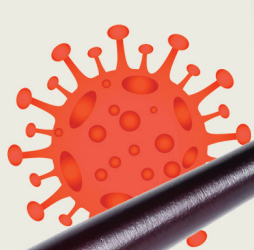
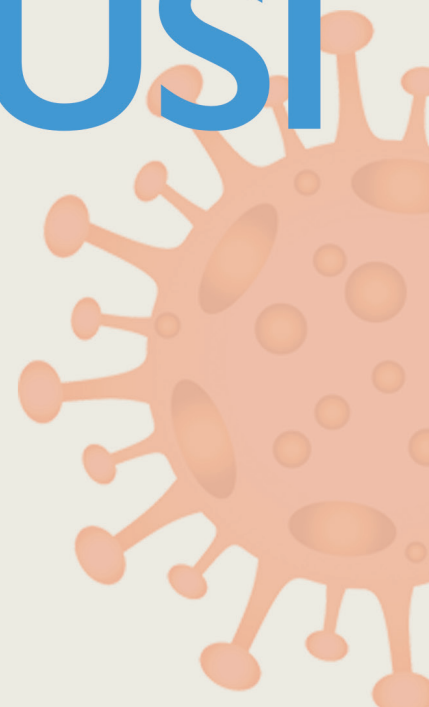


E-MAGAZINE **KONSTITUSI**

**COVID-19 LAW
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Number 177 ■ November 2021

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Editor's Foreword

Some information is summarized in the November 2021 Edition of Konstitusi Magazine. One of the most interesting information is the decision of the Constitutional Court (MK) on the review of Law no. 2/2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Diseases Pandemic (Covid-19 Law).

By the Decision Number 37/PUU-XVIII/2020, the Constitutional Court in its legal considerations decided that the Covid-19 Law is only valid as long as the Covid-19 pandemic status has not been announced as ending by the President and at the latest until the end of the 2nd year since the Covid-19 Law was enacted. The Court in this decision must affirm the time limit for the application of a quo law firmly and definitely. Thus, all parties have certainty over all the provisions in this law which are only in the context of tackling and anticipating the impact of the Covid-19 pandemic so that the enactment of this law must be linked with the status of an emergency that occurred due to the pandemic.

As it is known, the application for judicial review of the Covid-19 Law was submitted by the Indonesian Community Participation, Initiative and Partnership Strengthening Foundation (YAPPIKA) and individual applicants, such as Desiana Samosir, Muhammad Maulana, and Syamsuddin Alimsyah. The Petitioners formally and materially examined the Covid-19 Law that was deemed to have violated the constitutional rights of the Petitioners.

Hence, we made Constitutional Court's Decision Number 37/PUU-XVIII/2020 as the "Headline News" of the November 2021 Edition of Konstitusi Magazine. In addition, in the "Hearing Room" we discussed Decision Number 64/PUU-XVIII/2020 regarding the material review of the Minerba (Directorate General of Mineral and Coal) Law. The "Hi MK" rubric this time, it discusses the cooperation between the Republic of Indonesia and the Netherlands.

The readers are also presented with a variety of interesting information nicely in fixed rubrics. Both "Editorial", "Hearing Room", "Action", "Window", "Opinion", "Case Briefing", and others.

This is a brief introduction to the editor. Finally, we wish a happy reading to the loyal readers of Konstitusi Magazine. Long Live Constitution!



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HEADLINE NEWS

THE CONSTITUTIONAL COURT CUT “IMMUNITY RIGHTS” OF KSSK (FINANCIAL SYSTEM STABILITY COMMITTEE) MEMBERS IN THE COVID-19 LAW

Law Number 2 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic and/or in Facing Threats Endangering the National Economy and/or Financial Stability (Covid-19 Handling Law) has drawn controversy. It is because Article 27 paragraph (1), paragraph (2), and paragraph (3) of the Covid-19 Handling Law state that the Government/Institution of Members of the Financial Stability System Committee (KSSK) can't be prosecuted civilly or criminally.

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ACTION



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LIMITING THE ENTIRE VALIDATION OF THE COVID LAW

The highlight in the Constitutional Court Decision Number 37/PUU-XVIII/2019 is related to the objection to Article 29 of the Attachment to Law Number 2 of 2020 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2020 concerning State Financial Policy and System Stability Finance for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or In Facing Threats That Endanger the National Economy and/or Financial System Stability Becomes Law (Covid Law).

The Constitutional Court stated that Article 29 was meant to be conditionally unconstitutional and 'changed' the meaning of the provisions of Article 29 which originally read, "This Government Regulation in Lieu of Law shall come into force on the date of promulgation" to "This Government Regulation in Lieu of Law shall come into force on the date of promulgation and must be stated no longer valid since the President officially announced that the status of the Covid-19 pandemic has ended in Indonesia and that status must be declared no later than the end of the 2nd year. The Covid-19 pandemic has not ended, before entering the 3rd year, a quo Law can still be enforced, but the allocation of the budget and the determination of the budget deficit limit for handling the Covid-19 pandemic must obtain the approval of the House of Representatives and the consideration of the Regional Representative Council.

With a simple understanding of the order, the Constitutional Court is affirming that it is necessary to proclaim the beginning and end of an 'emergency' condition that necessitates the enactment of law (law) to resolve the emergency condition immediately, the Covid-19 pandemic. The main message is that the Covid Law as an emergency law has been established. However, there is a time limit for its validity which is until, as the President's announcement, that the status of the Covid-19 pandemic has ended. Furthermore, the Constitutional Court gave a limitation that the Presidential announcement must be proclaimed no later than the end of the 2nd year since the substitution was enacted. This means that if the substitution takes effect in 2020, then at the end of 2022, the President likes it or not, he has to announce whether the status of the Covid-19 pandemic ends or continues. The important thing is that there is a proclamation, whether it will be ended or continued.

The Constitutional Court's constitutional mandate, if the status of the Covid-19 pandemic announced has not

ended or will continue, the Covid Law may still be enforced. Yet, regarding budget allocations and determining the budget deficit limit for handling Covid-19, the President is no longer allowed to make his own decisions, but must be approved by the House of Representatives and involve the Regional Representative Council's considerations.

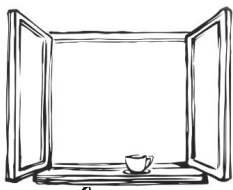
The decision seems to be confirming the theory that when the country is in a normal state, ordinary constitutional law applies. It means that the system of legal norms applies based on the Constitution and statutory instruments as the basis for state administration. Meanwhile, in an "emergency condition", emergency constitutional law applies. "Emergency conditions" uncertainty arises, while uncertainty must be quickly "tamed". Therefore, the need arises to normalize through the creation of legal regulations designed to address "emergency conditions". The substitution (which was later determined to be the Covid Law) was generated as a response to anticipate emergencies.

However, the problem is that the Covid-19 Law does not contain a time limit for its validity. Thus, it is open to being enforced at any time, even if the emergency is over. This is also a problem. The absence of a strict time limit in the Covid Law has a significant impact on the time limit for the implementation of an emergency which is the main substance because the characteristics of the Covid Law originating from the substitution are intended to overcome emergencies due to the Covid-19 pandemic.

When the status of the Covid-19 pandemic has been declared over, that is also the deadline for the validity of the Covid-19 Act. Through this decision, the Constitutional Court seemed to want to emphasize that one very important thing to be guided by, namely the substantive matter in "emergency conditions" lies at the point of 'what must be done', guarded so that it does not shift to the point of 'what can be done legally' (Goldsmith, 2009). In other words, it should not happen. The "emergency condition" that should be temporary, is then stretched to such lengths for reasons of strengthening power. Don't let the practice of "exception" in an "emergency condition" no longer be an "exception" to the rule, but has resembled the rule itself (Sherwood, 2017).

Once again, when the Covid-19 pandemic is overcome, the emergency status is removed and the country returned to normal conditions. So, at the same time, all extraordinary steps, such as enacting the Covid-19 Law, must also be ended and cannot be continued. Long Live Constitution!





Window

PUPUTAN

I D.G.Palguna

"I learned that courage was not the absence of fear, but the triumph over it. The brave man is not he who does not feel afraid, but he who conquers that fear."

Nelson Mandela, former President of South Africa, anti-apartheid fighter.



I quote Nelson Mandela's statement because it reminds me of a brave figure that Bali once had. She is I Gusti Ngurah Made Agung who was awarded the title of National Hero by President Joko Widodo on November 5, 2015. Maya Angelou, an American female poet, describes courage as the most important virtue that must exist in a person. "Because without the virtue called courage, you will not be able to apply other virtues consistently," continued this woman as an activist for civil rights. I Gusti Ngurah Made Agung is one of the right figures to represent the virtues described by Angelou.

Who is he? The figure who is also known as I Gusti Gde Ngurah Denpasar is the king who decided to *puputan*, fought to the last drop of blood to defend his honor, when his country (the Kingdom of Badung) was given an ultimatum by the Dutch in an incident later recorded and known as Puputan Badung (September 20, 1906). He was not at all daunted by the strength of the numbers and the sophistication of the equipment of the Dutch army led by Major General Marinus Bernardus Rost van Tonningen. In that heroic event, the king who was

only 30 years old died—that's why this king who was also a writer was called by his people with the honorific title *Cokorda Mantuk ring Rana*, he (the king) who died on the battlefield.

Until now, it is not clear what the actual event that caused the tragedy that appeared to be a combination of war and mass suicide was. What is truly only the initial event, namely the stranding of a ship named Sri Kumala in the waters of Sanur, the territory of the Kingdom of Badung, on May 27, 1904. The ship had a registration number and was flagged with the Netherlands. Thus, the Netherlands was both the country of registration and the country of the flag of the ship. Hence, two versions of the story developed. The first version is the version of the ship's owner, Kwee Tek Tjiang, a Banjarmasin resident of Chinese descent. The owner of the ship alleged that there had been the theft of some Chinese *kepeng* coins and silver coins by residents in the Sanur area. This version is believed by the Dutch, who then assumed that the looting of the ship that ran aground had taken place so that, according to the Dutch, there had been the implementation of the *tawan* coral rights and that meant a violation of the "Kuta Agreement" (which was also signed by the King of Badung). It had abolished the rights of coral captives. For the record, *Tawan Karang's* right is a royal right to confiscate ships (along with all their cargo) that are stranded in its territory. The second version is the retainer of Sanur. According to this version, when he received a report that the ship had run aground, the Sanur courtier immediately ordered several residents of Sanur to help the ship owner unload his cargo to the beach for safety reasons. Punggawa Sanur also ordered the residents of Sanur to guard the ship that ran aground at night. Punggawa Sanur said that at that time, the ship owner did not

mention anything about money. After all, if there was money, it would be the money that would be saved first, considering the other cargoes in the form of sugar and shrimp paste.

The Dutch "chose" to believe the shipowner's version and therefore demanded the King of Badung to pay compensation of F1.7500 to the shipowner. The King of Badung firmly rejected the Dutch accusations and demands. On the other hand, the King of Badung offered the ship owner, if he had strong evidence for his accusation, that he formally file a complaint with the royal court, the Kerta Council, because the incident occurred in the territory of the Badung Kingdom. In fact, the King of Badung invited the ship owner to be accompanied by a "legal advisor" from the Dutch if it was deemed necessary. The solution, which was elegant and based on law, was not only rejected, but the Dutch responded with an ultimatum. This is what causes the King of Badung, as a sovereign kingdom, to feel that his dignity has been trampled on. It is why the king ordered the *puputan*: an all-out fight in defense of honor and dignity. So, what had occurred was something like the following quote—a quote that I always want to rewrite because, apart from being touching, the quote is direct writing of a former Dutch soldier who was both an eyewitness and a perpetrator in the Puputan Badung incident. His name is van Weede.

This is an excerpt from van Weede's notes (which I cite from the book by Idea Anak Agung Gde Agung, Bali in the 19th Century, 1991, and I have quoted in my collection of writings, Nationalism: Identity and Anxiety, 2008):

"A very moving scene occurred on the morning of September 20 in front of the palace square in Denpasar when a group of people who had already been selected gathered,

those who would soon be killed by the presence of our troops. The king and the princes with their followers, in their glittering clothes and with their daggers drawn.... they were all dressed in red or black and their hair was neatly combed with perfumed oil. The women wore the finest clothes and jewels they had; most of them let their hair down, and all wore white sashes. The king had burned down his palace and everything that could possibly be destroyed had been destroyed.

When it was reported at nine o'clock that the enemy had entered Denpasar from the North, the tragic procession of about 250 men began; each man and woman carried a keris or long spear, as well as children who had enough strength to carry them, while the babies were carried in their arms. Furthermore, they marched north along a highway lined with tall trees, meeting their end.

The prince walked in the lead, carried on the shoulders of his followers according to the custom, and they had all quietly reached the crossroads near Belaluan's innards. They moved a little further, until they came to a bend, suddenly at the end of the Tain's interior a black line of our infantry appeared before them. It was the 11th battalion; they were slowly advancing from the North. One part of the battalion, with captain Schutstal van Woudenberg among them, followed the main road. When the infantry witnessed the glittering procession, the Balinese were within about 300 meters. Between these two opposing groups lied a small field.

Suddenly an order to stop was given and captain Schutstal asked the interpreter to order the newly arrived group to stop, either by the body or verbally. However, the order was in vain, and during repeated orders, the Balinese stepped forward steadily.

The captain and the translators incessantly signaled to stop, but all in vain. They soon realized that they were dealing with people who had come to meet their death. They let the Balinese go a hundred steps, eighty steps, sixty steps, and now they doubled their pace with spears raised and kris drawn, while the prince remained in front.

From the point of view of the safety of our people, any further delay could not be justified, so the first salvo was awarded. A number of those who were killed remained at the scene. One of the first to die was the King himself; then this is the moment where the most horrific

scene one can imagine takes place.

From the point of view of the safety of our people, any further delay could not be justified. Thus, the first salvo was awarded. A number of those who were killed remained at the scene. One of the first to die was the King; this is the moment where the most horrific scene one can imagine takes place. While the survivors continued their assault, and defensive fire on our side was still needed, someone who appeared to be only lightly injured dealt the mortal blow to their already mortally wounded comrade. Women gave up their chests to be killed or suffered a



mortal blow between the shoulders; and when those who carried out the act were knocked down by our gunfire, other men and women continued the bloody work. Suicide on a large scale was also taking place at that time, and they all seemed eager for his death: some women, that direction, and when it turned out that there was no shot, they killed themselves. Particular attention should be paid to an old man who was so busy jumping among the strewn corpses, slashing his dagger left and right, until he was shot down. Following later, an old woman took part and did the same thing, although, in the end, it didn't help much either. That is, there is always someone who continues the task of picking up death.

Meanwhile, one had to stay alert, for the second group of Balinese were approaching, led by a twelve years old boy, the prince's half-brother, who was holding his spear with all his might. When ordered to stop by the captain (Schutstal) and the interpreter, for a moment the boy looked like he

was about to obey the order, but when a follower pushed him forward, an onslaught ensued, and in gunfire being directed at his followers. the young prince was finally pierced by a bullet.

Thus, except for only a few who retreated into the houses as well as a few who were injured and later recovered, the great heap of valiant heroes met their sobering demise. A large pile of corpses lay in the center of the field where the battle had taken place; the prince's wives dragged their bodies towards the prince's corpse and covered it. The prince's body was buried by the corpses, and from the pile of corpses pointed spears poked here and there.

However, one may get used to seeing corpses scattered in battle, one may never be able to bear to witness what happened in Denpasar, because in a poepeatan incident, where not only soldiers but also women and children died, it didn't make sense. in the minds of people of any violent disposition."

Those who only see it from the perspective of war strategy may think that *Puputan Badung* is not a show of heroism, but an absurd drama of tragedy. Why not? five battalions of troops with full and modern weapons, three infantry battalions and two artillery battalions, and led by a high-ranking officer with the rank of major general, invaded a small kingdom that only had the capital of the people's army with makeshift weapons in the form of kris and spears. In such circumstances, even a miracle was difficult to "undo" the victory of the Dutch army. However, war is not only about the goal of achieving victory, but—as illustrated in the quote above—is also a matter of defending something that is believed to be the truth. The following quote (which I took from a translation of the book by Miguel Covarrubias, *The Island of Bali. An Amazing Finding*, 2013) contains this story: the day after the *Puputan Badung* incident, a young courtier came to the commander of the Dutch troops. This young retainer said that the day before he was traveling. Thus, he couldn't join the bellows. He felt that he had lost the opportunity to be killed, as happened to the soldiers and other *Badung* people. So, he begged the commander of the Dutch troops to shoot him. When the request was rejected, the young courtier pulled out his kris and stabbed himself before being prevented by the commander of the Dutch troops. ■

THE CONSTITUTIONAL COURT CUT “IMMUNITY RIGHTS” OF KSSK (FINANCIAL SYSTEM STABILITY COMMITTEE) MEMBERS IN THE COVID-19 LAW

Law Number 2 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic and/or in Facing Threats Endangering the National Economy and/or Financial Stability (Covid-19 Handling Law) has drawn controversy. It is because Article 27 paragraph (1), paragraph (2), and paragraph (3) of the Covid-19 Handling Law state that the Government/Institution of Members of the Financial Stability System Committee (KSSK) can't be prosecuted civilly or criminally.



It occurs because of one of the arguments outlined by the Indonesian Community Participation, Initiative and Partnership Strengthening Foundation (YAPPIKA) and three researchers in Case Number 37/PUU-XVIII/2020. In this application, it was submitted on June 9, 2020, the Petitioners examined the entire Covid-19 Handling Act formally and materially.

In retrospect, the Court’s Registrar’s Office recorded seven cases of materially testing the Covid-19 Handling Law during 2020. The seven cases are Case Number 37/PUUXVIII/2020; 42/PUU-XVIII/2020; 43/PUU-XVIII/2020; 45/PUUXVIII/ 2020; 47/PUU-XVIII/2020; 49/PUU-XVIII/2020 and 75/PUU-XVIII/2020.

However, of the seven cases above, only Case Number 37/PUUXVIII/2020 was partially granted by the Constitutional Court of Justice. In the Decision that was read out on October 28, 2021, which also coincided with Youth Pledge Day, the Court partially granted the Petitioner’s request regarding the validity period of the Covid-19 Handling Act as regulated in Article 29 of the Attachment to the Covid-19 Handling Act. Not only that, the Court slashed the “right of immunity” for Governments/State Institutions that are included in the Members of the Financial Stability System Committee (KSSK) as stated in Article 27 paragraph (1), paragraph (2), and paragraph (3) Attachment to the Law on Handling Covid-19. However, the Court considers the Petitioner’s petition for a formal review to be groundless according to law. For this reason, the Court rejected the Petitioner’s request regarding the formal examination.

APPLICATION FOR JUDICIAL REVIEW OF THE COVID-19 LAW

NO	CASE NUMBER	PETITIONER	JUDICIAL REVIEW		VERDICT
			FORMAL	MATERIAL	
1.	37/PUU-XVIII/2020	Indonesian Community Participation, Initiative and Partnership Strengthening Foundation (YAPPIKA), Desiana Samosir (Petitioner II); Muhammad Maulana (Applicant III); and Syamsuddin Alimsyah (Petitioner IV)	All the Covid-19 Laws and the attachments	All the Covid-19 Laws and their attachments	Granted Partly
2	42/PUU-XVIII/2020	50 individual petitioners	-	All the Covid-19 Laws and their attachments	Unacceptable
3	43/PUU-XVIII/2020	10 individual petitioners	All the Covid-19 Laws and their attachments	Article 2 paragraph (1) letter a number 1, number 2, and number 3 as well as Article 27 paragraph (1), paragraph (2), and paragraph (3) of the Covid-19 Handling Law	Unacceptable
4	45/PUU-XVIII/2020	Sururudin	-	Article 2, Article 12 paragraph (2), Article 27, as well as Article 28 point 3 and number 10 Attachment to the Covid-19 Handling Act	Unacceptable

5	47/PUU-XVIII/2020	27 individual petitioners	-	Article 28 paragraph (8) of the Covid-19 Law	Refused for the Whole
6	49/PUU-XVIII/2020	Damai Hari Lubis-	-	All the Covid-19 Laws and their attachments	Unacceptable
7		Al-Irsyad Youth Executive Board; Catur Bhakti Legal Aid Foundation; CAMMI; Islamic women; and 42 individual Applicants		Article 2 paragraph (1) letter a number 1, letter a number 2, and letter a number 3, Article 6 paragraph (12), Article 27 and Article 28 Attachment to the Covid-19 Handling Act	Unacceptable

First Hearing

In the first hearing which was held on June 18, 2020, the Petitioners postulated Article 1 paragraph (3); Article 2 paragraph (1) letter a number 1, number 2, number 3; Article 3 paragraph (2); Article 4 paragraph (1) letter b; Article 4 paragraph (2), Article 6; Article 7; Article 9; Article 10; Article 27 paragraph (1), paragraph (2), paragraph (3); and Article 29 of the Job Creation Law contradicts the 1945 Constitution.

Violla Reininda as the attorney for the Petitioners stated that the validity of the norms of the articles requested for review gave the Government the authority to use the budget sourced from the education endowment fund. As a result, the Petitioner finds it difficult to participate in the humanitarian activities he has created to improve people's education.

Misuse of State Money

In addition, the application of these norms, which have a very broad scope of regulation, has

implications for the danger of misuse of state finances. This breadth can be used for matters relating to state financial stability that does



Judicial review Session on Case Examination of the Law on State Finance Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic, Thursday (18/6/2020) in the Plenary Session Room of the Constitutional Court Building. Photo: Public Relations/Ifa.

not contain an element of urgency. The Petitioners note that the Title and Article 1 paragraph (3) of the Covid-19 Handling Act is contrary to the principles of the rule of law and the prerequisites of compelling urgency.

If we look at the considerations for the formation of this law, continued Viola, there is a contradiction in the scope of the regulation. The desired thing is the government's extraordinary efforts in dealing with the Covid-19 pandemic. However, the title and scope of the article are intended to address the wider issue of the economic crisis and financial stability than the handling of Covid-19. "So, it is necessary to limit the scope of this norm to only handling and resolving the Covid-19 pandemic problem," she explained.

In addition, the Petitioners also consider that Article 2 paragraph (1) letter a number 1, number 2, number 3 of Law 2/2020 is contrary to the principles of the rule of law, people's sovereignty, the oversight and budget functions of the DPR as well as the management of state finances. Even though in an emergency period, the President as the holder of the power to administer the state so as not to deviate from the constitution, must still be balanced by the legislative power to carry out supervision in evaluating the size of the deficit and the state's financial capacity in each fiscal year.

Contrary to the Autonomy Principle

The Petitioners also view that Article 3 paragraph (2) of Law 2/2020 is contrary to the principle of regional autonomy as regulated in Article 18 Paragraph (2) and Paragraph (5) of the 1945 Law. Regional governments are not given the freedom and independence to



Viola Reininda and Rahmah Mutiara as attorneys for the case petitioner Number 37/PUU-XVIII/2020 to review the Law on the handling of Covid-19, Wednesday (8/7) in the Court's Meeting Room. Photo: Public Relations/lfa.

determine the use of the Regional Revenue and Expenditure Budget (APBD). Whereas, the preparation and management of the APBD is an important aspect in the implementation of regional autonomy.

Furthermore, Article 29 of the Covid-19 Law is also considered by the Petitioners not to provide a period of validity even though it was issued in the context of solving public health emergency problems. Thus, to create fair legal certainty, it is necessary to limit the validity period until the public health emergency status due to Covid-19 is revoked by the president.

Protecting The People

In response to the request, Minister of Finance Sri Mulyani Indrawati, who was present virtually on behalf of the President, gave a statement on August 8, 2020. In her statement, Sri Mulyani stated that the issuance of the Covid-19 Law was intended to protect people's lives which are very

seriously threatened by the spread and spread of Covid-19, both from the aspect of life safety due to threats to health, safety and social life and the economy of the community.

"All policies in Law no. 2 of 2020, especially the policies in state finances that have been implemented at this time, have been based on calculations and using factual data on the impact of the Covid-19 threat to society and the country due to Indonesia's exposure to Covid-19. Efforts are needed to save the community which must be carried out very quickly by preparing assistance for health costs and social assistance support as well as supporting the economy to fulfill life and also assistance for the business world, especially for small and medium enterprises," explained Sri Mulyani to the Panel of Judges led by Chief Justice of the Constitutional Court Anwar Usman. Therefore, the Government thinks that the Covid-19 Handling Act does not at all harm the constitutional rights of the Petitioners.



Minister of Finance Sri Mulyani Indrawati was present virtually representing the President when delivering her statement at the trial of the Covid-19 Handling Act Testing case, Thursday (8/10/2020) in the Plenary Session Room of the Constitutional Court Building. Photo: Public Relations/Gani.

“Regarding the approval of the DPR as the budgeting and controlling function, it has been fulfilled, although the policy in the Attachment to the Covid-19 Handling Act was initially set by the President as the executor of Article 22 of the 1945 Constitution, with the stipulation of Perpu No. 1/2020 becomes the Covid-19 Law through discussion as it is in the formation of law. Thus, the policy in the Covid-19 Handling Law has received approval from the DPR. It shows that the House of Representatives has similarities with the Government regarding the urgency of forcing and the need for

About seven applications submitted by the Petitioners in the judicial review of the Covid-19 Law, almost all of the articles in the Attachment to the Covid-19 Law were requested to be tested. The government provides information based on the grouping of problems put forward by the Petitioners, namely: 1) The need for approval from the House of Representative as a budgeting and controlling function; 2) Formal testing; 3) Scope and period of validity; 4) State financial policies covering deficit widening, national economic recovery, taxation, customs, issuance of state debt securities and/or state Islamic securities, pending mandatory adjustments, use of educational endowments, regional financial policies; 5) Implementation of state financial policies; 6) The policy of the financial stability system covers the authority of LPS and OJK; 7) Legal protection, and 8) Harmonization of the Covid-19 Handling Act with other affected laws.



policies and actions that must be taken immediately in the face of the Covid-19 pandemic. Under the provisions of Article 22 Paragraph (2) of the 1945 Constitution, the Perpu must obtain the approval of the DPR after it is promulgated,” explained Sri Mulyani.

Should not be Used Arbitrarily

Sri Mulyani responded to the Government’s authority to widen the budget deficit above 3%. According to the Government, this authority is not intended to be used arbitrarily. Instead, it is intended to provide the Government’s ability to handle the health crisis caused by Covid-19 and the domino effect it causes. The ability and flexibility to handle problems in the health, social and economic fields will be conducted in a measured and prudent manner and remain based on the principles of good governance, accountability, and transparency.

Sri Mulyani explained, the 2020 State Budget deficit of 6.34% was intended to fund various programs to deal with Covid-19 and the socio-economic and financial impacts. Yet, the biggest portion is social protection. This is a response to the impact of the economic slowdown and Large-Scale Social Restrictions (PSBB) that has significantly hit the economic capacity of our society, followed by the provision of stimulus for MSMEs and business incentives as well as budgets for sectoral and local government assistance.


“Although the budget for the health program is not the largest, its adequacy has been calculated for handling expenditures and health, including providing incentives for health workers, purchasing medical devices such as PPE, rapid tests, reagents, construction of hospitals, health facilities, and infrastructure,

Health Cluster Realization

Rp135.53 trillion**

Used for:

- Diagnostics (Testing and Tracing)
- Therapeutic (Incentives and Benefits for Healthcare Workers)
- Vaccination (Procurement and Implementation)



Realization of Social Protection Cluster

Rp135.53 trillion**

It is used for:

- Family Hope Program (PKH)
- Village direct cash assistance (BLT) Food Card
- Wage Subsidy Assistance (BSU)
- Pre-Employment Card

** source: ekon.go.id

Health Care and Social Security Agency contribution subsidies, medical personnel incentives, death benefits for health workers, and tax exemptions, as well as import duties for medical devices,” said Sri Mulyani.

Legal Foundation

Meanwhile, the House of Representatives said that the ratification of Perpu No. 1 of 2020 into Law No. 2 of 2020 (Covid-19 Handling Law) is expected to provide a legal foundation for the Government for banking and financial authorities to take extraordinary steps, especially for the policy of setting limits on the budget deficit and shifting the budget deficit. financial unit in a pandemic situation. This statement was conveyed by Member of Commission XI of the DPR, Mukhamad Misbakhun, representing the DPR in the session which was held on August 15, 2020.

Furthermore, Misbakhun said, Government Regulation in Lieu of Law No. 1 of 2020 issued by the Government on March 31, 2020

was due to an urgent and urgent situation to resolve legal issues and save the country from the crisis. therefore, he continued, it was necessary to give the Government the authority to be able to reallocate the budget, which had been budgeted in the 2020 State Revenue and Expenditure Budget (APBN).

Misbakhun revealed that the urgency of the establishment of a Government Regulation in Lieu of Law (Perpu) is a subjective consideration from the President because the party has the right to form the regulation. However, this consideration needs to be assessed objectively by the people through the House of Representatives as the people’s representative. On this basis, the House of Representatives has assessed and seen an urgent element. Thus, it is necessary to approve the Government Regulation in Lieu of Law to become a law so that the Government can use it as a strong legal basis in dealing with the pandemic situation.



Member of the House of Representatives Commission XI, Mukhamad Misbakhun, represented the House of Representatives in a hearing the House of Representatives' statement on Thursday (15/10/2020). Photo: Public Relations

Conducted Formally

Regarding the formal testing of the Covid-19 Law, Misbakhun explained that based on the authority of the Constitutional Court as regulated in Article 24C paragraph (1) of the 1945 Constitution, the touchstone used by the Court to conduct this test must be based on Article 20 paragraph (2) of the 1945 Constitution. It states that every law draft discussed by the House of Representatives and the President to obtain mutual approval in these provisions is the application of the principle of legality to the formation of a law. If the formation of a law has mutual consent and there is no failure to obtain the mutual consent, the law becomes formally valid.

“So, according to the constitutional basis, the Constitutional Court’s authority in judicial review laws against the 1945 Constitution can only be stated as noting the procedure if it is contrary to Article 20 paragraph (2) of the 1945 Constitution,” explained Misbakhun virtually in the session

chaired by the Chief Justice of the Constitutional Court Anwar Usman.

Unauthorized

Regarding constitutional procedures that have been set aside in the absence of a Regional Representative Council in the discussion process to determine

the Government Regulation in Lieu of Law (Perpu), the House of Representatives believes that this Government Regulation in Lieu of Law essentially regulates state financial policies which, if implemented, have an impact on the balance of central and regional finances. Misbakhun continued that this is a consequence of regional finances which are part of state finances, so it is clear that the Government Regulation in Lieu of Law does not regulate regional autonomy, the formation and expansion of regions, and the management of other natural resources. Thus, the ratification of this Government Regulation in Lieu of Law is not obliged to include the DPD in the stipulation of the Government Regulation in Lieu of Law into law.

“Based on Article 71 letter d and Article 249 of Law Number 17 of 2014 concerning the People’s Consultative Assembly, the People’s Representative Council, the Regional Representatives Council, and the Regional People’s Representative Council (UU MD3), the bill for



The virtual session of the House of Representatives. Photo: dpr.go.id

determining the Government Regulation in Lieu of Law (Perpu) to become a law is not a proposal of Regional Representative Council. Thus, the Regional Representative Council is not authorized to discuss it,” explained Misbakhun.

Virtual Meeting

Furthermore, concerning the argument of the Petitioner in case Number 37, 43, 75/PUU-XVIII/2020 regarding virtual meetings due to the Covid-19 pandemic, the House of Representatives has made the Rules of Conduct in 2020 which will come into force on April 2, 2020. In this regulation, all types of meetings are held by the House of Representatives and attended by members except in certain circumstances, such as in a state of danger, conflict, disaster, and other circumstances, the meeting is held virtually using technology. On this basis, the DPR held a Level I Discussion Meeting on May 4, 2020, using information technology or through a virtual meeting. “Similarly with the Level II Discussion Meeting on May 12, 2020, which was carried out in combination, both physically present at the House of Representatives building and using information technology or virtually,” said Misbakhun.

Furthermore, concerning the argument that the signature of the attendance list for members of the House of Representatives can't be carried out for certain reasons, Misbakhun continued his statement that this can still be conducted through a letter from the Secretary-General of the House of Representatives. Therefore, being absent from the Plenary Meeting of Level II Discussions which approved the Perpu to become law at the Plenary Meeting on May 12, 2020, which was held virtual, has complied with the provisions of the law.

“so, the Petitioners’ argument is only an assumption because it is clear that the discussion and ratification technologically already has a legal basis through the 2020 House of Representative Regulations, the members who were present physically or virtually,” added Misbakhun.

Economic Stability

Meanwhile, regarding the issuance of this Government Regulation in Lieu of Law (Perpu), Misbakhun stated that this is an authority issued by the Government which is fundamental and has an impact on the long-term economy. Hence, it is necessary to provide a legal basis in the form of a law by the House of Representatives in the authority of its budget rights. Concerning this Perpu, Misbakhun explained that the focus is on realigning the budget for the next few years that will have an impact on the State Budget. On this basis, the

House of Representatives stipulates this regulation into law in a short time because of an urgent need that has an impact on the stability of the national economy.

“With the pandemic situation, it is not only health is needed, but also the country’s long-term economy which also requires quick steps to overcome the state emergency. With this legitimacy, the Government can carry out economic recovery due to the pandemic along with accelerating the handling of this pandemic,” said Misbakhun.

Deficit Determination

In relation to the Petitioners’ argument stating that the period for the preparation of the State Expenditure Budget (APBN) is up to 2022 and 2023, Misbakhun stated that in the Attachment to the Covid-19 Handling Law, there are still restrictions. In other words, the authority to determine a deficit is only valid until the 2022 Fiscal



The Panel of Constitutional Justices in a hearing heard the testimony of the House of Representatives on Thursday (10/15/2020). Photo: Public Relations



The atmosphere of the verdict reading session was held on Thursday (10/28/2021). Photo: Public Relations

Year. If it is more than that time and when recovery can run faster, the amount of the deficit will be carried out in stages. This can also be seen in other countries in the world, such as the United States, Singapore, and Malaysia, which even issued fiscal stimulus of more than 10%. While Indonesia is widening this deficit, it remains within the corridor of the number of loans that can be made at a maximum of 60% of GDP following the State Finance Law. “The amount of the 2021 and 2022 State Expenditure Budget in the attachment to Law 2/2020 is not regulated because the 2021 and 2022 State Expenditure Budget Laws have not been drafted and promulgated when this norm was enacted. However, in the preparation of this State Expenditure Budget, the provisions for the preparation of the State Expenditure Budget will still be applied as it should be,” stated Misbakhun.

Contrary to the Due Process of Law Principle

The Court finally granted part

of the Petitioner’s request, especially regarding the constitutionality of Article 29 of the Attachment to the Covid-19 Law and Article 27 paragraph (1), paragraph (2), and paragraph (3) of the Attachment to the Covid-19 Handling Law. In the legal considerations read out by Constitutional Justice Saldi Isra, the Court believed regarding the constitutionality of the phrase “not a loss to the state” in Article 27 paragraph (1) of the Attachment to the Covid-19 Law. The Court considers that the norm is related to state finances. Thus, it can’t be separated from Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (UU Tipikor). The Anti-Corruption Law contains provisions on essential elements that must be met in proving the occurrence of a criminal act of corruption, namely the fulfillment of the element “harming state finances or the state economy”.

Saldi argued that in the perspective of Article 27 paragraph

(1) of the attachment to the Covid-19 Law, if carefully observed, no elements of state losses were found, both in terms of the costs used for handling the Covid-19 pandemic, which was issued in good faith and following the laws and regulations by the government and/or member institutions of the Financial System Stability Committee (KSSK). On a contrary basis, he continued, even though the use of funds from state finances to handle the Covid-19 pandemic was carried out not in good faith and not following the laws and regulations, criminal charges could not be made against the perpetrators who abused their authority. “Because this has been locked with the phrase ‘not a loss to the state’ as stated in the norm of Article 27 paragraph (1) Attachment to the Covid-19 Law,” said Saldi.

Granting Immunity Rights

The Court considered the Petitioner’s argument that questioned the provisions that opened up the possibility that he could be prosecuted, both criminally and civilly in Article 27 paragraph (2) of the Attachment to the Covid-19 Law on condition that the essential element, namely the existence of “state losses”. It is caused by the existence of the use of state finances based on bad faith and not following the laws and regulations. The Court believes that this situation has legal consequences for the provisions of Article 27 paragraph (2) of the Covid-19 Handling Law which can’t be applied to anyone who abuses authority related to state finances.

In addition, the Court views that the provisions of Article 27 Attachment to the Covid-19 Law have the potential to provide immunity rights which in turn have the potential to cause immunity in law enforcement.

According to the Court, based on the construction of Article 27 paragraph (1) Attachment to the Covid-19 Handling Law which specifically regulates all costs that have been incurred by the Government and/or KSSK member institutions in the context of implementing crisis management policies due to the Covid-19 pandemic, this is part of the economic costs. To save the economy and “not a loss to the state”. Thus, the main thing that becomes a benchmark is the right of immunity which is reserved for policy-making officials in terms of overcoming the economic crisis due to the Covid-19 pandemic.

Saldi explained that the Court observed the word “cost” and the phrase “not a loss to the state” in Article 27 paragraph (1) of the Attachment to the Covid-19 Law

which was not accompanied by good faith and following the laws and regulations, it caused to create uncertainty in law enforcement.

“The placement of the phrase ‘not a loss to the state’ in the article is certainly contrary to the principle of due process of law to obtain equal protection. Therefore, for the sake of legal certainty, the norms of Article 27 paragraph (1) the attachment to the Covid-19 Act must be declared unconstitutional as long as the phrase ‘not a state loss’ is not interpreted as ‘not a state loss as long as it is carried out in good faith and in accordance with the laws and regulations’, “ added Saldi.

Two Years

In the 439-page decision, the Court also decided that the Covid-19

Law is only valid as long as the Covid-19 pandemic status has not been announced as ending by the President and at the latest until the end of the 2nd year since the Covid-19 Handling Law was enacted.

“The court in this decision must affirm the time limit for the application of a quo Law firmly and definitely. Thus, all parties have certainty over all provisions in this law that are only in the context of tackling and anticipating the impact of the Covid-19 pandemic so that the enactment of this law must be linked to an emergency status. It occurred because of the pandemic,” said Constitutional Justice Suhartoyo in the Judgment Pronunciation Session that was held on Thursday (10/28/2021) against the test of the Covid-19 Law.



Suasana sidang pembacaan putusan yang digelar pada Kamis (28/10/2021). Foto: Humas

Formal Review Is Rejected

Meanwhile, regarding the formal review with the argument that the Regional Representative Council was not involved and the discussion of the bill was through a virtual meeting. The Court assessed that the stipulation of Perpu 1/2020 into Law 2/2020 was following the provisions of Article 22 of the 1945 Constitution. Deputy Chair Aswanto said after observing the Explanation section of Government Regulation in Lieu of Law (Perpu) 1/2020. The Court relates to the terms of a compelling urgency as stipulated in the Decision of the Constitutional Court Number 138/PUUVII/2009, on February 8, 2010.

These requirements are as follow: a) there is an urgent need to quickly resolve legal issues based on the Law; b) The required law has not yet existed, resulting in a legal vacuum or inadequacy of the existing law; and c) the condition of a legal vacuum that can't be overcome by making laws in the usual procedure which takes quite a long time, while the urgent situation requires certainty to be resolved. "So, according to the Government Regulation in Lieu of Law of a quo Court, it has fulfilled the requirements as stipulated in the Constitutional Court Decision Number 138/PUU-VII/2009," said Aswanto.

Virtual Meeting is Valid

Aswanto continued to explain the Petitioners' argument regarding the validity of the virtual meeting in the discussion of the Bill. In the opinion of the Court, one of the core

principles of this openness principle is public access to parliament (access to parliament). During the Covid-19 pandemic, it has been going on since early 2020 until now, mobility, activities, and events—hearing meetings (RDP), seminars, limited discussions (Focus Group Discussions), and the net of public aspirations—are all limited. on the other hand, the legislative work by the people's representative institutions should not be hampered. Many bills must be completed following the plans set by the House of Representatives to meet the needs of the community and business actors.

"Therefore, public participation can't be carried out directly (face to face) due to limitations caused by the pandemic conditions. Thus, conventional public participation is irrelevant during the Covid-19 pandemic. Based on these considerations, according to the Court that the Petitioners' argument which states that a virtual meeting has the potential to violate people's sovereignty that is groundless according to law," added Aswanto.

Securing The Legality

In this case, three constitutional judges have different opinions. Chief Justice of the Constitutional Court Anwar Usman, Constitutional Justice Arief Hidayat, and Constitutional Justice Daniel Yusmic P. Foekh believe that the Petitioners' argument has no legal basis.

Regarding the Petitioner's argument over the constitutionality of Article 29 of the Covid-19 Law,

the three argued that the COVID-19 pandemic was immeasurable when it would end. During that time, Indonesia was in a state of emergency. At least until the Covid-19 pandemic turns into an endemic like other seasonal diseases that have been controlled. The impact of the Covid-19 pandemic may not end with turning into an endemic. Therefore, Law 2/2020 is still needed to ensure the legality and legitimacy of policy makers in dealing with the negative impacts of Covid-19. There is a different character between the Covid-19 pandemic and the emergency that was born because of Article 12 of the 1945 Constitution concerning the state of danger that generated civil emergency, war emergency, and military emergency. It is the Government Regulation in Lieu of Law that was established as a result of Article 12 of the 1945 Constitution that should have a deadline set.

"Meanwhile, the Government Regulation in Lieu of Law Covid-19 as stated in the dictum Given that it is based on Article 22 of the 1945 Constitution, is not based on Article 12 of the 1945 Constitution. Likewise, in Presidential Decree No. 11/2020 and Presidential Decree No. 12/2020, the constitutional basis used as a reference is Article 4 paragraph (1) of the Constitution 1945. Thus, the petition of the Petitioners has no legal basis," said Arief. ■

LULU ANJARSARI

HEARING PROTOCOL

CONSTITUTIONAL COURT



MUST WEAR MASK, GLOVES, CHECK BODY TEMPERATURE, AND KEEP THE DISTANCE



PARTIES CAN ATTEND THE HEARING THROUGH A VIRTUAL TRIAL



IMPLEMENT ATTENDANCE RESTRICTIONS IN THE HEARING ROOM FOR A 2 PEOPLE MAXIMUM



SPRAY DISINFECTANT ON ALL COURSE FACILITIES AND INFRASTRUCTURE INCLUDING THE COURT ROOM, COURT WAITING ROOM, COURSE RECORDING ROOM, TOILET, AND ALL EQUIPMENT



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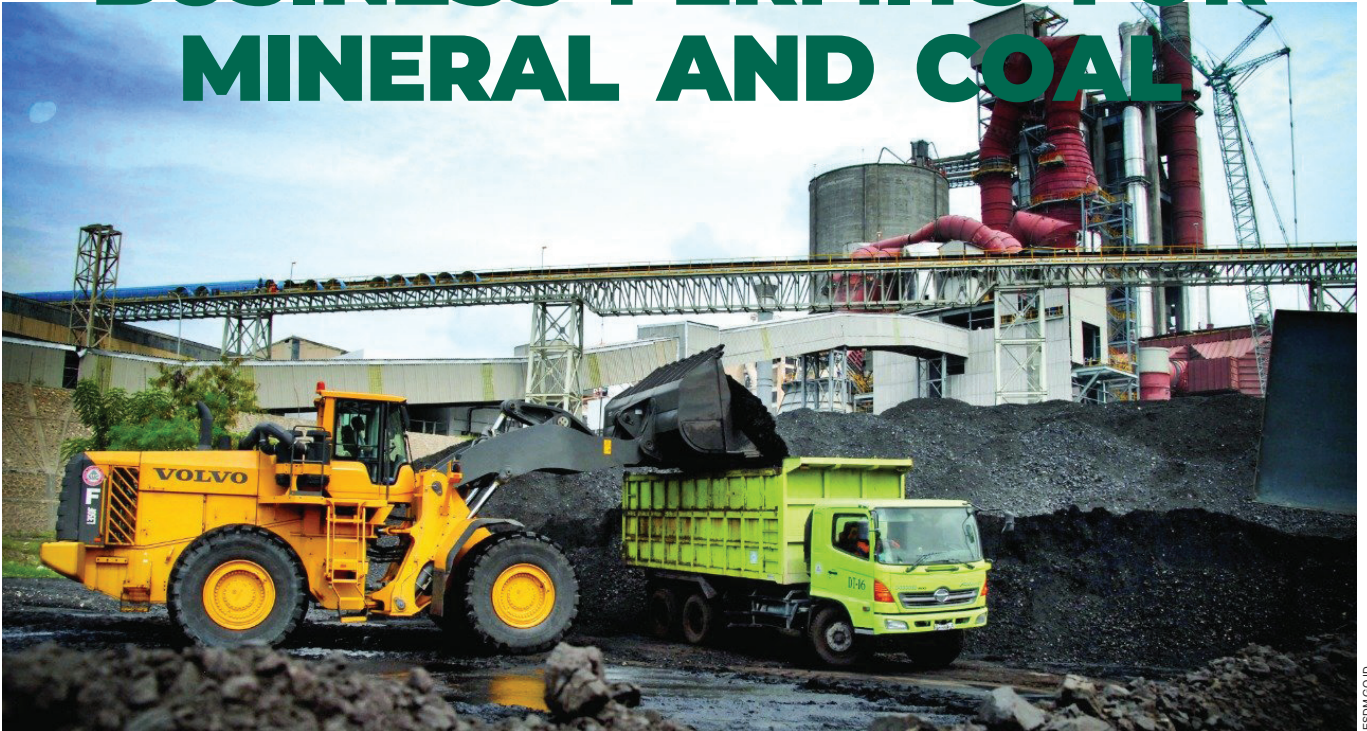


Mahkamah Konstitusi RI



mahkamahkonstitusi

REGULATING THE REGULATION OF MINING BUSINESS PERMITS FOR MINERAL AND COAL



ESDM/GO.ID

The provisions of Article 169A of the Minerba Law are considered not to give priority to BUMN State-owned enterprises and Regional owned enterprises in obtaining Mining licenses (IUP). On the other hand, KK and PKP2B holders are guaranteed an extension into an IUPK without following the mechanism regulated in Article 75 of the Mineral and Coal Law. The provisions of Article 169A of the Minerba Law were also reviewed in the Constitutional Court.

Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (UU Minerba) was tested in the Constitutional Court (MK). The request for a judicial review of the Minerba Law was submitted by Helvis (Ret. TNI/Advocate), Muhammad Kholid Syeirazi (General Secretary of PP ISNU), and the Legal and

Constitutional Study Forum (FKHK).

The application was submitted to the Constitutional Court on July 20, 2020. The Registrar of the Court on July 23 2020 registered the application with Number 64/PUU-XVIII/2020. The material requested for review is Article 169A of the Mineral and coal Law against Article 18A paragraph (2), Article 27 paragraph (1), Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution.

Helvis (Petitioner I) is an Indonesian citizen who works as an advocate. Petitioner I is also often a Mining Legal Consultant. Then Muhammad Kholid Syeirazi (Applicant II) is an Indonesian citizen who served as General Secretary of the Nahdlatul Ulama Scholars Association (ISNU) for the 2018-2023 Solemn Period. Syeirazi also has a concern for Indonesia's energy governance, which can be seen from

several of his writings in the form of books and seminar activities as well as views/opinions published in online media. Meanwhile, FKHK (Applicant III) is a legal entity association based on the Decree of the Minister of Law and Human Rights of the Republic of Indonesia No. AHU-220.AH.01.07. of 2012 concerning the Ratification of Association Legal Entities.

This is not in favor of State and Regional owned Enterprise

Muhammad Kholid Syeirazi (Petitioner II) argued that Article 169A of the Minerba Law shows the impartiality of legislators to the role (state organs) through State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD). BUMN and BUMD should have priority in obtaining a Special Mining Business Permit (IUPK). However, parties holding a Contract of Work (KK) and a Coal Mining Concession Work Agreement (PKP2B) are guaranteed an extension to an IUPK as a Continuation of Contract/Agreement Operations without following the various mechanisms regulated in Article 75 of the Minerba Law.

According to Syeirazi, the priority of State-Owned Enterprises and Regional-Owned Enterprises in obtaining Special Mining Business Permit has been regulated in the provisions of Article 75 paragraph (3) of the mineral and coal Law. Meanwhile, specifically for Private Business Entities, obtaining a Special Mining Business Permit is carried out using an auction. The construction of Article 75 paragraph (3) of the Mineral and coal Law shows legal politics that requires State-Owned Enterprises and Regional-Owned Enterprises to be positioned as the main parties to obtain Special Mining Business Permit as part of the interpretation

of controlling the state (the state conducts management) as stipulated in Article 33 of the 1945 Constitution and in line with various decisions of the Constitutional Court about the meaning of ruling the country.

ARTICLE 169A OF MINERAL AND COAL, REGULATE:

- (1) KK and PKP2B as referred to in Article 169 are guaranteed an extension to IUPK as Continuation of Contract/Agreement Operations after fulfilling the requirements with the following conditions:
 - a. Contracts/agreements that have not been extended are guaranteed to obtain 2 (two) additional times in the form of Special Mining Business Permit (IUPK) as Continuation of Contract Operations each for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the KK or PKP2B taking into account efforts to increase state revenues.
 - b. Contracts/agreements that have obtained the first extension are guaranteed to be given a second extension in the form of an IUPK as a Continuation of Contract Operations for a maximum period of 10 (ten) years as a continuation of operations after the end of the first addition of KK or PKP2B by considering efforts to increase state revenues.
- (2) The efforts to increase state revenue as referred to in paragraph (1) letters a and b are carried out through:
 - a. re-arrangement of the imposition of tax revenues and non-tax state revenues; and/or;
 - b. the area of the Special Mining Business Permit as Continuation of Contract/Agreement Operations following the development plan for the entire contract area or agreement approved by the Minister.
- (3) In the implementation of the extension of the Special Mining Business Permit as Continuation of Contract/Agreement Operations, all goods obtained during the implementation of the PKP2B which are designated as state property can still be utilized in Coal Mining business activities following the provisions of the legislation.
- (4) Special Mining Business Permit holders as Continuation of Contract/Agreement Operations as referred to in paragraph (1) for Coal mining commodities are required to carry out domestic Coal Development and/or Utilization activities following the provisions of laws and regulations.
- (5) Holders of Special Mining Business Permit as Continuation of Contract/Agreement Operations for Coal mining commodities who have carried out the obligation to develop and/or utilize coal in an integrated manner domestically following the development plan of the entire agreement area approved by the Minister are given an extension of 10 (ten) years each time the extension has met the requirements under the provisions of the legislation.

Whereas the construction of Article 75 paragraph (3) of the Mineral and Coal Law which gives priority to BUMN and BUMD to obtain IUPK from the beginning has become a legal policy chosen by

legislators as stated in Law Number 4 of 2009 concerning Mineral and Coal Mining. So according to Syeirazi, the provisions of Article 169A of the Mineral and Coal (Minerba) Law contradicts Article 33 paragraph (2) of the 1945 Constitution which states that “Production branches which are important to the state and which affect the livelihood of the people are controlled by the state”, and paragraph (3) of the 1945 Constitution. “Earth and water and the natural resources contained are controlled by the state and used for the greatest prosperity of the people.”

Ministerial Act

Syeirazi further argued that the existence of Article 169A of the Mineral and Coal Law had given highly broad authority to the Minister to provide guarantees for extension into IUPK to KK and PKP2B holders without involving the Regional Government. Whereas the Regional Government is the party that directly impacts the existence

of the activities contained in the KK and PKP2B.

Therefore, the provisions of Article 169A of the Mineral and Coal Law contradicts Article 18A paragraph (2) of the 1945 Constitution which states that “Financial relations, public services, utilization of natural resources and other resources between the central government and regional governments are regulated and implemented fairly and in harmony under the law”. In addition, the existence of Article 169A of the Mineral and Coal Law shows an unfair relationship between the center and the regions in managing natural resources.

Based on the reasons mentioned above, Muhammad Kholid Syeirazi asked the Court to pass a decision by stating that Article 169A of the Mining Law contradicts the 1945 Constitution and has no binding legal force. Furthermore, to prove the arguments for his application, Syeirazi has submitted 15 pieces of evidence and presented Expert A. Sonny Keraf.

The Meaning of “State-Controlled”

According to the Court, minerals and coal as one of the natural resources contained in the earth are non-renewable natural resources, as stated in the provisions of Article 33 paragraph (3) of the 1945 Constitution controlled by the state and used for the greatest prosperity of the people. The State through the Central Government is responsible for the use of minerals and coal in the jurisdiction of the Unitary State of the Republic of Indonesia through optimal, effective, and efficient management and utilization of minerals and coal to encourage and support the development and independence of national industrial development based on mineral resources and /or coal energy (see General Elucidation of Law 3/2020).

As one of the potentials of Indonesia’s natural resources, minerals and coal is also expected to bring prosperity to the people of Indonesia. Thus, a mining policy in favor of the national interest is needed. In managing natural resources, the Government refers to the provisions of Article 33 paragraph (3) of the 1945 Constitution. In addition, the Court has also emphasized in several of its decisions that the meaning of “state-controlled” includes the meaning of control by the state in a broad sense which originates and is derived from the conception of the sovereignty of the Indonesian people over all sources of earth, water and natural wealth contained therein, including the notion of public ownership by the people’s collectivity of the said resources. The meaning of “state-controlled” is affirmed among others in the Constitutional Court Decision Number 001-021-022/PUU-I/2003, the Constitutional Court Decision



The Plenary Session of the Mineral and Coal Law review case with the agenda of hearing to the Government’s statement, Wednesday (21/10) online in the Plenary Session Room of the Constitutional Court Building. Photo: Public Relations/Gani.

Number 058-059-060-063/PUU-II/2004, and the Constitutional Court Decision Number 3/PUU-VIII/2010.

Legal Consideration

Against the argument of Muhammad Kholid Syeirazi (Petitioner II) above, the Court in its legal considerations stated that the construction of Article 75 paragraph (3) of the Mineral and Coal Law which has relevance to the provisions of Article 169A of the Mineral and Coal Law has confirmed the granting of priority to State-owned enterprises and Regional-owned enterprises to obtain a Special Mining Business Permit. Since the beginning, this has become the legal politics chosen by the legislators as stated in Law Number 4 of 2009 concerning Mineral and Coal Mining.

The philosophy contained in giving priority to State-owned enterprises and Regional-owned enterprises is none other than because the state wants to embody the role of the state in actualizing the principle of “state control over natural resources”. Through the organs of State-owned enterprises and Regional-owned enterprises, the state’s control over natural resources can be realized as also mandated by Article 33 paragraph (3) of the 1945 Constitution. Therefore, it is very important to treat the differences between state-owned enterprises and business entities, owned by a private company.

The distinction as mentioned above is intended to provide reinforcement (justification). Hence, the management of natural resources in Indonesia can’t easily be handed over to private parties, both domestic and foreign, unless they have given priority to State-owned enterprises and Regional-owned enterprises.

Therefore, the selection for granting a Special Mining Business Permit must be carried out strictly and guided by the provisions of Article 75 of the Mineral and Coal Law.

Based on the provisions of Article 75 of the Mineral and Coal Law above, it is clear that the granting of Special Mining Business Permit to private entities must be carried out by way of Special Mining Business License Area (WIUPK) auctions and is not differentiated between domestic and foreign private business entities (see Article 75 paragraph (4) of Law 3/ 2020) and must fulfill the considerations as required in the provisions of Article 75 paragraph (5) of the Mineral and Coal Law. Therefore, the provisions of Article 169A of the Mineral and Coal Law create a discrepancy with the spirit contained in Article 75 of the Mineral and Coal Law. Moreover, the provisions that justify being granted an extension guarantee into

a Special Mining Business Licenses a continuation of the operation of the contract/agreement. This means that business entities that carry out KK and PKP2B will automatically obtain a guarantee for an extension to become a Special Mining Business License. In fact, the CoW and PKP2B are private legal relationships that actually must have been completed by the time the term of the agreement ended. Therefore, there is no longer any legal relationship between the Government and private business entities contained in the KK and PKP2B to be given priority in the form of guarantees for an extension to Special Mining Business License even though they meet the requirements as stipulated in Article 169A paragraph (1) of the Mineral and Coal Law. Thus, the Government should therefore begin to reorganize by embodying the state’s control over natural resources, particularly in the granting of permits, to begin

ARTICLE 75 OF MINERAL AND COAL LAW STATES:

- (1) The granting of a Special Mining Business License as referred to in Article 74 paragraph (1) it is carried out based on the considerations as referred to in Article 28.
- (2) The Special Mining Business License as referred to in paragraph (1) may be granted to State-owned enterprises, regionally owned business entities, or private business entities.
- (3) State-owned enterprises and regional-owned enterprises as referred to in paragraph (2) shall receive priority in obtaining Special Mining Business License.
- (4) The private business entity as referred to in paragraph (2), to obtain a Special Mining Business License is carried out by way of a Special Mining Business License Area auction.
- (5) The Special Mining Business License Area auction as referred to in paragraph (4) is carried out by the Minister and carried out by considering:
 - a. the area of Special Mining Business License Area to be auctioned;
 - b. administrative/management capabilities;
 - c. technical capability and environmental management; and
 - d. financial ability.
- (6) Further provisions regarding the auction as referred to in paragraph (4) shall be regulated by or based on a Government Regulation.

controlling with a priority scale as mandated in the Mineral and Coal Law.

Based on the description of the considerations above, apart from the essence of the existence of guarantees for KK and PKP2B, a Special Mining Business License extension is granted after fulfilling the requirements due to historical factors relating to the history of investments that have contributed to Indonesia's economic growth, but the provision of such guarantees will close and distance the implementation of control. natural resources by the state. In addition to these legal considerations, the guarantee for granting the Special Mining Business License also closes the opportunity for domestic business entities to play a role in advancing the economy following the spirit in Article 33 of the 1945 Constitution.

Therefore, the Court is of the opinion that the phrase "guaranteed" in Article 169A paragraph (1) of the Mineral and Coal Law and the word "guaranteed" in Article 169A paragraph (1) letter a and letter b of the Mineral and Coal Law contradicts the spirit of control by the state and provides opportunities for domestic business entities as mandated by the Mineral and Coal Law.

Hence, without the intention of reducing the opportunity for private business entities to compete in obtaining Special Mining Business License and adding to the consideration that the government will obtain private business entities that truly have the capability and integrity and are following the provisions of laws and regulations that comply with the principles of good governance. corporate governance, the phrase "provided a guarantee" in Article 169A paragraph (1) of the Mineral and Coal Law must

be interpreted with the phrase "can be given" and the word "guaranteed" in Article 169A paragraph (1) letter a and letter b of the Mineral and Coal Law must be interpreted as "capable".

Partially Granted

Based on the entire description of the legal considerations above, according to the Court, the provisions in Article 169A paragraph (1) of the Mineral and Coal Law to the extent that the phrase "guaranteed" and Article 169A paragraph (1) letter a and letter b of the Mineral and Coal Law as long as the word "guaranteed" contradicts Article 27 paragraph (1), as well as Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution.

"Thus, Petitioner II's petition is legally grounded in part," said Constitutional Justice Suhartoyo when reading out the legal considerations of Decision Number 64/PUU-XVIII/2020 in an online

trial held at the Constitutional Court, Wednesday, October 27, 2021.

The Court concludes that the Court has the authority to hear the petition of the Petitioners. Petitioner I and Petitioner III have no legal standing to apply. Meanwhile, Muhammad Kholid Syeirazi (Petitioner II) has the legal standing to apply. Then, the main point of Syeirazi's petition is legally grounded in part. As a result, in its ruling, the Court partially granted Muhammad Kholid Syeirazi's request.

"The ruling, adjudicating, stated that the petitions of Petitioners I and Petitioners III could not be accepted. Granted Petitioner II's request in part," said Chief Justice of the Constitutional Court Anwar Usman accompanied by eight constitutional judges when pronouncing Decision Number 64/PUU-XVIII/2020 in a Plenary Session which was open to the public on Wednesday (10/27/2021). ■

NUR ROSIHIN ANA



The attorneys for the Petitioner's review of the Mineral and Coal Law, Case Number 64/PUU-XVIII/2020 and Number 65/PUU-XVIII/2020, each submitted their revised petition, Thursday (9/3/2020) in the Plenary Session Room of the Constitutional Court Building. Photo: Public Relations/Gani.

QUOTATION OF DECISION NUMBER 64/PUU-XVIII/2020

The decision in the case of Judicial Review of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining against the 1945 Constitution of the Republic of Indonesia.

Petitioner

1. Dr. Drs. Helvis, S.Sos., S.H., M.H. (Retired Indonesian National Army / Advocate)
2. Muhammad Kholid Syeirazi, M.Sc. (General Secretary PP ISNU)
3. Forum for the Study of Law and Constitution (FKHK).

Verdict

Justify:

1. To declare that the applications of Petitioner I and Petitioner III can't be accepted;
2. Granting the petition of Petitioner II in part;
3. Stating the provisions of Article 169A paragraph (1) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525) along with the phrase "given a guarantee" is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, as long as it is not interpreted as "can be given";
4. Stating the provisions of Article 169A paragraph (1) letter a and letter b of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525), as long as the word "guaranteed" contradicts the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, as long as it is not interpreted as "capable";
5. Stating the provisions of Article 169A paragraph (1) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525) reads in full, "KK and PKP2B as referred to in Article 169 may be granted an extension to become Special Mining Business License as Continuation of Contract/Agreement Operations after fulfilling the requirements with the following conditions: ...";
6. Stating the provisions of Article 169A paragraph (1) letter a and letter b of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525), in full it reads:
 - a. Contracts/agreements that have not yet received an extension can obtain 2 (two) extensions in the form of a Special Mining Business License as a Continuation of Operations for each Contract/Agreement for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the KK or PKP2B taking into account efforts to increase state revenues.
 - b. contracts/agreements that have obtained the first extension may be granted a second extension in the form of a Special Mining Business License as a Continuation of Contract/Agreement Operations for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the first extension of KK or PKP2B by considering efforts to increase state revenues.
7. Rejected Petitioner II's application;
8. Order the loading of this Decision in the State Gazette of the Republic of Indonesia as appropriate.

Verdict Date

1. Decision of the Judges Consultative Meeting (RPH) on Thursday, October 7, 2021 and on Thursday, October 21, 2021 by nine Constitutional Justices.
2. The pronouncement of the decision in the Plenary Session was open to the public on Wednesday, 27 October 2021 by nine Constitutional Justices.

CONSTITUTIONAL COURT'S VERDICT IN NOVEMBER 2021

No	Case Number	Subject Matter of the Case	Appellant	Verdict
1	52/PUU-XIX/2021	Material and Formal Testing Regulation of the Minister of Education and Culture Number 50 of 2015 concerning General Guidelines for Indonesian Spelling	dr. H. Ludjiono	Withdrawn
2	92/PUU-XVIII/2020	Material Testing of Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission of the 1945 Constitution	Dr. Burhanudin,S.H., M.Hum	Rejected the application in its entirety
3	16/PUU-XIX/2021	Material Testing of Law Number 7 of 2017 concerning General Elections against the 1945 Constitution	1. Akhid Kurniawan; 2. Dimas Permana Hadi; 3. Heri Darmawan; 4. Subur Makmur.	Rejected the application in its entirety
4	48/PUU-XIX/2021	Material Testing of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions against the 1945 Constitution	1. Arnold Belau; 2. The Alliance of Independent Journalists (AJI), represented by Abdul Manan (Chairman) and Revolution Riza Zulverdi (Secretary General)	Rejected the application in its entirety
5	49/PUU-XIX/2021	Material Examination of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with the Criminal Code	Tuti Atika	Unacceptable

6	51/PUU-XIX/2021	Judicial review of Law Number 7 of 2017 concerning Elections	PT. Sainath Realindo, in this case represented by Vikash Kumar Dugar who acted as President Director	Rejected the application in its entirety
7	91/PUU-XVIII/2020	Formal Examination of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution	Hakiimi Irawan Bangkid Pamungkas, Ali Sujito, Muhtar Said, SH, MH, Migrant CARE (represented by the Chair and Secretary), the West Sumatra Nagari Customary Density Coordinating Board (represented by the General Chair and General Secretary), and the Minangkabau Natural Customary Court who represented by the Chief (Imam) of the Court	<p>In provision:</p> <ol style="list-style-type: none"> 1. Declared that the Provisional Application for Petitioner I and Petitioner II can't be accepted; 2. Rejected the Provisional Application for Petitioner III, Petitioner IV, Petitioner V, and Petitioner VI. <p>In the Principal of the Application:</p> <ol style="list-style-type: none"> 1. Declared that the applications of Petitioner I and Petitioner II can't be accepted; 2. Granted the application of Petitioner III, Petitioner IV, Petitioner V, and Petitioner VI in part; 3. Declared that the establishment of Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as does not mean "no repairs have been made within 2 (two) years since this decision was pronounced"; 4. Declared that Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) is still in effect until corrections are made to the establishment following the grace period as determined in this decision;

				<ol style="list-style-type: none"> 5. Ordered the legislators to make improvements within a maximum period of 2 (two) years since this decision is pronounced and if within that time limit no corrections are made then Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) becomes permanently unconstitutional; 6. Stated that if within 2 (two) years the legislators can't complete the revision of Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) then the law or articles or material content of the law that have been revoked or amended by Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) shall be declared valid again; 7. Declared to suspend all strategic and broad-impact actions/policies, and it is also not permissible to issue new implementing regulations relating to Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573); 8. Ordered the loading of this decision in the State Gazette of the Republic of Indonesia as appropriate; 9. Rejected the petition of the Petitioners for other than and the rest.
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8	107/PUU-XVIII/2020	Formal judicial review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution	Indonesian Peasant Union (SPI), Sadajiwa Village Development Foundation (Bina Desa), United Pertamina Workers Union Federation (FSPPB), et al.	Unacceptable
9	6/PUU-XIX/2021	Formal judicial review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution	Riden Hatam Aziz, S.H., Suparno, S.H., Fathan Almadani, and Yanto Sulistianto	Unacceptable
10	103/PUU-XVIII/2020	Formal Examination of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution	The Confederation of All Indonesian Trade Unions (KSBSI), represented by Elly Rosita Silaban as President of the Executive Council and Dedi Hardianto as Secretary-General	Unacceptable
11	105/PUU-XVIII/2020	Formal judicial review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution	The Central Leadership of the Federation of Clothing and Leather Textile Workers Union - All-Indonesian Workers Union (PP FSP TSK-SPSI), represented by Roy Jinto Ferianto, S.H., as the General Chair and Moch. Popon, S.H., as General Secretary (Applicant I); Rudi Harlan (Petitioner II); Arie Nugraha (Petitioner III); Bey Arifin (Applicant IV); et al.	Unacceptable

12	4/PUU-XIX/2021	Formal Examination of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution	R. Abdullah as General Chairperson of the Federation of Chemical, Energy and Mining Workers Unions throughout Indonesia (FSP KEP SPSI), Indra Munaswar as General Chairperson of the Federation of Indonesian Trade Unions (FSPI), Abdul Hakim as General Chairperson of the Indonesian Muslim Workers Brotherhood '98, et al	Unacceptable
13	87/PUU-XVIII/2020	Examination of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution	The Central Executive Board of the Federation of Singapore Trade Unions represented by Deni Sunarya as the General Chair and Muhammad Hafidz as the General Secretary	Unacceptable
14	101/PUU-XVIII/2020	Formal judicial review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution	The Confederation of Indonesian Trade Unions, represented by Ir. Said Iqbal, M.E., as President of the National Executive Council and Ramidi, as Secretary General; et al.	Unacceptable

15	108/PUU-XVIII/2020	Formal judicial review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution	Ignatius Supriyadi, S.H., LL.M. (Applicant I), Sidik, S.H. (Applicant II), Janteri, S.H. (Applicant III)	Unacceptable
16	3/PUU-XIX/2021	Formal Examination of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution	Federation of Trade Unions for Cigarettes, Tobacco, Food and Beverage, All Indonesian Workers Union (PP FSP RTMM-SPSI) represented by Sudarto (General Chair) and Yayan Supyan (General Secretary)	Unacceptable
17	5/PUU-XIX/2021	Formal Examination of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution	Putu Bagus Dian Rendragraha (Petitioner I) and Simon Petrus Simbolon (Petitioner II)	Unacceptable
18	55/PUU-XIX/2021	Formal Examination of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution		Unacceptable



REBUILDING THE CONSTITUTIONAL FRIENDSHIP

Chief Justice of the Constitutional Court Anwar Usman and Constitutional Justice Arief Hidayat were speakers in the Constitutional Lecture held in the constitutional village of Bangbang, Bali on Friday (10/22). Photo: Public Relations/ Yuwandi

As a constitutional court institution that oversees the constitutional rights of citizens, the Constitutional Court continues to disseminate information to the public. The Constitutional Court seeks to introduce itself and its work to all social levels of society. At the end of 2021, the constitutional judges and officials of the Constitutional Court returned to visit several campuses, regions, and institutions in order to establish the procedural law and the authority of the Constitutional Court as well as to increase the constitutional awareness of citizens.

Constitutional Village as a Cultural Fortress

Chairman of the Constitutional Court Anwar Usman and Constitutional Justice Arief Hidayat were speakers in the Constitutional Lecture as well as the handover of the SmartBoard Mini Court Room in collaboration with the Constitutional Court (MK) and Bangbang Village, Bali on Friday (10/22/2021). This activity was also attended by the Regent and Deputy Regent of Bangli Regency Sang Nyoman Sedana Arta and I Wayan Diar, as well as Bangli Police Chief AKBP I Gusti Agung Dhana Aryawan.

In the activity with the theme "Constitutional Court in the Constitutional System of the Republic of Indonesia", Anwar said that the role of the judges

of the Constitutional Court is not only to enforce the law but also to uphold justice. Anwar also mentioned the existence of the Constitutional Court in the constitution, namely Article 24C of the 1945 Constitution. The authority of the Constitutional Court granted by Article 24C Paragraph (1) and Paragraph (2) of the 1945 Constitution is to examine laws against the Constitution; decide on disputes over the authority of state institutions whose authority is granted by the Constitution; decide on the dissolution of a political party, and decide disputes about the results of the general election.

On the same occasion, Constitutional Justice Arief Hidayat in his lecture conveyed about the Constitutional Village. Arief explained that the Constitutional Court not only

functions as a judicial body but also functions as a guardian of the Pancasila ideology. This is because the ideology of Pancasila is the most appropriate state ideology chosen by Indonesia. After all, it contains various things following the foundations of the social life of the Indonesian people. Indonesia is a Muslim majority country, but it is not an Islamic country. Indonesia chooses a country based on Pancasila.

"Indonesia is a godly country and the Constitutional Court must protect the country with divine justice. Indonesia must be managed in three powers, namely theocracy, democracy, and nomocracy. Thus, with the advancement of technology, these three things are needed by the Indonesian people so they are not deprived of the openness of technology at this time," Arief said



Constitutional Justice Enny Nurbaningsih and Constitutional Justice Manahan MP Sitompul gave a hybrid public lecture "The Constitutional Court and the Characteristics of the Procedural Law of the Constitutional Court" on Friday (10/22/2021) at Warmadewa University, Bali. Photo: Public Relations/Hamdi.

in an activity led by Professor of the Faculty of Law Udayana University, I Made Arya Utama. (Sri Pujianti/Nur R.)

The Constitutional Court: The Result of Reformation

Constitutional Justice Enny Nurbaningsih and Constitutional Justice Manahan MP Sitompul gave a hybrid public lecture "The Constitutional Court and the Characteristics of the Procedural Law of the Constitutional Court" on Friday (22/10/2021) at Warmadewa University, Bali. Enny started the lecture by explaining the presence of the Constitutional Court (MK) in Indonesia. "The Constitutional Court is the sweet fruit of reform. If only there were no reforms in Indonesia, maybe I wouldn't be here, maybe there wouldn't be a Constitutional Court either. Why is that? Because things related to judicial review were impossible before the reformation," said Enny.

The history of the need for the establishment of the Constitutional Court

in Indonesia began when Mohammad Yamin in the Investigating Agency for Preparation for Independence (BPUPK) session proposed that the Supreme Court (the Supreme Court at that time) be given the authority to appeal the law. However, Soepomo did not agree, because the 1945 Constitution does not adhere to the *trias politica* and not many legal scholars have that experience. (Nano Tresna Arfana/Lulu Anjarsari)

Religious Harassment from a Constitutional Perspective

Deputy Chief Justice of the Constitutional Court Aswanto and Constitutional Justice Daniel Yusmic P. Foekh gave a public lecture to the academic community of the Law Department, Faculty of Dharma Duta, State Hindu University I Gusti Bagus Sugriwa Denpasar. The activity with the theme "Juridical Review of the Provisions on Religious Harassment from a Constitutional Perspective"

was held on Friday, (10/22/2021), at the I Gusti Bagus Sugriwa State Hindu University (UHN) Rectorate Building in Bangli, Bali.

Aswanto in his lectures said that harassing religion was a form of denial of God. According to him, religious freedom is an internal dimension, but religious freedom has an external aspect. "From the external aspect, the government has stepped in so that all religions respect each other not to commit blasphemy, and if it turns out that there is blasphemy, the mechanism has been regulated," said Aswanto.

Aswanto said that as a consequence of the rule of law, the guarantee is not only a diction or phrase contained in a book, but the provisions must be implemented. Thus, when something deviates from the regulations, the government must be present so that conditions remain conducive. "So that all religious adherents can carry out worship according to their religion and teachings without any fear, anxiety, etc.," said Aswanto.



Furthermore, Constitutional Justice Daniel Yusmic Foekh in his general lecture said that there were several mentions of rights, including human rights, constitutional rights, citizens' rights, and others. According to him, some human rights can be limited and some cannot. "In the 1945 Constitution, there are provisions that state rights can be limited with strict conditions," he explained.

Daniel added, after the fall of the New Order regime, there were more and more cases of harassment, and many cases occurred on social media. It is because many people do not understand the use and impact of social media. (Ilham M. Wiryadi/Lulu Anjarsari P)

Public Lecture in FH Unud

Constitutional Justice Saldi Isra and Suhartoyo were speakers in the Public Lecture as well as the handover of the SmartBoard Mini Court Room in collaboration with the Constitutional Court (MK) and Udayana University (Unud), Bali on Saturday (10/23/2021). This activity was also attended by the Dean of the Faculty of Law, Udayana University, and Constitutional Justice for the period 2003-2008 and 2015-2020 I Dewa Gede Palguna.

In this public lecture with the theme "Examining Government Regulation in Lieu of Law in the Indonesian

Constitutional System", Saldi said that the government regulation in lieu of law (perpu) in the constitutional system has terminology issues. The issue relates to the phrase "a matter of compelling urgency", the next hearing, and what if the House of Representatives does not obtain approval.

"So, perpu in the state administration system has three issues that need to be studied," said Saldi.

Furthermore, Saldi said, the phrase "matters of compelling urgency" in Article 22 Paragraph (1) of the 1945 Constitution is measured through the "subjective" constitutional rights of the President. Therefore, some identify this with subjective emergency constitutional law.

On the same occasion, Constitutional Justice Suhartoyo in his lecture conveyed the basic authority of the Perpu review by the Constitutional

Court, namely the jurisprudence of Constitutional Court Decision No. 138/PUUVII/2009 concerning Review of Government Regulations in Lieu of Law Number 4 of 2009 concerning Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission against the 1945 Constitution of the Republic of Indonesia. In this decision, the Constitutional Court stated three conditions as a parameter of "forced urgency" for the President to stipulate a perpu. (Utami Argawati/ Nur R)

Get to Know the Constitutional Court Closely

Nine Constitutional Justices attended the Constitutional Discussion with the theme "Knowing the Constitutional Court more closely" at Hasanuddin University (UNHAS) Makassar, South Sulawesi, Friday (10/29/2021) morning. This event was a part of the Inauguration of the Mini Courtroom Utilization of the Long-Distance Session in Cooperation between the Constitutional Court (MK) and Hasanuddin University.

In the event to get to know the Constitutional Court more closely, the nine constitutional judges were allowed to talk about the Constitutional Court



Constitutional Justice Saldi Isra and Suhartoyo were speakers in a Public Lecture organized by Udayana University Bali, Saturday (10/23). Photo: Public Relation/Yuwandi.



in government, women’s rights and children’s rights. This was conveyed by Constitutional Justice Enny Nurbaningsih in a Public Lecture on Cooperation between the Constitutional Court and Bosowa University, Makassar, South Sulawesi on Friday (29/10/2021).

Enny, who was present offline, said that the rights considered to be harmed by the people or legal entities who apply must depend on what is

and its authorities. Chief Justice of the Constitutional Court Anwar Usman said that this was the first time the nine judges had gathered in the same event. “Usually, there are those who are absent. This is amazing. Now this shows that we are very concerned about upholding the constitution and law enforcement in the Republic of Indonesia,” he said.

In the event, Aswanto explained a little about the Constitutional Court. He emphasized that the Constitutional Court examined the Act against the 1945 Constitution (UUD 1945) while the Supreme Court examined the laws under the law. According to Aswanto, when rights guaranteed by the constitution are negated, those who feel they have been negated can file a complaint with the Constitutional Court. “That is why one of the functions of the Constitutional Court that must be carried out is to ensure that the rights guaranteed by the constitution are not ignored,” he said. (Utami Argawati/Lulu Anjarsari P)

The Constitutional Court Guarantees Citizens’ Constitutional Rights

The constitutional rights of citizens are rights regulated in the 1945 Constitution. Constitutional rights consist of the right to life, the right to have a family and continue offspring,



Constitutional Justice Enny Nurbaningsih in a Public Lecture on Cooperation between the Constitutional Court and Bosowa University, Makassar, South Sulawesi on Friday (10/29/2021). Photo: Public Relations/Hamdi.



the right to develop oneself, the right to obtain justice, the right to personal freedom, the right to security, the right to welfare, rights as well as

being applied for later. “This will be seen whether the applicant is right, there is an assumption of a loss,” said Enny. (Utami Argawati/Lulu Anjarsari P)

Legal Update

Chief Justice of the Constitutional Court Anwar Usman delivered a keynote speech at the inauguration of "Utilization of the Mini Courtroom Smartboard" as a remote trial tool at the Indonesian Muslim University (UMI) Makassar on Friday (10/29/2021). Anwar emphasized the importance of the Constitution in the life of the nation and state. Without heeding the Constitution, without heeding the law, then just waiting for the destruction of a nation.

"This has been occurring since ancient times. How the rise and fall of a nation, a sultanate when the Constitution and the law are not heeded," explained Anwar.

Furthermore, Constitutional Justice Wahiduddin Adams on this occasion also gave a Public Lecture "Legal Reform in Indonesia". Wahiduddin said that the Proclamation of Indonesian Independence on August 17, 1945, was the starting point for the Indonesian people to renew the laws that would apply in Indonesia.

Wahiduddin further explained, to fill a legal vacuum, a transition was made in the 1945 Constitution. At that time, the Indonesian nation will build its

own nation's laws as an independent nation. Until 1984, more than 600 laws and regulations in Indonesia were still the colonial products of the Dutch East Indies heritage. For more than 200 years, the laws of the colonizers apply in Indonesia. Some legal products became a big task at the time of Indonesian Independence. There are the Criminal Code, the Criminal Procedure Code, the Civil Procedure Code, and the Commercial Law. So, there are still many difficult things in legal reform in Indonesia. (Nano Tresna Arfana/Nur R)

Discussion With Galesong Indigenous People

The inauguration of the "Utilization of Smartboard Mini Court" and "Discussion on the Empowerment of Indigenous Peoples" was held in a hybrid manner by the Constitutional Court (MK) in Galesong Village, Takalar Regency, South Sulawesi on Saturday (10/30//2021). This activity was attended by the Chief Justice of the Constitutional Court, all Constitutional Court Justices, Secretary-General of the Constitutional Court M. Guntur Hamzah, Indonesian Minister of Agriculture

Syahrul Yasin Limpo, and some other officials.

Chief Justice of the Constitutional Court Anwar Usman said that Indonesia, which consists of more than 17,000 island groups, with around 700 ethnic groups and more than 1000 regional languages, was once an indigenous community unit that was separated from one another. Indigenous peoples were formed before the Unitary State of the Republic of Indonesia (NKRI) was formed. Even the customary community unit existed before the kingdoms of the archipelago were formed in the past.

Protection for customary law communities, continued Anwar, is a consequence of the adoption of the understanding of Constitutionalism which was chosen by the makers of the 1945 Constitution. The Constitution must be placed as The Living Constitution in the life of the nation and state. The values and norms of the Constitution will always live, always develop, and be enriched with new values and systems. On the other hand, Anwar was also impressed by the philosophy of the Galesong community and some other areas in South Sulawesi regarding the nature of truth. That the truth must always be established on earth. (Nano Tresna Arfana/Lulu Anjarsari P).



Ethical Values That Constitutional Judges Must Have

The independence of judges is manifested by the independence of judges to make decisions. This was conveyed by Constitutional Justice Arief Hidayat in the National Seminar entitled "Ethical Values in the Judicial Process at the Constitutional Court", the collaboration between the Constitutional Court and the State Islamic University (UIN) Alauddin Makassar, that took place at the Rectorate Building of UIN Alauddin Makassar, Gowa, Sulawesi. South, Friday, (10/29/2021).

"As far as I understand, independence is understood to decide what is externally responsible, but for me, this independence must also be responsible to Allah Subhana wa Ta'ala," said Arief.

One form of ethics from a judge is independence, then this generates a dissenting opinion which is the personal responsibility of the judge to show his independence. Furthermore, Arief said, we can't trace principles or legal concepts that come from other civilizations, because they will not match. The next ethic that a judge must possess is impartiality or impartiality. According to Arief, the impartiality of a judge is strongly influenced by his background, so that impartiality is very difficult for a judge to apply. Arief continued that the next ethics that must be applied by a judge is the principle of equality. A judge must treat everyone equally. Skill and thoroughness are the next ethics that must be possessed by a Constitutional Justice. (Ilham M.W/Lulu Anjarsari P)

Discussing Religion Harassment

Constitutional Justice Manahan MP Sitompul and Constitutional Justice Daniel Yusmic P Foekh gave a public lecture at the Indonesian Christian



University (UKI) Paulus, Makassar, Friday (10/29/2021). On this occasion, Constitutional Justice Manahan MP Sitompul delivered a material entitled "The Constitutional Court and the Judgment on Blasphemy of Religion". Manahan started his presentation by explaining the history of the establishment of the Constitutional Court (MK), which is the "real son of reform". He also explained the authority and obligations of the Constitutional Court as stipulated in Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution.

"With these powers and obligations, the Constitutional Court functions as a guardian and final

interpreter of the constitution, guardian of democracy, protector of human rights, as well as the constitutional rights of citizens, and no less important is the guardian of the state ideology," explained the man who Previously served as Deputy Chairperson of the Pangkalpinang High Court, Bangka Belitung.

Concerning religious blasphemy, continued Manahan, the Court has accepted and decided 5 (five) cases in the review of Law Number 1/PNPS/1965 regarding the Prevention of Abuse and/or Blasphemy of Religion.

Meanwhile, Constitutional Justice Daniel Yusmic P Foekh delivered the



Constitutional Justice Manahan MP Sitompul and Constitutional Justice Daniel Yusmic gave a Public Lecture at the Lilin Building, Paulus Indonesian Christian University, Makassar, Friday (29/10). Photo: Public Relations/Made Sukarma.

material "Blame of Religion from a Constitutional Perspective". Daniel first pointed out the trend towards the increasing number of blasphemy cases. "YLBHI found 67 cases of blasphemy of religion during 2020, while the results of the Setara Institute research stated that there were 97 cases of blasphemy of religion from 1965 to 2017 where 88 cases of which occurred after the reformation," explained a doctoral graduate from the University of Indonesia who studied the topic of government regulations in lieu of law (Perpu). (Alboin Pasaribu and Muhammad Mahrus Ali/Nur R).

Indonesian People with Characteristic of Pancasila

In principle, after the amendment to the constitution, there is a change in the spirit about building the Indonesian legal system where the term resistant is removed so that Indonesia is a state of law as stated in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia. This is evidence of the effort that Indonesia has to build its legal system, not only referring to civil law or common law but also acculturating it with customary law and religious law recognized in Indonesia.

This was conveyed by Constitutional Justice Arief Hidayat when starting a public lecture held by the Faculty of Law, Tanjungpura University (Untan) on Friday (11/5/2021) at 15.30. Arief explained the theme "Building Laws with Pancasila Character".

On the occasion of the public lecture, Arief stated that the state must emphasize the development of the Indonesian people as a whole. Building a complete human being means not only in the political, economic, cultural, or welfare aspects, but also becomes important to build a divine-human character. Arief also conveyed Bung Karno's message that can be used



Constitutional Justice Arief Hidayat gave a public lecture organized by the Faculty of Law, Tanjungpura University, on Friday (11/5/2021). Photo: Public Relations/Hamdi.

as a guideline in competing in today's global arena, namely that in the era of openness, the Indonesian must continue to pay attention to sovereignty in the political field, independence in the economy and personality in the cultural field. These three things are strongly supported and filtered through the Pancasila philosophy.

Arief closed the public lecture by explaining the challenges faced by legal experts and law students in today's contemporary era, namely the challenges of information technology disruption. Information technology provides a lot of convenience and speed, but it is necessary to pay attention to how hate speech is also very widespread among Indonesian people.

"Students must realize how today's social media is full of false information that is repeated until it finally becomes the truth (Post Truth Era)," said Arief Hidayat (NL/Nur R).

The History of Indonesia's Constitution

Constitutional Justice Enny Nurbaningsih gave a Public Lecture for the Academic Community of the Faculty of Social and Political Sciences,

Bangka Belitung University, on Saturday (11/6/2021). The event is a series of activities from the submission of the Smartboard Mini Court Room at the Faculty of Law, Bangka Belitung University which took place on Friday (11/5/2021) yesterday.

In her presentation, Enny said that when talking about the Constitutional Court, one must understand the history of the state administration. According to him, it can't be separated. "When we talk about the Constitutional Court, we have to understand the history of the state administration. If we talk about the history of the state administration, it can't be separated from the political dynamics at that time," added Enny.

Before the establishment of the Constitutional Court, Enny continued, the People's Consultative Assembly was given temporary authority to review laws against the 1945 Constitution and MPR Decrees. However, after the amendment process was complete, the Constitutional Court was formed in 2003. From there the Constitutional Court was given the authority, but in its development, the Court also has the authority to examine Government Regulations in Lieu of Law (Perpu) with the consideration that the Perpu creates new legal norms with the same force as

the Law. In addition, Enny also said that the Constitutional Court's judges were monitored at all times by the Ethics Council. This is because constitutional judges must maintain ethics as stated in the Sapta Karsa Utama.

"Sapta Karsa Utama is a guide for judges on how to be ethical in carrying out their duties and functions. "The judge is actually in a silent decision position. He (constitutional judge) is not allowed to meet and interact with politicians, lawyers and behave inappropriately, he is not allowed to dress carelessly," said Enny (Utami Argawati/Lulu Anjarsari P).

The Development of the Court's Procedural Law

Chief Justice of the Constitutional Court Anwar Usman after the inauguration of Unej Law Integrated Legal Edu and the Utilization of the Mini Courtroom Smartboard at the University of Jember, Saturday (6/11/2021) gave material related to the development of the Constitutional Court's Procedural Law. He said it happened through trial practice and decisions issued by the Constitutional Court. This has even been done by constitutional judges in the early generations until now. The development of the Constitutional Court's Procedural



Chief Justice of the Constitutional Court Anwar Usman was the keynote speaker in the inauguration of Unej Law Integrated Legal Edu and the Utilization of the Mini Courtroom Smartboard at the University of Jember, Saturday (11/6/2021). Photo: Public Relations/Hendy.

Law through practice and decisions is not the will of the Constitutional Court, but to fill a legal vacuum in practice, and even to provide protection of constitutional rights to citizens.

For example, when the Constitutional Court was first established and regulated in Law Number 24 of 2003 concerning the Constitutional Court, there was one norm that forbade that the laws that could be applied for review to the Constitutional Court were laws promulgated after the amendments to the 1945 Constitution was implemented (Amendments to the 1945 Constitution in 1999-2002). The provisions of this norm of course depart from a legal principle that the law must be prospective and not retroactive.

However, the provisions of this norm are contrary to the spirit of the establishment of the Constitutional Court, namely to protect constitutional rights to citizens from the enactment of a law that is contrary to the Constitution. In fact, the enactment of a law that was born before the amendment to the 1945 Constitution, it is possible that it may also violate the constitutional rights of citizens.

"If the validity of this norm persists, of course in the procedural law of judicial review, this provision becomes a formal requirement for the Petitioner to conduct a judicial review of the law. Therefore, since 2004 the norms of the provisions of this article have been annulled by the Constitutional Court, through Decision Number 066/PUU-II/2004," said Anwar. (Nano Tresna Arfana/Nur R)

Pancasila Economy

Constitutional Justice Daniel Yusmic P. Foekh delivered the material "Constitutional Court and Economic Interpretation of Pancasila" in the National Seminar "Investing Based on Pancasila". This activity was held by Class A Masters of Law at the Indonesian Christian University (UKI) in a hybrid manner on Thursday (11/11/2021) at Nusantara V Building, MPR/DPR/DPD Complex, Jakarta.



Constitutional Justice Enny Nurbaningsih gave a Public Lecture for the Academic Community of the Faculty of Social and Political Sciences, Bangka Belitung University, on Saturday (11/6/2021). Photo: Public Relations/Banji.

"As a state ideology, Pancasila is a manifestation of the values that live in society. These values become the way of life of the Indonesian people in everyday life. He became the material cause of Pancasila that was born and the original face of the character of the Indonesian nation itself," said Daniel.

Furthermore, Daniel revealed about the Pancasila Economy. Daniel explained Pancasila Economy is an offer of moral and political solutions for economic deconstruction towards the reconstruction of Indonesia's national economic system. According to Mubyarto, the Pancasila economic system is characterized by the wheels of the economy being driven by economic, social, and moral stimuli. In addition, there is a strong will from the entire community towards a state of social equality (egalitarianism), following humanitarian principles and economic policy priorities is the creation of a strong national economy which means nationalism animates every economic policy. (Nano Tresna Arfana/Nur R)

The Protection of Constitutional Rights during a Pandemic

Constitutional Justice Manahan MP Sitompul gave a Public Lecture to inaugurate the use of the Smartboard Mini Courtroom at the Faculty of Law, Sam Ratulangi University (Unsrat), Manado, Saturday (11/13/2021) in a hybrid way. Manahan in his public lectures raised the theme "Protection of the Constitutional Rights of Citizens in a Time of Pandemic".

Talking about the protection of constitutional rights during the pandemic, Manahan cited the provisions of Article 28A paragraph (1) of the 1945 Constitution which states that everyone has the right to live and has the right to defend his life and life. Furthermore, Article 28H paragraph (1) which states that everyone has the right to live in



physical and spiritual prosperity, to live and to have a good and healthy living environment, and have the right to obtain health services.

Manahan said, Covid had global and national impacts. WHO has announced the status of a global pandemic against Covid-19 on March 12, 2020. Various policy steps taken by most countries are prohibitions or restrictions (travel bans/restrictions) and closing borders and tightening traffic between countries. In addition, total border shutdown (total border shutdown), partial border shutdown, lockdown on a domestic scale.

Covid-19 causes various problems, from health problems to social problems which then spread to economic aspects which are at risk of triggering a crisis.

The Covid-19 pandemic has stopped various social, business, and economic activities. Furthermore, Manahan said, Since Covid-19 hit on March 2, 2020, the Government has issued Presidential Regulation Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Covid-19 dated March 13, 2020, and Presidential Regulation Number 9 of 2020 dated March 20, 2020. Covid-19 has had a domino effect on socio-economic and financial aspects. Termination of Employment Relations (PHK) in various business sectors, the cessation of export-import activities that have an impact on the financial sector where the profitability and solvency of the company continue to decline (Utami Argawati/Nur R).



Constitutional Justice Manahan MP Sitompul gave a Public Lecture to inaugurate the use of the Smartboard Mini Courtroom at the Faculty of Law, Sam Ratulangi University (Unsrat), Manado, Saturday (11/13/2021). Photo: Public Relations/Banji.



CONSTITUTIONAL JUDGES TALKING ABOUT JUDICIAL REVIEW

Even though the pandemic has been affecting the world, including Indonesia, constitutional education and constitutional awareness must continue to be disseminated. At the end of this year, the constitutional judges also enthusiastically presented material related to the Constitutional Court's procedural law and the trial mechanism in filing laws which were one of the powers of the Constitutional Court through online lectures.

Judicial Review Hearing

Constitutional Justice Saldi Isra was a speaker in the Moot Court and Legislative Drafting Training organized by the Constitutional Law Study Program, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University, Malang on Tuesday (26/10/2021) online. In this activity, Saldi reviewed in detail the "Procedural Law of the Constitutional Court" by starting with an explanation of the Authority of the Constitutional Court as a constitutional judicial institution.

Based on Article 24C of the 1945 Constitution, the Constitutional Court is given four powers and one obligation to adjudicate at the first and final levels, the decision of which

is final. Concerning the Constitutional Court's authority to conduct judicial review against the 1945 Constitution, Saldi said that the procedural law in his trial had different characteristics from other Constitutional Court authorities. Because in the PUU no party is being sued. That at the hearing of the judicial review (PUU), the presence of the House of Representatives, the Government, or related institutions did not become opponents in the case. Rather, it is to provide information for constitutional judges in deepening the material on a case. In addition, Saldi continued all constitutional judges in the task of reviewing cases have two researchers and a judicial secretary (Sri Pujianti/Lulu Anjarsari P).

Constitutional Justice Saldi Isra was a presenter in the Motu Judicial Training organized by the Sharia Faculty of the State Islamic University of Maulana Malik Ibrahim, Malang online on Tuesday (10/26) at the Constitutional Court Building. Photo: Public Relations/Banji.

Law Enforcement Reform Is Needed

"Additional values or new values in society 5.0 are generally obtained through the analysis of artificial intelligence big data which includes thousands of information including real-time data on the condition of a person's individual that can be processed in such a way as to create a technology that makes people's lives easier. This will disrupt the order of people's lives in various aspects, such as education, health, economy, including aspects of law enforcement."

This was conveyed by Constitutional Justice Suhartoyo as a keynote speaker at a national seminar on legal research and writing forum with the theme "Reflections on Indonesian Law Enforcement in the Era of Society 5.0". This seminar was organized by the Faculty of Law, the Islamic University of Indonesia (UII) online, Sunday (10/31/2021).

Suhartoyo who delivered an online seminar material from Makassar on the sidelines of a series of tasks for the Constitutional Court (MK) in South



Constitutional Justice Suhartoyo was an online keynote speaker at a national seminar on law review and writing forum organized by the Islamic University of Indonesia, Sunday (10/31). Photo: Public Relations/Ifa's.

Sulawesi, revealed that to face the challenges of Society 5.0. It is necessary to reform law enforcement to achieve the rule of law that is just. The form of law enforcement reform carried out, first, is the use of a just law as a basis for good decision-making by state officials. Second, Suhartoyo continued, judicial institutions must be able to maintain independence, impartiality, and freedom in deciding cases. Third, increasing the professionalism of law enforcement officers. Fourth, law enforcement is increasingly based on the principles of justice. Fifth, the promotion and protection of human rights. Sixth is public participation and effective oversight mechanisms.

Facing the Era of Society 5.0, Constitutional Court has been preparing devices and systems since several years ago. The difference in law enforcement in Era Society 5.0 is the use of Internet of Things support. Thus, the public can easily access law enforcement agencies. In line with the case, the Constitutional Court has implemented e-court and e-litigation in exercising its authority through online hearings. It can be accessed directly by the entire community through the Constitutional Court's social media channels (Ilham Wiryadi Muhammad/Nur R.).

The Constitutional Court's Decision Is Part

of Judicial Law Politics

Decisions of the Constitutional Court (MK) are not only valid and have binding legal force since they were read in a plenary session open to the public (*ius constitutum*), but also often provide direction to legislators regarding the direction of national legal development to be achieved in the future (*ius constituendum*). In that context, the term judicial law politics arises.

This was conveyed by Constitutional Justice Arief Hidayat when giving a key lecture on the Book Review with the theme "Judicial Law Politics (Source of National Legal Development)". The online event was held on Saturday (11/6/2021) morning. In addition, Arief said the decisions of

the Constitutional Court often contain orders, prohibitions, permissibility, recommendations, and obligations to the addressees of their decisions. "And it is a new window for legislators to make laws following the directions given by the Constitutional Court," said Arief in front of 150 participants who were also present in the book review.

Arief added that several interesting things become a novelty in the book Political Judicial Law. One of them is when the author describes that the Constitutional Court's decision is a source of national law development and positions it as equal or slightly lower than the Constitution itself. He explained that in the perspective of legal politics, it is divided into 3 (three) aspects, namely ideal legal politics (Pancasila), basic legal politics (UUD 1945), and instrumental legal politics (UU and statutory regulations). "The nature and application of Pancasila as an ideal legal politics is permanent and cannot be changed or replaced. It is the nation's philosophy of life, national identity, and the basis of the state," said Arief.



Constitutional Justice Arief Hidayat gave a key lecture online in a Book Review with the theme "Judicial Law Politics", on Saturday (06/11). Photo: Public Relations/Hamdi.

The book on Judicial Law Politics (Source of National Legal Development) was written by Constitutional Court Researcher Irfan Nur Rahman who on this occasion reviewed the book by experts in constitutional law, Ni'matul Huda and Jimmy Z. Usfunan. (NL/Lulu Anjarsari P.)

Practice at the Constitutional Court

Constitutional Justice Wahiduddin Adams was a speaker for the Special Advocate Professional Education (PKPA) online class X on Saturday (11/6/2021). This activity was held in collaboration with the University of Muhammadiyah Jakarta (UMJ) with the National Leadership Council of the Indonesian Advocates Association (DPN Peradi).

"On this occasion, I will emphasize the discussion about the practice of proceedings in the Constitutional Court. Maybe later there will be some of you who will participate in the trial of the Constitutional Court as Petitioners, Respondents or as legal counsel," said Wahiduddin.

Wahiduddin further explained the main characteristics used in the Constitutional Court judicial process, both related to the substance of the case and the procedural law, namely the Constitution itself, the 1945 Constitution. Although there are various provisions of the Constitutional Court Law and Regulations (PMK) as the basis for examining, adjudicating, and deciding cases, this provision is used as long as it is deemed not contradictory to the 1945 Constitution. This is inseparable from the nature of the Constitutional Court's authority, which in essence is to adjudicate constitutional cases. (Nano Tresna Arfana/Nur R)

Indonesia is the State of Law Based on the 1945



Constitution

Deputy Chief Justice of the Constitutional Court (MK) Aswanto was a speaker in Paralegal Education and Training Batch IX organized by the State Children's Legal Aid Institute (Lembakum) online, on Sunday (7/11/2021).

In his presentation, Aswanto said, in the Law on the basis (UUD 1945) affirms that Indonesia is a state of the law in the sense of *rechtsstaat*. But its development does not only *rechtsstaat* then shifted to the rule of law. "Between the rule of law and *rechtsstaat* is the same but philosophically, there are fundamental differences," he added.

Aswanto said that the 1945 Constitution had determined that Indonesia was a unitary state in the form of a republic. As a consequence of a unitary state in the form of a Republic as regulated in Article 1

Constitutional Justice Wahiduddin Adams became a speaker for the online Advocate Profession Special Education organized by the Muhammadiyah University of Jakarta with the National Leadership Council of the Indonesian Advocates Association, Saturday (11/06). Public Relations/Supreme's photo.

paragraph (1) of the 1945 Constitution, sovereignty is in the hands of the people and is implemented according to the Constitution contained in Article 1 paragraph (2) of the 1945 Constitution.

Aswanto further said that Indonesia is a state of law. This is because in Article 1 paragraph (3) it is emphasized that the State of Indonesia is a state of law. "So, these are the sequences that constitute a single unit that we are a Republican state, the Republican State is a Unitary State and the Unitary State is based on law, so that we become a country that must be based on legal principles," he stressed. (Utami Argawati/Lulu Anjarsari P)



Deputy Chief Justice of the Constitutional Court Aswanto was a speaker for Paralegal Education and Training online organized by the State Child Legal Aid Institute, Sunday (11/07). Photo: Public Relations/M.Nur.



IMPROVING THE UNDERSTANDING OF CONSTITUTIONAL RIGHTS

The Pancasila and Constitutional Education Center (Pusdik) as part of the Constitutional Court continues to provide education and socialization to increase citizens' constitutional awareness. Even though it is at the end of the year, The Pancasila and Constitutional Education Center OF Constitutional Court is increasingly active in educating various parties about the importance of understanding the nature of the constitutional rights of citizens.

The Living Constitution

Chairman of the Constitutional Court Anwar Usman was at the opening of the Online Citizenship Education Lecturer Association for Citizenship Education Lecturers Association and Citizenship Education Lecturers on Tuesday (26/10/2021).

Anwar said, although in fact the amendments to the 1945 Constitution had occurred 16 years ago, due to the changes being fundamental and having a broad impact on the life of the nation and state, dissemination and discussion of Pancasila and the Constitution must always be carried out. This is also considering that changes and developments in the values of

Pancasila and the Constitution are also developing and dynamic following the context of the era. Theoretically, this is called the living constitution.

Regarding the authority of the Constitutional Court to settle disputes over election results, Anwar recalled the message of the 3rd President of the Republic of Indonesia (deceased.) Bacharuddin Jusuf Habibie (BJ Habibie) during a joint iftar. BJ Habibie warned of the danger of division among the Indonesian people due to differences in opinion of supporters of each candidate pair after the 2019 Presidential Election. "The key is in the hands of Pak Anwar and his friends," said Anwar imitating BJ Habibie's message.

"Alhamdulillah, we can carry out the duties and responsibilities of the Constitutional Court following the mandate of the Constitution. We decided that the case is directly responsible to Allah SWT, the Almighty God. This includes the constitutional court's authority to decide disputes over election results," said Anwar.

Anwar further revealed that the Constitutional Court never stops to disseminate the understanding of Pancasila and the Constitution. One of them is by organizing activities to increase the understanding of constitutional rights for citizens. Because there are still many Indonesian citizens, even the executives do not understand the meaning of the Constitution and the Constitutional Court.

The Essence of State Administration

The second day of Activities to Improve Understanding of Citizens' Constitutional Rights for the Association of Citizenship Education Lecturers and the Association of Pancasila and Citizenship Education Lecturers was held

by the Constitutional Court (MK) virtually on Wednesday (27/10/2021). The speakers provided various information about the state administration and the Constitutional Court.

The Head of Public Relations and Domestic Cooperation of the Constitutional Court, Fajar Laksono Soeroso presented the material "The State Administration System According to the 1945 Constitution and the Constitutional Court in the Republic of Indonesia's State Administration System". Fajar explained that the direction of the administration of the Indonesian state was contained in the Preamble to the 1945 Constitution.

"The essence of administering our country is in the Preamble to the 1945 Constitution. Where do you want to take it? how is it made that an independent Indonesia is held? The preamble to the 1945 Constitution is not only declarative but also programmatic. It means that the Preamble to the 1945 Constitution provides directions, provisions, and signs on how this sovereign nation of the people should be built to achieve the country's ideals. Indonesia's independence was built through the 1945 Constitution," explained Fajar.

The Meaning of the Constitution

Meanwhile, Constitutional Court's Senior Researcher Pan Mohamad Faiz explained the material "Constitution and Constitutionalism". Faiz explained the meaning of the Constitution as a law or principle. Faiz said, in the Netherlands, the meaning of the Constitution and the Constitution have different meanings. In Germany, there is a difference between the Constitution and the Constitution (UUD). So why did Indonesia make the Constitution the basis of the state and not mention it as the Constitution?

"If we look at its history, the Constitution is heavily influenced by German terms. Even though the law in Indonesia is heavily influenced by Dutch law, in terms of state administration, it doesn't take much from the Dutch term," explained Faiz.

Faiz said that the constitution can be divided into two meanings, narrowly and broadly. In a narrow sense, the constitution is a written basic norm, that is what is meant by the Constitution. However, the Constitution has a broader meaning than the Constitution which is only in text form. There is such a thing as a convention, the basic values of which are not stated in the Constitution

but can be interpreted by authorized institutions such as the Constitutional Court, the President or the House of Representatives.

Faiz also explained the meaning of Constitutional Values as a result of the implementation of norms in a constitution in practice. According to an expert named Karl Loewenstein, there are important aspects related to the value of the Constitution, namely its ideal nature as a theory (*das sollen*) and its real nature as practice (*das sein*).

The Theory and Practice of Compilation of Applications for Judicial Review of Laws for ADPK

The Substitute Registrar of the Constitutional Court, Syukri Asy'ari, delivered the material "Techniques for Drafting Applications for Judicial Review of the 1945 Constitution of the Republic of Indonesia" at the Activity to Improve Understanding of Citizens' Constitutional Rights for the Association of Citizenship Education Lecturers and the Association





Wakil Ketua Mahkamah Konstitusi Aswanto saat menutup Kegiatan Peningkatan Pemahaman Hak Konstitusional Warga Negara Bagi Asosiasi Dosen Pendidikan Kewarganegaraan dan Asosiasi Dosen Pendidikan Pancasila dan Kewarganegaraan (ADPK) secara virtual pada Jumat (29/10/2021) siang. Foto: Humas/Teguh.

of Pancasila and Citizenship Education Lecturers (ADPK) organized by the Constitutional Court (MK.) virtually on Thursday (28/10/2021).

Syukri said, the case for judicial review (PUU) is a case that only has one party, what is being tested is legal norms (UU). There is a Petitioner but no Respondent or opponent.

Furthermore, Shukri explained the parties in the PUU case trial, namely the Petitioner, the Information Giver, and the Related Party. They can be represented by a legal representative based on a special power of attorney and/or accompanied by a companion based on a certificate.

Syukri explained that the Petitioners are parties who consider their constitutional rights and/or authorities to be impaired by the enactment of the law, namely individual Indonesian citizens or groups of people who have the same interests, customary law community units as long as they are still alive and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia. Indonesia is regulated by law, as well as public or private legal entities, as well as state institutions.

Deputy Chief Justice of the Constitutional Court Aswanto when closing the Activities for Increasing Understanding of Citizenship Constitutional Rights for the Association of Citizenship Education Lecturers and the Association of Pancasila and Citizenship Education Lecturers (ADPK) virtually on Friday (29/10/2021) afternoon. Photo: Public Relations/Teguh.

Citizens Must Be Aware of Their Rights

Citizens who do not realize their rights are guaranteed in the Constitution will make the Constitution 'sleep'. Therefore, citizens whose rights are guaranteed in the Constitution must understand when there is a law that degrades the constitutional rights of citizens. This was stated by Deputy Chief Justice of the Constitutional Court Aswanto when closing the Activities for Increasing Understanding of Citizens' Constitutional Rights for the Association of Citizenship Education Lecturers and the Association of Pancasila and Citizenship Education Lecturers (ADPK) virtually on Friday (10/29/2021) afternoon.

Furthermore, Aswanto stated, massive constitutional awareness efforts are expected to accelerate the understanding of citizens' awareness of their constitutional rights. According to Aswanto, there must be a trigger or trigger to raise public awareness. One of them is through education and training conducted by the Constitutional Court to increase constitutional awareness. (Nano Tresna Arfana/Nur R)

Constitutional Court Held PPHKWN for Civic Education Subject Teachers at the SMA/SMK and MA/MAK Levels

The Chief Justice of the Constitutional Court (MK) Anwar Usman opened and gave a key lecture in the activity of Increasing Understanding of Citizens' Constitutional Rights (PPHKWN) for Civic Education Subject Teachers at the SMA/SMK and MA/MAK Levels, on Tuesday (11/2/2021) afternoon at the Constitutional Court's Building.



In his remarks, Anwar said that the amendments to the 1945 Constitution, which were carried out from 1999 to 2002, were an inseparable part of the reform movement in 1998. Therefore, he continued, the Constitutional Court in 2003 was also the result of the amendments to the 1945 Constitution. Hence, the Constitutional Court is often referred to as part of the biological child of the reform movement.

"In the third phase of the amendment to the 1945 Constitution carried out in 2001, specifically Article 24 paragraph (2), the Constitutional Court was established as one of the

actors of judicial power besides the Supreme Court (MA)," said Anwar accompanied by Head of the Center for Pancasila and Constitutional Education, Imam Margono.

Anwar argued, the authority of the Constitutional Court is explicitly stated in Article 24C paragraphs (1) and (2), namely reviewing laws against the Constitution, deciding disputes over the authority of state institutions whose authority is granted by the Constitution, deciding the dissolution of political parties, deciding disputes about the results of the general election. (legislative elections for House of Representatives, Regional

Representative Council, Regional People's Representative Assembly, and Presidential elections), and decide on the opinion of the DPR regarding alleged violations by the President and/or Vice President according to the 1945 Constitution.

Constitution to Constitutional Rights

In the series of Improving the Understanding of Citizens' Constitutional Rights for Civic Education Subject Teachers at the SMA/SMK and MA/MAK levels organized by the





Constitutional Court (MK) through the Pancasila and Constitutional Education Center, various materials were presented to the participants. The speakers who were presented on this second day were Constitutional Justice Arief Hidayat, Professor of Constitutional Law UIN Ni'matul Huda, and Lecturer of Faculty of Law Universitas Surabaya Hesti Armiwulan.

In the first session which took place on Wednesday (11/3/2021), Constitutional Justice Arief Hidayat delivered material on the Constitution and Constitutionalism. In his presentation, Arief said that the constitution is different from the usual law. He revealed the constitution is a fundamental legal product and is in a very high position. Thus, it is different from ordinary legal products, for example, laws or regulations that are under the Act. According to Arief, the position of the 1945 Constitution (UUD 1945) occupies a very important position. This is because the basic rules can be used as a guide in the administration of the state.

"So, there is a Dutch term, the constitution is different from ordinary legal products, this shows us that the constitution or constitution occupies the highest position in the structure or

strata of legal products that we know as a state," said Arief online.

In simple terms, Arief continued, the constitution is interpreted as a basic law that is used as a guide in the administration of the state. Arief said that Indonesia is different because it has an ideology based on Pancasila. The 1945 Constitution regulates all aspects of life in society, nation, and state. The 1945 Constitution has a different scope from the constitutions of liberal, individualistic, and communist countries. Indonesia is based on Pancasila as stated in the preamble, especially in the context of achieving the national vision and mission as well as goals.

Learning the Constitutional Court's Procedural Law

Learning the Procedural Law The third day of Increasing Understanding of Citizens' Constitutional Rights (PPHKWN) for Civic Education Subject Teachers at the SMA/SMK and MA/MAK Levels was held by the Constitutional Court (MK), on Thursday (11/4/2021) online. The speakers who were presented on this third day were Constitutional Justice Suhartoyo and the Substitute Registrar of the Constitutional Court Saiful Anwar.

On that occasion, Constitutional

Justice Suhartoyo gave material in session I regarding the Constitutional Court and the Procedural Law of Judicial Review of the 1945 Constitution of the Republic of Indonesia. Starting his presentation, Suhartoyo said that the Constitutional Court's Procedural Law highly depends on the authority possessed by the Constitutional Court. Suhartoyo revealed the difference between the Constitutional Court's Procedural Law in exercising its authority to conduct judicial review of the Constitution and the procedural law when the Constitutional Court exercised other powers.

"When the Constitutional Court conducted judicial review against the Constitution, the procedural law used is quite different from when the Court carried out other powers," Suhartoyo continued.

Suhartoyo explained, when the Constitutional Court exercised the authority to conduct judicial review against the Constitution, the nature of the case did not have any parties. It means, there is Petitioner but no Respondent or Defendant. It is different when the Constitutional Court exercises its powers in addition to examining the law, the nature of the case is that there



Rights Guaranteed by the Constitution The Deputy Chief Justice of the Constitutional Court (MK) Aswanto closed the event on Improving the Understanding of Citizens' Constitutional Rights on Friday (11/5/2021). Photo: Public Relations/Teguh.

are the Petitioners and the Respondent, there is a dispute of interest.

The activity to improve the understanding of the constitutional rights of citizens was officially closed by the Deputy Chief Justice of the Constitutional Court (MK) Aswanto, on Friday (11/5/2021). In his remarks, Aswanto said that constitutional rights are rights guaranteed by the constitution which cover all aspects of daily life. -day as a human. There is a long debate about human rights with constitutional rights. He emphasized that basically the human rights adopted into the constitution are what is called constitutional rights.

Aswanto said, the problem faced by the nation and state is, of course, whether the guarantees of human rights contained in the constitution, which was later given the nomenclature of constitutional rights, have been implemented in the life of the nation and state. This is a question that we can answer together.

"For teachers, have the constitutional rights of fathers or mothers as guaranteed in the 1945 Constitution been implemented in the life of the nation and state, especially in carrying out the profession as teachers

of civic education subjects at the SMA/SMK and MA/MAK levels? Of course, this is what we have to investigate first," Aswanto said online from his house.

Aswanto further said that it seems difficult to talk much about constitutional rights or the protection of citizens' constitutional rights. According to him, when individual constitutional rights have not been fulfilled, the fundamental problem is not just an understanding of what are the constitutional rights of citizens, but how to implement constitutional rights in the life of the nation and state and everyday life for each profession including the profession. teacher.

"Well, that is why the Constitutional Court initiates or carries out activities to increase the understanding of the constitutional rights of citizens," he said. According to Aswan, the Constitutional Court realized that before we talk further about enforcement, the most important thing first is an understanding of the concept of constitutional rights. the teaching profession or teaching civic education subjects at the SMA/SMK and MA/MAK levels is very important to provide the basics. Even though the previous level of education may already have a basis, he believes that to finalize

the basics, it is at the SMA/SMK and MA/MAK levels. (Utami Argawati/Lulu Anjarsari P)

Technology Guidance for the Association of Legislative Designers

The Association of Indonesian Legislative Designers (IP3I) follows the Technical Guidance (Bimtek) of Legal Testing Procedures. This activity was organized by the Constitutional Court (MK) in collaboration with IP3I online on 9-12 November 2021.

"The amendments to the 1945 Constitution are quite large in terms of quantity and substance. If we look at the changes, there is one very important content material, (namely) on Human Rights in Chapter XA," said Chief Justice of the Constitutional Court Anwar Usman while giving a keynote speech as well as opening this technical guidance activity on Tuesday (11/9/2021) night.

Although the regulation of human rights (HAM) is not only listed in Chapter XA of the 1945 Constitution, the placement and regulation specifically on human rights indicate that the state



Ketua MK Anwar Usman saat memberikan ceramah kunci sekaligus membuka kegiatan Bimbingan Teknis Hukum Acara Pengujian Undang-undang bagi Ikatan Perancang Peraturan Perundang-undangan Indonesia (IP3I) Selasa (9/11), secara daring. Foto Humas MK/Budiman.

really wants to guarantee the protection of constitutional rights to its citizens.

"In line with the case, the establishment of the Constitutional Court in the Amendment of the 1945 Constitution is also aimed at safeguarding the guarantee of the constitutional rights of citizens. In this context, the Constitutional Court is tasked with overseeing the implementation of guarantees for the implementation of citizens' constitutional rights through the formation of laws as outlined in the 1945 Constitution," Anwar said to 400 participants of the technical guidance.

As we all know, Anwar continued, the law is a political product formed by the legislature and the executive. These two state institutions gain legitimacy in their power through democratic mechanisms, as we know with general elections. The election product produces a majority vote which ultimately leads to the power to be able to sit in a majority, both in parliament and in the highest position as President.

Not Only about Technical

The second day of the Technical Guidance (Bimtek) of Legal Examination Procedures for the Association of Indonesian Legislative Designers (IP3I)

was held online by the Constitutional Court (MK) on Wednesday (10/11/2021). On this occasion, Constitutional Justice Enny Nurbaningsih explained the material "The Constitutional Court and the Characteristics of the Procedural Law of the Constitutional Court".

"Speaking of judicial review, there must be problems in it. It could be the material aspect or the substance of the law as well as the formal aspect or the process in the formation of the law," said Enny.

According to Enny, these two aspects are the main tasks of the drafters of the legislation. The drafters of laws and regulations do not only talk about technical matters, yet can also link material and technical matters, so that what is born is truly a good legal product.

"When we form a product of laws and regulations, like it or not, we have to see what is the purpose of the legal product that will be realized," continued Enny.

Enny also explained the development of national law. Legal development is directed at the realization of a stable national legal system based on Pancasila and the 1945 Constitution which includes: development of legal materials; legal structure including

legal apparatus; legal facilities and infrastructure; the embodiment of a society that has high awareness and legal culture in the context of realizing a rule of law; creation of a just and democratic society.

"The development of national law can't be done instantly. But there must be methods and strategies in planning the development of national laws," said Enny.

Application Techniques for Judicial Review

Petitioners in the judicial review are parties who consider their constitutional rights and/or authorities to be impaired by the enactment of a law, which includes individual Indonesian citizens, including groups of people who have the same interests. Furthermore, the Petitioner from the customary law community unit as long as it is still alive and following the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in the Law.

"In addition, there are Petitioners who are public or private legal entities as well as Petitioners who are state institutions," said Registrar of Substitute Constitutional Court (MK) Rizki Amalia



Deputy Chief Justice of the Constitutional Court (MK) Aswanto officially closed the Technical Guidance (Bimtek) of the Legal Examination Procedures for the Association of Indonesian Legislative Designers (IP3I) on Friday (12/11) online. Photo: Public Relations MK/ Hendy.

on the third day of Bimtek (technology guidance) of Procedural Law of Judicial Review for the Association of Indonesian Legislative Designers (IP3I) on Thursday (11/11/2021) which was held by the Court online.

Having a Conception on Constitutional Rights

Deputy Chief Justice of the Constitutional Court (MK) Aswanto officially closed the Technical Guidance

(Bimtek) of Legal Examination Procedures for the Association of Indonesian Legislative Designers (IP3I) on Friday (11/12/2021). The online technical guidance activity which took place on 9-12 November 2021 was held by the collaboration of the Constitutional Court and IP3I.

“The understanding that you get from the technical guidance material, is not only for your profession as a drafter of laws and regulations. We

hope that there will be inputs from the technical guidance that can be taken into consideration when you and your father draft law and regulations, starting from laws to the lowest regulations,” said Aswanto to the participants from IP3I. Aswanto hopes that the regulation of the draft legislation when it was born from the thoughts of the drafters of the legislation, from the beginning had a constitutional right perspective. (Nano Tresna Arfana/ Nur R)



Constitutional Justice Enny Nurbaningsih was the presenter of Technical Guidance (Bimtek) on Legal Examination Procedures for the Association of Indonesian Legislative Designers (IP3I) which was held online on Wednesday (11/10/2021). Photo: Public Relations/Budiman.



CONSTITUTIONAL COURT RECEIVES PUBLIC INFORMATION DISCLOSURE AWARD

THE CONSTITUTIONAL Court (MK) received the 2021 Public Information Disclosure Award (KIP) as an "Informative" Public Body. The award was given by the Vice President of the Republic of Indonesia KH Ma'ruf Amin symbolically through a video conference on Tuesday (10/26/2021). Secretary-General of the Constitutional Court M. Guntur Hamzah received the award virtually from Lt. 11 Constitutional Court Building.

This award is a form of appreciation for all the efforts and commitments of the Constitutional Court in providing information services openly to the public. The public information disclosure services offered by the Constitutional Court are also increasing from year to year, along with the rapid development of information and communication technology and changes that occur in society.

The Constitutional Court received a score of 93.41 in the "Informative" category. The category achieved by the Constitutional Court has increased from 2020, namely the "Towards Informative" public body. Thus, the Constitutional Court has succeeded in increasing its position as a state institution and

non-ministerial government institution with informative qualifications.

Indonesian Vice President KH Ma'ruf Amin in his speech said that this award is a very good opportunity for the public department to continue to accelerate the best efforts regarding information disclosure, through various innovations that are relentless. The awarding for the management of public information disclosure is carried out to encourage public participation in realizing good and transparent government governance.

"The Indonesian state firmly guarantees the acquisition of information for the public, this means that all institutions must continue to encourage the spirit of information disclosure and become a common concern," said Indonesian Vice President KH Ma'ruf Amin.

In addition to the Constitutional Court, the Public Information Disclosure award with the "Informative" classification was also given to the three best ministries, namely the Ministry of Agriculture (99.29), the Ministry of Communication and Information (99.21), and the Ministry of Tourism and Creative Economy (98.10). (Utami Argawati/Nur R.)

THE OPENING OF THE 1945 CONSTITUTION IS THE ENTRY TO UNDERSTAND INDONESIA

IN ORDER to evaluate the achievement of the Vision of Indonesia 2020 as stated in MPR Decree Number VII/MPR/2001, the Constitutional Court (MK) through the Secretary-General of the Constitutional Court M. Guntur Hamzah attended the Meeting of the Constitutional Review Commission of the People's Consultative Assembly of the Republic of Indonesia (MPR RI) on Wednesday (27 /10/2021). This activity was held to gather input from resource persons from various disciplines and professions for the Basic Principles of State Policy (PPHN). The activity with the theme "Evaluating the Implementation of the Vision and Mission of the State in Formulating the Direction of National Development" was held in the Nusantara Delegation Room IV, MPR RI Building.

On this occasion, Guntur also provided input in determining the direction of national development based on the vision and mission of the state. Guntur said, according to the construction of the 1945 Constitution, the Constitutional Court as one of the actors of judicial

power, was given the authority to carry out constitutional adjudication through the constitutional court mechanism under the supremacy of the constitution. Constitutional adjudication is carried out to protect the constitution. It means that the Constitutional Court maintains the constitutional values in the 1945 Constitution through constitutional testing to ensure that the legal system is carried out according to the hierarchy of laws and values and the values of the 1945 Constitution. In the context of guarding and safeguarding the 1945 Constitution, Guntur continued, in exercising the authority to examine laws against this Constitution, the Constitutional Court plays a function as the guardian of ideology, it is Pancasila.

"That Pancasila is not just a theory but includes a method of getting an agreement to achieve social justice. Pancasila is a perfect and final concept and cannot be disputed anymore," said Guntur.

By reading meaningfully the main ideas of the Preamble to the 1945 Constitution, Guntur invites all parties to understand the direction of why and how the Indonesian nation must be managed and organized. In other words, the main ideas in the Preamble to the 1945 Constitution are the entrance to understanding the reasons for the existence of the Indonesian nation and state. (Sri Pujianti/Nur R.)



VILLAGE COMMUNITY EMPOWERMENT CONSTITUTION INVOLVES RELATED MINISTRY

HEAD of the Public Relations and Protocol Bureau, Heru Setiawan, gave a speech as well as opened the Workshop on the Improvement of Citizens' Constitutional Rights and Empowerment of Constitutional Village Communities. This activity took place at the Faculty of Law, Hasanuddin University, Makassar, South Sulawesi, Wednesday (10/27/2021).

"The village is a picture of Indonesia, and we see Indonesia is looking at the village, this commitment made the Constitutional Court 12 years ago led by Mahfud MD set a constitutional village," said Heru. Heru stated, after 12 years of establishing a constitutional village, the Constitutional Court conducted an evaluation and saw constitutional awareness to find



out what problems occurred in the constitutional village, namely Galesong Village, Wasur Village, Bangbang Village, and Nagari Pasia Laweh.

Based on the results of the evaluation of the four constitutional villages, the Constitutional Court collaborated with the relevant ministries to improve the empowerment of constitutional villages. The workshop, said Heru, involves relevant ministries where each ministry will explain what

program will be carried out on the constitutional village.

In this workshop, an action plan will be prepared which will later be submitted to the ministers at the peak of the workshop which will take place in Galesong Village. Heru said that this workshop is expected to be an initial solution in empowering constitutional village communities and other village communities. (Ilham Wiryadi Muhammad/Nur R.)



RESEARCH RESULTS ARE EXPECTED TO BE A REFERENCE TO THE CONSTITUTIONAL JUDGE

SECRETARY-General of the Constitutional Court M. Guntur Hamzah said, the purpose of Competitive Research Activities at the Constitutional Court (MK) is to provide substantive support to Constitutional Justices. This was conveyed by Guntur on Tuesday

(11/2/2021) morning giving a speech before "Presentation of Competitive Research Results to be held by the Constitutional Court in 2021".

Guntur said, after the research was completed, the Constitutional Court MK Research Team needed to make a summary or at least a summary of the research results by attaching a soft file of the complete research. "By taking the most important angles from the results of this research, to improve the quality of the Constitutional Court Decisions,

it is hoped that the Constitutional Justices will read the summary of the research results. Hopefully, they are interested in the results of the research so that it can be used as a reference in the Constitutional Court's Decision. In addition, certain methods are needed so that research results can be more effectively communicated to constitutional judges," said Guntur.

According to Guntur, if the results of the research are not read by the Constitutional Court Justices, this is very unfortunate. Because research has cost, time, thought, and so on, but it's a shame if it doesn't have an outcome related to the Constitutional Court's Decision. "Therefore, if the three research results provide something new, then the constitutional judges will use the research results as a reference, not just research results. Indeed, here is the challenge," said Guntur. (Nano Tresna Arfana/Lulu Anjarsari P)



CONSTITUTIONAL COURT INSPECTORATE REACHES SIKD AWARD OCTOBER 2021

THE INSPECTORATE of the Constitutional Court was in the first position as the work unit with the fastest performance response in October 2021, thus winning the SIKD Award. The SIKD Award was given directly by The head

of the Pancasila and Constitutional Education Center, Imam Margono as the previous winner of the SIKD award, on Tuesday (2/11/2021) afternoon at the Constitutional Court Building.

Secretary-General of the Constitutional Court M. Guntur Hamzah congratulated the bureau at the Constitutional Court for successfully occupying the first position. According to Guntur, the SIKD Award is intended to be a spirit and motivation for other

work units in the Constitutional Court to achieve the same award. In addition, this award, it can increase cohesiveness among fellow employees in the work unit.

The Dynamic Archive Information System (SIKD) is a system used to support the internal performance of the Constitutional Court and is part of the knowledge management of the Constitutional Court. Regarding the use of the SIKD, the Constitutional Court held a SIKD Award for work units. The SIKD developed by the Constitutional Court now has features that are not only able to show performance responses but are connected to various applications related to the Court's performance. Several applications, including SIBANGGALAN, e-SOP, Dashboard, and others. Later SIKD will form a judicial technology ecosystem that will assist the performance of the Court as a whole. (Utami Argawati/Nur R)

THE CONSTITUTIONAL COURT PUTS THE FIRST RULING AT THE CONSTITUTIONAL HISTORY CENTER

PLACEMENT of the First Decision of the Constitutional Court (MK) at the Center for Constitutional History (Puskon) by the National Archives of the Republic of Indonesia (ANRI) and Submission of the Static Archives of the Constitutional Court to ANRI took place on Tuesday (11/9/2021) at the Constitutional Court Building.

"We can learn from Japan, the first Criminal Code in Japan is kept very special, treated specially in the Minister of Justice Building. It means that the first Criminal Code in Japan is the history of the nation and is a very extraordinary monument. Besides, it has become an icon for visits from various parts of the world who come to the Minister of Justice in Japan," said Guntur.

Guntur also gave an example of the Louvre museum in France which

stores icons that are often visited by the domestic and international community. One of the famous icons in the museum is the Monalisa painting which is packaged in such a way that it has extraordinary appeal for the viewer.

"Because I hope that the First Decision of the Constitutional Court can become an icon and the center of people's visits, as the first original document to be decided by the Constitutional Court. This means that all those present at this event, especially the Head of ANRI, have registered themselves in the history

of the Constitutional Court. This is an extraordinary effort from the Head of ANRI and all his staff who support us. Because it is very rare for ANRI to approve to move the archives," said Guntur.

Therefore, continued Guntur, in accordance with the provisions, this is part of ANRI's supervision, ANRI's ownership, as an ANRI document placed in the Constitutional Court. Considering its benefits, it is far more beneficial if it is placed in the Constitutional Court. (Nano Tresna Arfana/Lulu Anjarsari P)





CONSTITUTIONAL COURT WON BMN AWARDS 2021

THE CONSTITUTIONAL Court (MK) won the 2021 BMN Awards announced by the Minister of Finance Sri Mulyani Indrawati online on Monday (15/11/2021) morning. Secretary-General of the Constitutional Court M. Guntur Hamzah attended the event from his office on the 11th floor of the Constitutional Court Building. The 2021 BMN Awards are an appreciation from the Ministry of Finance given to some ministries/agencies and stakeholders who can maintain state assets in the form of state property (BMN) or through an auction process. The Constitutional

Court won the 2021 BMN Awards for the category of reporting quality for group I with the Coordinating Ministry for Human Development and Culture (PMK) and the State Administration Agency (LAN). Several state institutions that also won the 2021 BMN Awards are the Ministry of Communication and Information, the Ministry of Energy and Mineral Resources and the BPK for the category II reporting quality.

“Of course, all these results can be appreciated, but of course, we also have no reason to feel complacent and complacent with the achievements that

have been achieved, because there are still many challenges,” said Sri Mulyani.

To stakeholders who have not received awards or achievements, Sri Mulyani hopes that they will not be discouraged, and are encouraged to keep trying so that all ministries/agencies can make achievements in managing and utilizing state property. According to him, the treatment of a nation and state in managing its assets shows the character of the nation and its civilization (Nano Tresna Arfana/Nur R).

Is The Netherlands Far Away?

● **Immanuel B. Hutasoit**
Head of International Cooperation

The idiom “The Netherlands is still far away” is certainly very close to our ears. This sentence is conveyed to give a message that something is still very far from happening. Thus, we need to relax a little bit about everything. Don’t worry, that’s roughly the term children today. Somehow the Dutch story can be connected in this idiom. It is perhaps because the Dutch “closeness” to Indonesia which occurred for about 350 years was the reason the Netherlands was involved in the idiom. In fact, if we draw a straight line, the distance between Jakarta and Amsterdam stretches as far as 11,353 km, which if taken by commercial aircraft (non-stop flights) takes about 15 hours. From this simple data, it can be concluded that from a geographical point of view, the Netherlands is located far away from our country.

Not to mention from a cultural point of view, although some words in Dutch were absorbed into Indonesian—namely *gratis*, *koelkast*, *kantoor* and so on. Yet, in terms of human character, the two are quite different. Dutch people are known to be straightforward and frank in communicating. They are educated to get used to openly expressing opinions or even refuting the opinions of others, as written by Ben Coates in the book *Why the Dutch Are Different*. In Dutch, the term *bespreekbaarheid* is known—which means that anything can and needs to be discussed. This is certainly very different from our nation’s culture which tends not to be too direct and even seems taboo to refute or have different opinions from other people.

Even though they have different distances and cultures, speaking in the realm of law, it is undeniable that the legal system in Indonesia—directly or indirectly—is heavily influenced by the Dutch legal system that has been implemented in Indonesia since the colonial era.

This is what the Chairperson of the Republic of Indonesia, Anwar Usman, together with Secretary-General M. Guntur Hamzah captured. The two of them started to think about the need for a special program for the employees of the Constitutional Court to increase capacity through a series of training in collaboration with several foreign universities, especially in the Netherlands in 2016. This training program must be unique and tailor-made according to the needs of the Constitutional Court.

In general, the training program is divided into two groups. First, a training program for substitute clerks, researchers or employees with a law degree background called the recharging program. From this program, it is hoped that the participants will have knowledge management related to the authority of the Constitutional Court. Second, a training program for employees in the field of general administration, which is called an internship program. This program aims to increase the knowledge and applicative ability of public administration employees in securing support for the handling of cases in the Constitutional Court.

Against these two concepts, the Constitutional Court gave the choice to The Hague University in The City of The Hague as the first organizer as well as the pilot project for the two programs. Communication with The Hague University began in December 2016 in Den Haag City, through a working visit by the Chairperson and Secretary-General of the Republic of Indonesia. Although it was a little “bleeding” in program preparation, budget preparation, participant preparation, and so on, finally the first wave of this program started running in 2017. A total of 4 (four) people participated in the recharging program for 10 (ten) weeks and 6 (six) people join the internship program for 1 (one) week. This was followed by a second wave

in 2018 and the third wave in 2019 until this program was temporarily suspended during the pandemic. This program also experienced the development of cooperation partners with the MoU between MKRI and Maastrich School of Management (MSM) in 2018.

In total, these two programs were attended by around 50 selected MK employees. Besides, these two programs also involved a series of official trips abroad by the chairman of the Constitutional Court, some constitutional judges, and other high-ranking officials of the Constitutional Court to the Netherlands in the evaluation process or delivering public lectures in scientific discussion forums and public lectures held at the Oval Aula, The Hague University.

This program is a path of progress that needs to be optimized for its benefits, both for the personal life of the participant, or the Constitutional Court as an institution. Of course, during the training program, all participants have gained additional knowledge and insight. It is not only academically but also learning culture and life culture. The order that may be difficult to find in their own country, is very evident in the Netherlands. It encourages independence in every aspect.

Program participants have seen with their own eyes that queuing is convenient; walking is cheap and exciting; maintaining cleanliness in public areas is commonplace; and they also understand very well that expressing opinions has an incomparable pleasure.

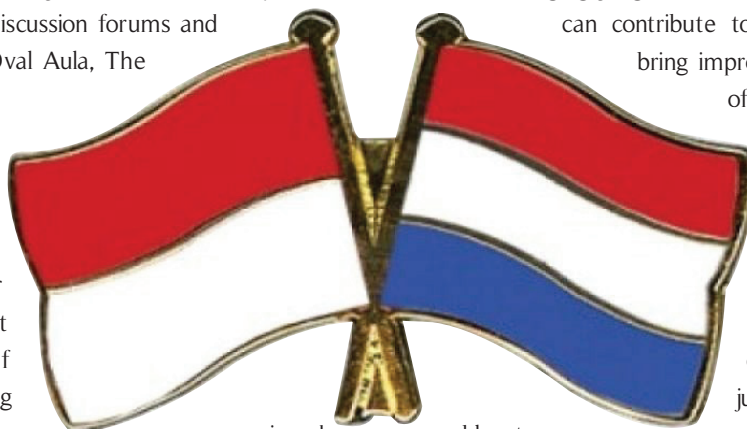
But the question is, will it survive after returning to the homeland? Do you still like walking? Do you enjoy using public transportation? Willing to queue? Or is there still a desire to just put your dirty plates and glasses in the office pantry? It's still a matter of culture, what about the additional results of academic insight obtained, can it be assessed and applied with the right method? In the meantime, these questions are rhetorical matters that need to be analyzed more deeply and presented with a unique approach.

Naturally, expectations soar high for the alumni of the recharging program and internship program so that they can contribute to a positive atmosphere and bring improvements to the performance

of the Constitutional Court. But if it's not too pronounced, maybe we need to ask the creator of the idiom "The Netherlands is still far away". Maybe because the Netherlands is always considered far away, then it justifies that we will not be able to catch up or even get close to that everything that was learned and gained while in the Netherlands would one by one fade and evaporates during the journey of life in this country.

Then who's at fault? There is nothing wrong, we just need to sit together, think together, analyze data, and communicate frankly, and find a way to manage this excellent program while maintaining and caring for existing alumni as agents of reform who will later bring progress to the Constitutional Court even Indonesia.

The Netherlands is still far away, let's run even faster!



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