corruption Eradication Commission and notified to the Supervisory Board no later than 14 (fourteen) working days as of the wiretapping is completed".

				5. Stating that phrase "not completed within a maximum period of 2 (two) years" in Article 40 paragraph (1) of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (State Gazette The Republic of Indonesia Year 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) contradicts the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted as "not completed within a maximum period of 2 (two) years as of issuance of Commencement Notification of Investigation (SPDP)". Thus, Article 40 paragraph (1) of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) which originally read "The Corruption Eradication Commission may stop the investigation and prosecution of cases of Corruption Crimes whose investigations and prosecutions are not completed within a maximum period of 2 (two) years", became in full reads "The Corruption Eradication Commission may stop the investigation and prosecution of cases of Corruption crime whose investigation and prosecution are not completed within a maximum period of 2 (two) years from the issuance of the Notification of Commencement of Investigation (SPDP)."
				6. Stating the phrase "must be reported to the Supervisory Board no later than 1 (one) week" in Article 40 paragraph (2) of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (State Gazette). The Republic of Indonesia Year 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) is contrary to the Constitution of... 7. Republic of Indonesia Year 1945 and it has no binding legal force as long as it is not interpreted as "notified to the Supervisory Board no later than 14 (fourteen) working days". Thus, Article 40 paragraph (2) of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) which originally reads "Termination of investigation and prosecution as referred to in paragraph (1) must be reported to the Supervisory Board no later than 1 (one) week as of the issuance of the order for termination of investigation and prosecution", becomes fully read "Termination of investigation and prosecution as referred to in paragraph (1) (1) be notified to the Supervisory Board no later than 14 (fourteen) working days as of the issuance of the order to terminate the investigation and prosecution".

				8. Stating that phrase "with written permission from the Supervisory Board" in Article 47 paragraph (1) of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197 , Supplement to the State Gazette of the Republic of Indonesia Number 6409) is contradicted to the 1945 Constitution of the Republic of Indonesia and it has no binding legal force as long as it is not interpreted "by notifying the Supervisory Board". Thus, Article 47 paragraph (1) of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) which originally read, "In the process of investigation, investigators may conduct searches and confiscations with written permission from the Supervisory Board", became in full reads "In the process of investigation, investigators may conduct searches and confiscations by notifying the Supervisory Board." 9. Ordering the decision in the State Gazette of the Republic of Indonesia as appropriate. 10. Rejecting the petition of the appellants;
5	71/PUU-XVII/2019	Application for Judicial Review of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission toward the 1945 Constitution of the Republic of Indonesia	Zico Leonard Djagardo Simanjuntak	1. Stating that application of the Petitioners regarding the unconstitutionality of the norms of Article 12B, Article 12C, Article 12D, Article 37B paragraph (1) letter b, Article 40, and Article 47 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) are not able to be accepted. 2. Rejecting the application of the appellant for the rest.

6	77/PUU-XVII/2019	Application for Judicial Review of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission, and Law Number 24 of 2003 concerning the Constitutional Court in conjunction with Law Number 8 of 2011 concerning Amendments to Laws -Law Number 24 of 2003 concerning the Constitutional Court, as well as Law Number 12 of 2011 concerning the Establishment of Legislations	1. Jovi Andrea Bachtiar, S.H. 2. Ricardo Purba, S.H. 3. Leonardo Satrio Wicaksono, S.H. et al	1. Stating that application of the appellant regarding the unconstitutionality of the norms of Article 12B paragraph (1), Article 12B paragraph (2), Article 12B paragraph (3), Article 12B paragraph (4), Article 37B paragraph (1) letter b, Article 47 paragraph (1) , Article 47 paragraph (2), Article 69A paragraph (1), and Article 69A paragraph (4) of the KPK Law are not able to be accepted; 2. Reject the appellant' Application for the rest.
7	73/PUU-XVII/2019	Application for Judicial Review of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission against the 1945 Constitution of the Republic of Indonesia	Ricki Martin Sidauruk	Reject the application of the appellant in its entirety

8	59/PUU-XVII/2019	Application for Formal and Material Judicial review of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission toward the 1945 Constitution of the Republic of Indonesia	1. Sholikhah, S.H., 2. Agus Cholik, S.H., 3. Wi w i n Taswin, S.H.,	1. Stating that applications of appellant I, appellant II, appellant III, appellant V, appellant VI, appellant VIII, appellant IX, appellant X, appellant XI, appellant XII, appellant XIII, appellant XIV, appellant XV, appellant XVI, appellant XVII, appellant XVIII, appellant XIX, appellant XX, appellant XXI, and appellant XXII are not able to be accepted; 2. Rejecting the applications of appellant IV and appellant VII in entirety.
9	62/PUU-XVII/2019	Application for Judicial Review of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission toward the 1945 Constitution of the Republic of Indonesia	Gregory Yonathan Deowikaputra, S.H.	In Provision Rejecting the appellant's provision application In the case: 1. In Formal Review; Rejecting the appellant's application in its entirety; 2. In Material Review; Rejecting the appellant's application in its entirety.

ANALYZING COURT PROCESS AND PROCEDURAL LAW OF REGIONAL HEAD ELECTION IN CONSTITUTIONAL COURT

Constitutional Justice Saldi Isra as speaker for the virtual event held by the Indonesian Moot Court Community Association, Sunday (25/04). Photo: Public Relations/Bayu

Although they are busy with the hearing on the handling of the 2020 Dispute Over the Results of Regional Head Election case, the constitutional judges continue to share knowledge and experience with students and legal practitioners in seminars held online. On this occasion, Constitutional Justices Saldi Isra and Daniel Yusmic P. Foekh were speakers in a webinar that reviewed the Court's hearing process and the procedural law of procedural law

The Court Process in Constitutional Court

Constitutional Justice Saldi Isra gave a material entitled "Hearing and Decision" through a virtual room, on Sunday (25/4/2021). This activity was organized by the Indonesian Motu Judicial Community Association (HKPSI). Guided by moderator M. Afdhal Alfarisyi, at the beginning of his presentation, Saldi explained about the authority of the Constitutional Court (MK) as mandated by Article 24C of the 1945 Constitution. As an illustration, Saldi reviews more deeply about the crown of the Constitutional Court in the form of judicial review of the 1945 Constitution. This is intended to assess whether a law contradicts the 1945 Constitution.

With regard to hearings under this authority, continued Saldi, the entirety of the law can be submitted for review by individual citizens, private/public legal entities, state institutions, indigenous peoples. The appellants may examine the substance of a statutory norm, both formally and materially, that is considered detrimental to their constitutional rights.

In addition, Saldi explained the stages of submitting an application. The applicant must register his/her application with the Registrar's Office of the Constitutional Court that can be conducted online or delivered directly to the registration room for filing cases in the Constitutional Court Building. Furthermore, the Registrar will examine the initial files submitted by the appellant, starting from the formal provisions such as the identity of the Applicant, attachments, and others that are in accordance with the administrative requirements for submitting the application. If it is considered complete, the application will be registered in the Constitutional Case Registration Book (BRPK) and given a case number.

Furthermore, the Registrar will submit an application to the Chief Justice of the Constitutional Court along with a proposal to be appointed as a Panel Judge to examine the initial application. Each judge will have a list of cases that are currently under his duty so that the management of existing cases will be clearly monitored and balanced. After that, the case will be distributed to the Panel Judge by the Registrar. Then the Chair of the Panel will schedule a preliminary hearing. Usually, in every case, constitutional judges are accompanied by two researchers,

a judicial secretary, and a general secretary. After the case reaches the constitutional judge, the initial reading of the application will be carried out. The researchers will also conduct a

preliminary study of the case. From the results of the initial study, the researcher will present the results. They are then combined with the results of the judge's reading to then be used as capital for the judge when giving advice at the preliminary examination session according to a predetermined schedule.

"Usually, all of the rights that follow after reading the application read out by the appellant during the preliminary hearing. In the preliminary hearing, usually the Petitioner will obtain the judge's advice on the application he submitted," said Saldi to 117 students as members of the HKPSI (Moot Court Society).

Application Material

As for the material to be considered in a petition, Saldi explained in a simple way, in the first part of the form of the identity of the Petitioner, it is about an explanation of the Court's authority in examining and adjudicating cases. This is necessary to provide evidence that the Court, based on applicable legal provisions, has the authority to hear the case. In this section, explained Saldi, there is no need to be elaborative, but it is sufficient to quote the norms related to the authority of the Constitutional Court in adjudicating the case for which a review is requested.

The second part is the legal position of the Petitioner in the case being filed. This must be explained because the description will give confidence to the Court if the applicant has a right to the constitutional loss suffered by the Petitioner, both factual and potential. Therefore, there are certain provisions related to this legal position, ranging from individual citizens, customary law community groups, state institutions, or legal entities.

"If the appellant can't explain his/her legal position, then there will be a reason for the Court to declare the application as NO (*Niet Ontvankelijk Verklaard*). This legal position is a key to entering the house. Thus, it must be constructed in such a way by providing a concrete example experienced by the Petitioner for the loss of his constitutional rights in order to emphasize the enactment of the law, that is really detrimental to him, "said Saldi.

The third part is the reason for the application. In this section, Saldi mentions that the description made must be based on an explanation of why certain norms are contrary to the 1945 Constitution. Saldi added, this section is exactly like writing a scientific paper. The appellant must find academic, theoretical, comparative experience, or norm synchronization to explain his/her contradiction with the Constitution. 1945. Thus, at a certain point, the description of the intended conflict will be seen.

Hearing Stage

The Court will hold a hearing of the case application openly and can be seen by the public. At the preliminary hearing, after receiving advice from the Panel of Judges, the Petitioner will be given 14 days to complete his application. Before closing the hearing, the panel judge will ratify the evidence. In this regard, the judge really expects that the Petitioner can submit as much evidence as possible. Thus, it can be used as a tool to strengthen the argument of the application.

The panel judges will then hold a brief meeting to discuss the continuation of the application. Generally, in meetings, that are scheduled for one to two days after the preliminary hearing, the results will then be reported at the judges' deliberation meeting (RPH). It was only at this RPH that the panel judges conveyed the provisions being tested, including the legal position of the appellant, that would be thoroughly discussed.

The next stage is the hearing of evidence with varies numbers. It depends on the seriousness of the Petitioner in presenting experts, witnesses, and other evidence. After the hearing is deemed sufficient, each judge will formulate a legal opinion to be presented further in the RPH.

"So, for 1 case, sometimes there are 9 kinds of opinions according to the number of judges. So that it will be deepened until it finally narrows to the final position, rejecting or granting it. After the composition is seen, a judge will be appointed who will make a draft of the results of the decision. In addition, there is also a Substitute Registrar who is a party involved from the beginning to the end to prepare the decision. The judge appointed as the drafter is the panel judge who is concerned with the case being applied for," added Saldi.

After explaining the series of mechanisms for the hearing of judicial review cases at the Constitutional Court, Saldi invited students to ask questions, suggestions, and objections to the material he had reviewed.

The Dynamic of Regional Head Election Procedural Law

Constitutional Justice Daniel Yusmic P. Foekh was the keynote speaker in a web seminar (webinar) organized by the Association of Procedural Law Lecturers of the Constitutional Court (APHAMK) regional representative council of DKI Jakarta Province, Friday (7/5/2021). In this activity entitled "The Dynamics of Procedural Law of Disputes over the Results of Regional Head Elections in the Pandemic Period",

Daniel invited the webinar participants to actively participate in virtual discussions in order to contribute to the perfection of the Constitutional Court Regulations in the future, especially those related to the provisions for resolving disputes over the results of regional head elections (pilkada).

At the beginning of his presentation, Daniel stated that the amendment to the 1945 Constitution emphasizes the existence of a rule of law and democracy, including when talking about regional elections as part of democracy and the implementation of people's sovereignty. This process of change also reinforces the existence of the institution of the Constitutional

Court. Regarding the settlement of disputes over the results of the election, said Daniel, it is actually an additional authority given to the Constitutional Court until the formation of a special institution to handle it.

Daniel described that the implementation of regional elections in Indonesia began to be known in 2008. However, the regional elections at that time had not been carried out simultaneously. It was only on December 1, 2015 that simultaneous local elections were held and the resolution of the dispute was resolved in the Constitutional Court with the guidance of several Constitutional Court Regulations made at that time, including Constitutional Court Regulation Number 1/2015 concerning Guidelines for Proceeding in Disputes on the Results of the Election of Governors, Regents, and Mayors. At this time, the Constitutional Court applied a threshold for the difference in votes in the submission of the parties' petition. In addition, a period for case settlement of 45 working days from the date of registration is also enforced and the Constitutional Court also accommodates the legal standing of election observers and handling disputes with one pair of candidates.

In the 2017 Simultaneous Regional Head Election, the Court made adjustments to the method of calculating the threshold for the difference in votes based on Law 10/2016. The Constitutional Court has updated the mechanism for submitting applications and/or information online as well as simplifying duplicate applications, statements, and evidence.

Entering the handling of disputes over the results of the 2018 Simultaneous Regional Elections, the Constitutional Court continued to innovate by consolidating the handling of cases based on communication and information technology. The Court also strengthened the management of the hearing.

"In the 2020 Simultaneous Regional Head Election, the Constitutional Court optimized the handling of cases with the support of technology and made flexible the application of the threshold requirement for the difference in votes in filing cases," explained Daniel in the activity which was also attended by speakers from APHAMK (Association of Procedural Law Lecturers of the Constitutional Court), namely the Secretary of APHAMK DKI Jakarta and the Dean of the Faculty of Law. Muhammadiyah University Jakarta Dwi Putra Cahyawati, Member of APHAMK South Sulawesi Fahri Bachmid, and Senior Researcher of Constitutional Court Pan Mohamad Faiz.

Inn the next review, Daniel also discussed in detail and detail the statistics on Dispute Over the Results of Regional Head Election 2008–2014 and Dispute Over the Results of Regional Head Election 2020/2021. Daniel also revealed that some of the chosen ones with charitable decisions were granted at the Dispute Over the Results of Regional Head Election in 2020, including the decisions of Dispute Over the Results of Regional Head Election in Sekadau Regency, Penukal Abab Lematang Ilir (PALI) Regency and Dispute Over the Results of Regional Head Election of Sabu Raijua.

After the keynote speech from Constitutional Justice Daniel, the webinar was continued with presentations of material from other speakers and closed with a discussion of the lighter in the question-and-answer room to the speakers of the webinar. Also present on the agenda of this activity were the Secretary General of APHAMK Sunny Ummul Firdaus, and the Chair of the DKI Jakarta DPD APHAMK Tri Sulistiyowati who gave remarks and submitted activity reports. ■

SRI PUJIANTI/NUR R

Constitutional Justice Daniel Yusmic was the keynote speaker at a web seminar organized by the Association of Procedural Law Lecturers for the DPD DKI Jakarta Province Constitutional Court, Friday (07/05) at the Constitutional Court Building. Photo: Public Relations/Ifa.

GATHERING AND DISCUSSION ABOUT CONSTITUTION

Secretary General of the Constitutional Court M. Guntur Hamzah and President Director of BSI Hery Gunardi signed a memorandum of understanding witnessed by Chief Justice of the Constitutional Court Anwar Usman and MK officials and BSI officials on Friday (30/4) in Building 2 of the Constitutional Court. Photo: Public Relation/Teguh.

Entering the middle of April 2021 in the atmosphere of Ramadan 1442 Hijriah, the Constitutional Court Justices continue to be active in various activities to support institutional performance and their role in the life of the nation and state. To make it concrete, constitutional judges were also present in an effort to cooperate with the institutions and families of the Constitutional Court as well as the Indonesian people at the gathering and discussion of the constitution regarding the constitutional rights of people.

The signing of the Constitutional Court-BSI Memorandum of Understanding

The signing of the memorandum of understanding between the Constitutional Court (MK) and Bank Syariah Indonesia (BSI) took place on Friday (30/4/2021) morning at the Constitutional Court Building. Secretary General of the Constitutional Court M. Guntur Hamzah and President Director of BSI Hery Gunardi were pleased to sign a memorandum of understanding witnessed by Chief Justice of the Constitutional Court Anwar Usman and Constitutional Court officials and BSI officials.

The provision of Islamic banking services is essentially part of the fulfillment of citizens' constitutional rights in the economic field. Every citizen who owns property, especially in terms of financial management, also has an inherent right to choose the financial management system used in banking services. In that perspective, alternative Islamic banking services are part of fulfilling the constitutional rights of citizens, said Anwar Usman.

The presence of Islamic banking, said Anwar, is actually part of the sharia finance practice that has been carried out. Outside of banking, there are other sharia finance practices.

We heard some time ago that the government issued sukuk in order to raise public funds, in order to meet the financing of the national budget. Other sharia finance practices outside banking, for example, such as baitul mal, sharia insurance, sharia pawnshops, sharia mutual funds, sharia cooperatives have also become common practices in Islamic finance practice, explained Anwar.

Currently, continued Anwar, it is undeniable that the practice of sharia finance or sharia-based financial management has become an alternative for many people. Not only in the national scope, but also in various countries in the world. The Islamic financial system has become a universal trend.

Furthermore, the Secretary General of the Constitutional Court M. Guntur Hamzah said that the signing of the memorandum of understanding this time was a collaboration between the Constitutional Court and Bank Syariah Indonesia. The signing of this memorandum of understanding, God willing, will be followed up with

programs from Bank Syariah Indonesia. "We have also told employees to participate as customers of Bank Syariah Indonesia who have various benefits," said Guntur.

Meanwhile, President Director of BSI Hery Gunardi expressed his gratitude to the Constitutional Court for the trust given by the Court in synergizing with BSI. Hery hopes that the presence of BSI is expected to be a catalyst in the economy. According to Hery, during the Covid-19 pandemic, the growth of Sharia banks was actually better than conventional banks. Thanks to the trust and support from the community and stakeholders, said Hery, Bank Syariah Indonesia became the largest Islamic bank in Indonesia spread across all provinces. In addition to financial achievements, said Hery, BSI also allocates zakat on profits earned every year. The allocation is used to provide benefits to the wider community, for example the construction of places of worship, assistance to foster children, and village empowerment by building business groups that are expected to help increase the independence of the Indonesian people.

Donations for orphans

The activity of providing donation to orphans of the Constitutional Court (MK) extended family took place on Friday (7/4/2021) afternoon on the 2nd floor of the Constitutional Court Building. "Today we are here in this building to strengthen friendship and foster brotherhood, togetherness and our sense of empathy for the orphans of the Constitutional Court extended family. Indeed, in this glorious month of Ramadan, it is a month full of blessings and a test of patience for those who undergo it and is a provision for our safety in this world and the hereafter," said Constitutional Justice Wahiduddin Adams while giving his opening remarks.

Wahiduddin stated that the activity of providing donation to orphans of the Constitutional Court (MK) extended family is a form of concern and a sense of togetherness among the employees of the Constitutional Court between one employee and another.

"So, we are expected to provide assistance to fellow employees. This is the most important thing how we build brotherhood. Establishing brotherhood does not only stop at the Constitutional Court. After we retire, the brotherhood of Constitutional Court employees can continue. Good with employees, family, friends and others. God willing, this activity can be continued and expanded in the years to come. This is a mandate from Allah SWT for us," said Wahiduddin at the event which was attended by the Chief Justice of the Constitutional Court Anwar Usman and a number of officials of the Constitutional Court as well as the ranks of the Islamic Court's spiritual management.

Meanwhile, the Clerk of the Constitutional Court Muhidin said that the Islamic Court's Islamic spiritual management had carried out various activities during the month of Ramadan.

"There is a Ramadan *Kultum* leaded by Constitutional Justices as well as functional and structural officials of echelon I and echelon II officials which is held before the noon prayer. Even though in the context of this activity it coincides with the activities of holding the Constitutional Court hearing and the Judges' Consultative Meeting as well as other activities," said Muhidin.

Muhidin continued, Constitutional Court 's Islamic spiritual activities during Ramadan also included zuhur prayers in congregation, provision of takjil, compensation for orphans of the Constitutional Court's extended family consisting of 11 people also gifts for the MK's Islamic spiritual management, raising the Ramadan Blessing Infak Package and finally holding Friday prayers.

Chief Justice of the Constitutional Court Anwar Usman together with Constitutional Justice Wahiduddin Adams provided compensation to orphans from the Constitutional Court's family, Friday (07/05) at the Constitutional Court Building. Photo: Public Relations/Ifa.

Chairman of the Constitutional Court (MK) Anwar Usman became a speaker in gathering and breaking the fast together with health protocols held by the Mayor of Bima Muhammad Lutfi on Sunday (25/4). Photo: Public Relation/Hendy.

Leadership Based on Islam and Constitution

Chairman of the Constitutional Court (MK) Anwar Usman became a speaker in gathering and breaking the fast together with health protocols held by the Mayor of Bima Muhammad Lutfi at his residence. The event was attended by the Bima City Government and the Chairman of the Bima City MUI TGH Abidin H.Idris. In the event that was held on Sunday (4/25/2020), Anwar gave material with the theme "Leadership According to Islam and the Constitution".

Anwar reviewed the social etiquette to obey the principles and the constitution. "Because by doing this, we contribute to the state in carrying out the rules and laws in that country, it can create a good country with a legal system in that country. In addition, Anwar added that if in a country the law is thrown out, the country will fall because there is no legal system in it," said Anwar.

At the end of his brief lecture material, Anwar also added that when a legal system is sharp downwards and blunt upwards, then the nation or state will be destroyed in carrying out a system of government. "That's why it's important that we are based and have a constitution so that a country/nation can run well," said Anwar.

Ministering the Constitutional Rights of Citizens

Chief Justice of the Constitutional Court Anwar Usman was speapker for the One Day Socialization event held by the Bima City Regional People's Representative Assembly on Friday (21/5/2021). In this activity, the Chief Justice of the Constitutional Court conveyed the theme "The Role of the Constitutional Court in Maintaining and Caring for the Constitutional Rights of Citizens in a Democratic State".

Anwar explained that the idea of the existence of the Constitutional Court in Indonesia was born, which began during the discussion of the 1945 Constitution. The idea was initiated by Prof. Muhammad Yamin, who during the discussion of the draft constitution by the Indonesian Independence Preparatory Agency (BPUPKI) said the importance of a judicial institution that has the authority to appeal the law. However, this thought was rejected for several reasons, among which at that time the Indonesian nation had just become independent, so that there were not many legal scholars in Indonesia. During the discussion to amend the 1945 Constitution in the reform era, opinions about the importance of a judicial institution having the authority to appeal the law resurfaced.

Furthermore, Anwar discussed the post-amendment of the 1945 Constitution. According to him, the current understanding of democracy must go hand in hand with the nomocracy (constitution) understanding as the highest norm consensus in the state. This has a logical consequence that, even though a law has been formed by the legislature with the executive, but in order to avoid the tyranny of the majority against the minority, as well as to maintain the constitutionality of the state in accordance with the 1945 Constitution. Therefore, judicial review is a must as a manifestation of the balance of power between branches of state power, as well as to protect the constitutional rights of citizens due to political policies that have the potential to violate the rights of citizens. ■

NANO TRESNA ARFANA/ HENDY PRASETYA/ AGUNG SUMARNA/LULU ANJARSARI P/NUR R

EDUCATION CONSTITUTIONAL RIGHT DURING A PANDEMIC

Secretary General of the Constitutional Court M. Guntur Hamzah was a speaker at the 2021 Hardiknas Webinar held online by APHTN-HAN, on Monday (3/5). Photo: Public Relation/Bayu.

SECRETARY General of the Constitutional Court M. Guntur Hamzah was a speaker at the 2021 National Education Day web seminar on Monday (3/5/2021). The activity, entitled "The Dynamics of Fulfilling Constitutional Rights to Education in a Time of Pandemic" was attended by 200 participants who are members of the Association for Teaching Constitutional Law and State Administrative Law (APHTN-HAN).

While talking about Hardiknas (National Education Day), Guntur said this was related to three things, namely the issue of education, constitutional rights in the field of education, and constitutional rights during the pandemic. With regard to education, continued Guntur, we need to reflect on what Ki Hajar Dewantara has done as a national education figure through Taman Siswa. This figure became a pioneer who broke down the educational discrimination experienced by the natives during the colonial period. Not only as a national figure, but he also reminds us of the motto *"Ing ngarsa sung tulada, ing madya mangun karsa, tutwuri handayani".* Through this idea, it becomes a concrete step in liberating human beings as a whole.

If it is related to current thinking, Guntur sees the value of this motto as being in line with the Merdeka Learning Program for the Independent Campus in teaching and learning activities. Guntur acknowledged that the rapid changes in social, economic, cultural, and technological life, including in universities, also demands the ability of universities to produce graduates with character and able to face dynamic changes. Through a student-focused learning pattern, the Merdeka Learning Campus Merdeka Program is expected to provide broad opportunities for students to translate their needs into the world of education.

Furthermore, Guntur said that the Covid-19 pandemic in early 2020 was a challenge for the Indonesian people. The learning process can no longer be done in a meeting room, but must utilize information technology in learning that is carried out in a virtual room.

In connection with the constitutional mandate and the ongoing pandemic issue in several countries around the world, including Indonesia, Guntur believes that there are limitations to the fulfillment of citizens' constitutional rights which must be properly enforced. Therefore, Guntur invited all parties on National Education Day 2021 to devote attention and enthusiasm to simultaneously move in the fulfillment of the right to a good education and can deliver a better future for Indonesia. "Therefore, let's make this National Education Day moment as a reflection and evaluation to increase self-capacity, both personally and as academic educators to become better," said Guntur at the activity which was also attended by various academics from several campuses in Indonesia. (Sri Pujianti/Nur R.)

Constitutional Court Was Visited by Trade Union Representatives

LABOR Day or May Day is celebrated every May, 1st. Workers around the world on that date commemorate the day with various activities including holding rallies demanding proper rights. On this year's commemoration of World Labor Day, representatives of trade unions from the Confederation of Indonesian Trade Unions (KSPI) and the Confederation of All Indonesian Trade Unions (KSPSI), visited the Constitutional Court (MK) on Saturday (1/5/2021). On that occasion, KSPSI President Andi Gani Nena Wea and KSPI President Said Iqbal and their entourage were received directly by the Registrar of the Constitutional Court Muhidin, accompanied by the Young Registrar I Triyono Edy Budhiarto, Head of the Legal and Administrative Bureau of the Registrar Tatang Garjito, Head of the Public Relations and Protocol Bureau Heru Setiawan, and Head of Public Relations and Domestic Cooperation Fajar Laksono Soeroso.

Said Iqbal said that the purpose of going to the Constitutional Court was related to the application for a review of the Job Creation Act. "We have high expectation for the Constitutional Court to determine the truth of the process of reviewing the Job Creation Law which is currently rolling," Said said when reading the declaration of the workers' attitude in the ground floor hall of the Constitutional Court Building.

Responding to this statement of attitude from the workers, the Registrar of the Constitutional Court Muhidin welcomed the efforts to convey this aspiration. However Constitutional Court can't comment further on the case for the review of the Job Creation Law which is currently being handled by the Court. Muhidin informed that the case for reviewing the Job Creation Law submitted by KSPI and KSPSI is currently entering the plenary stage of examination.

"One of the most important things is that the case related to the Job Creation law has already been rolled out and is under examination by the panel of judges. Regarding the judicial review of the laws proposed by KSPI and KSPSI, they have entered the plenary session stage," Muhidin replied. (Bayu Wicaksono/Nur R.)

Constitutional Court Held 2nd Dose Covid-19 Vaccine for Employees' Families

THE Constitutional Court (MK) held a mass vaccination to anticipate the spread of the 2nd Dose Covid-19 on Monday (3/5/2021) in the Hall of the Constitutional Court Building. A total of 650 family members of employees participated in the scheduled activities from 08.00 – 12.00 WIB. This vaccination activity to anticipate the spread of Covid-19 was carried out with the support of the Ministry of Health, that monitors the implementation of vaccinations.

For information, the government has established a Covid-19 vaccination program through the Decree of the Minister of Health Number H.K.01.07/ Menkes/9860/2020 concerning Determination of Vaccine Types for the Implementation of Corona Virus Disease 2019 (Covid-19) Vaccination. The government has started the Covid-19 vaccination program in Indonesia since mid-January 2021.

Before getting the vaccine, participants had to go through four stages, namely registration and data verification, screening in the form of anamnesis and a simple physical examination by checking blood pressure and body temperature. Next, the vaccine participant will receive an injection administered by the vaccinator. Then at the final stage, vaccine participants need to record and wait for 30 minutes to anticipate if there is a Post-Immunization Adverse Event (AEFI). After going through all these stages, vaccine participants will be given a vaccination card and education on Covid-19 prevention. (Sri Pujianti/Lulu Anjarsari P)

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