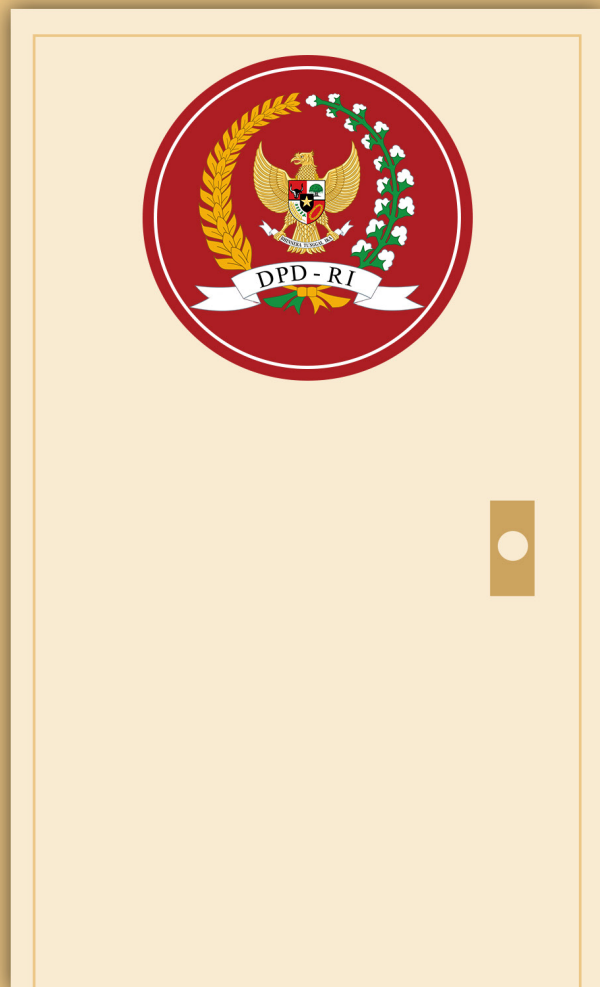
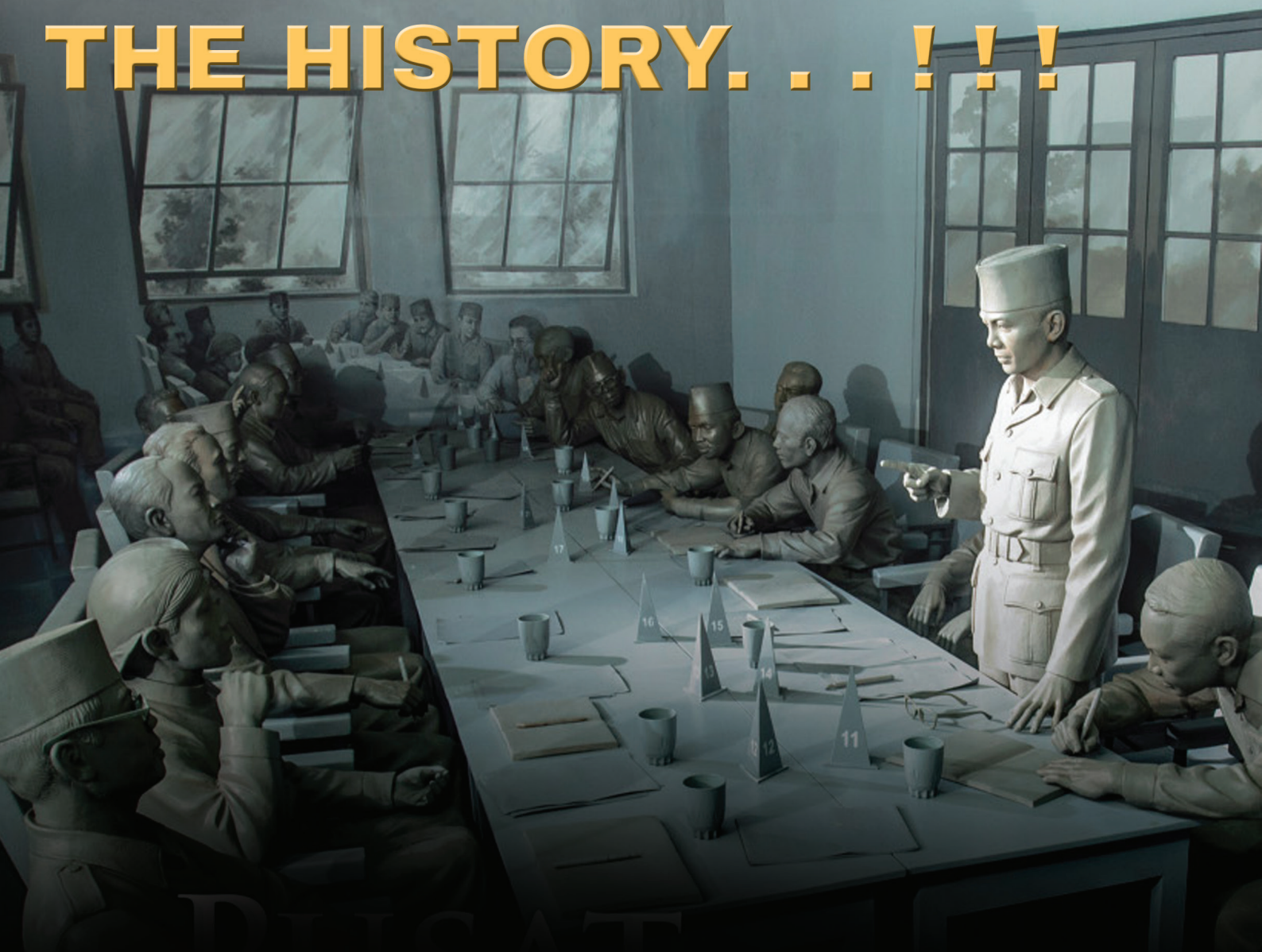


KONSTITUSI



**Former Convict
Candidate Member of DPD**

**COME LEARN ABOUT
THE HISTORY...!!!**



CONSTITUTIONAL HISTORY CENTER

Floors 5 and 6 of the Constitutional Court Building
Jl. Medan Merdeka Barat No. 6 Central Jakarta



Editor's Foreword

The eligibility criteria for the nomination of former convicts as participants in general elections for members of the Regional Representative Council (DPD), differ from the eligibility criteria for nominations in elections for members of the People's Consultative Assembly (DPR) and Regional People's Representative Council (DPRD), as well as local elections (pilkada), prompted Perludem to examine the Election Law. Ultimately, the Constitutional Court Judges rendered a decision on this examination on February 28, 2023. The details of the hearing process leading to the verdict can be found in the Main Report section.

Furthermore, after a month of work, the Honorary Assembly of the Constitutional Court, consisting of Constitutional Judges from the 2015–2020 period, namely I Dewa Gede Palguna (Chairman), Constitutional Judge Enny Nurbaningsih, and Faculty of Law UGM Lecturer Sudjito as Members, completed its duties. On March 20, 2023, the Honorary Assembly of the Constitutional Court delivered a decision on the findings related to the alleged alteration of Constitutional Court Decision No. 103/PUU-XX/2022, requested by Zico Leonardo Djagardo Simanjuntak. How the examination process unfolded leading to the decision of the Honorary Assembly of the Constitutional Court can be reviewed in the Special Coverage section of the KONSTITUSI Magazine March 2023 edition.

There are still many other sections for readers to explore in the KONSTITUSI Magazine March 2023 edition. Happy reading!

NUMBER 193 • MARCH 2023

KONSTITUSI

DIRECTING BOARD:

Anwar Usman • Arief Hidayat
Enny Nurbaningsih • Wahiduddin Adams
Suhartoyo • Manahan MP Sitompul
Saldi Isra • Daniel Yusmic Pancastaki Foekh
• M Guntur Hamzah

DIRECTOR:

Heru Setiawan

EDITOR IN CHIEF:

Heru Setiawan

DEPUTY EDITOR-IN-CHIEF:

Fajar Laksono Suroso

MANAGING EDITOR:

Mutia Fria Darsini

EDITORIAL SECRETARY:

Tiara Agustina

EDITOR:

Nur Rosihin Ana

Nano Tresna Arfana • Lulu Anjarsari P

REPORTER:

Ilham Wiryadi • Sri Pujianti
Yuniar Widiastuti
Panji Erawan
Utami Argawati • Bayu Wicaksono

CONTRIBUTOR:

I Dewa Gede Palguna
Bisariyadi
Luthfi Widagdo Eddyono
Wilma Silalahi
M Agus Maulidi

INTERNATIONAL AFFAIRS

Sri Handayani
Immanuel Hutasoit
Sherly Octaviana
Wafda Afina

PHOTOGRAPHER:

Ifa Dwi Septian

VISUAL DESIGN:

Rudi • Nur Budiman • Teguh

VISUAL DESIGN:

Herman To

EDITOR'S ADDRESS:

Gedung II Mahkamah Konstitusi
Republik Indonesia
Jl. Medan Merdeka Barat No. 7
Jakarta Pusat
Telp. (021) 2352 9000 • Fax. 3520 177
Email: majalahkonstitusi@mkri.id
Website: www.mkri.id



@officialMKRI



@officialMKRI



Mahkamah Konstitusi RI



mahkamahkonstitusi



mkri.id



REGIONAL REPRESENTATIVE COUNCIL MEMBER CANDIDATE IS FORMER CONVICT

The Former convicts who plan to run as candidates for members of the Regional Representatives Council (DPD) must wait five years after completing their prison sentences.

34 CONSTITUTIONAL DOCUMENTATION

OPTIMIZING THE USE OF "SMART BOARD" IN "ACCESS TO JUSTICE" EFFORTS



- EDITOR'S FOREWORD 1
- EDITORIAL 3
- WINDOWS 4
- OPINION 8
- HEADLINE NEWS 10
- SPECIAL COVERAGE 22
- LIST OF VERDICT 32
- NEWS FLASH 34
- CONSTITUTIONAL DOCUMENTATION 40
- KHAZANAH 52
- BOOK REVIEW 56
- MINUTES OF AMENDMENT 58
- REVIEW 60
- HI MK 62

THE FORMER PRISONER WAITING FOR FIVE YEARS

Episodes of former convicts are in a new chapter. It is about the conditions for former convicts who want to take part in the contest, either in the regional elections or also in the legislative elections. Recently, the Constitutional Court drafted a new constitutional mandate. In regional elections, former convicts who plan to contest must pass a waiting period. The duration is five years. It is calculated from the time he finished serving a prison sentence. This is contained in Decision Number 56/PUU-XVII/2019. Besides, the former convict must be patient, beyond the 5-year gap first, only then he can "nyaleg". Decision Number 87/PUU-XX/2022 confirms this.

In the most recent round, through Decision Number 12/PUU-XXI/2023, the Constitutional Court also imposed a 5-year interlude for former convicts who plan to become candidates for Regional Representatives Council (DPD) members. In the Election Law, there is still an opportunity for former convicts to nominate themselves as candidates for Regional Representatives Council members, without a respite period. It means that once they are free, he can immediately register and progress. Thus, when the norm was requested for review, the Court granted it.

Decision Number 12/PUUXXI/2023 fulfills the evolution and twists and turns of the Constitutional Court's decision regarding the requirements for the candidacy of former convicts, after having several twists and turns. If we look closely, there are five bends. **First**, former convicts for criminal offenses due to minor negligence (*culpa levis*) or political crimes are not prohibited or can still meet the requirements to run for regional election contestation.

Second, besides *culpa levis* and political crimes, the Constitutional Court determined that 4 conditions must be fulfilled by former convicts who are 'candidates' in regional elections. These conditions are; (1) not valid for elected public office as long as no additional punishment is imposed in the form of revocation of the right to vote by a court decision that has permanent legal force; (2) limited to a period of 5 (five) years after the former convict has finished serving a prison sentence based on a court decision that has permanent legal force; (3) Honesty or openness

regarding his/her identity background as a former convict; and (4) Not as a repeat offender. This was written by the Constitutional Court in Decision Number 4/PUU-VII/2009.

Third, this time the Constitutional Court made a sharp turn. In Decision Number 42/PUU-XIII/2015, the Constitutional Court annulled the 4 previous cumulative conditions. There is only one thing left: openly and honestly to the public that he/she is a former convict. If he/she has been open and honest with the public, the former convict can be considered to have met the requirements, without the need for the other three conditions.

Fourth, the Constitutional Court turns to the old direction. The Constitutional Court decided to return to the legal considerations of Decision Number 4/PUU-VII/2009. Through Decision Number 56/PUU-XVII/2019, the Constitutional Court reinstated the 4 previous cumulative requirements. The Constitutional Court underlined how important the 5-year gap period is for former convicts who will run for regional head candidates. Furthermore, through Decision Number 87/PUU-XX/2022, the Constitutional Court harmonized this requirement to also apply to candidates for House of Representatives and Regional People's Representative Assembly members in the Election Law. Finally, through

Decision Number 12/PUU-XXI/2023, this condition also applies to former convicts who will contest to become candidates for Regional Representative Council members.

How complicated forming a convoluted pattern, this Judgment fulfills the previous ruling. The mandatory requirement of passing a 5-year gap period applies to former convicts to sit in all public positions which are filled through elections (elected officials). The positive impact is that in the practice of holding simultaneous general elections and simultaneous local elections in 2024. There are certainly no former convicts who are 'fresh out of jail'.

Even if later (perhaps) there is a former convict who runs for office and turns out to be elected, at least he/she has finished serving his sentence 5 years ago. The figure of 5 years of waiting, according to the Constitutional Court, is sufficient time for former convicts to do self-introspection and adapt to the society around them. Long Live The Constitution!





“WIJKENSTELSEL”

I D.G. Palguna

“Wijkenstelsel requires each tribe live in its own village. Hence, there is no relationship, except maybe economic relations, between ethnic groups in one city, although it is very possible that there is a relationship between ethnic elites in one city.”

Ong Hok Ham, historian

Have you ever imagined that there is a government deliberately making laws to regulate the residence of its residents based on ethnic criteria? Even though it sounds absurd, this happened. It is *Wijkenstelsel*, a village system based on ethnic groups imposed by the Dutch East Indies colonial government. This was mainly regulated in the Staatsblad of 1935 Number 37 (Staatsblad, or in full Het Staatsblad van Nederlandsch-Indië, is the “state sheet” of the Dutch East Indies), especially for citizens of Chinese descent, even though this policy had started in the mid-18th century. For residents of Chinese descent in Indonesia, *wijkenstelsel* is an integral part of the history of the presence of Chinatowns in Indonesia, especially in several big cities. Through this *Wijkenstelsel*, people of Chinese descent are required to live in *Chineesche Wijk*, a.k.a Chinese Village. *Wijkenstelsel*’s “partner” is



Passenstelsel, a system that requires Chinese people to have a road pass if they want to travel, which requires them to leave *Chineesche Wijk*. Obtaining this road pass is considered to be very difficult, time-consuming, and even frustrating. Meanwhile, the sanctions “prepared” for those caught leaving Chinatown but not having a pass are quite severe: corporal punishment up to a fine of up to 10 guilders.

Each *wijk* is led by a *wijkmeester*—which in the governance hierarchy

for natives (*Inlandsche-bestuur*) is the lowest position. However, this position was quite prestigious in its day. The proof is that there is a vacancy in the *wijkmeester* position every time, whether it occurs as a result of retirement or the dismissal of the old *wijkmeester*. Thus, a new *wijkmeester* position has to be filled, and dozens of candidates can register. In its development, the method of selection and the conditions were quite heavy. *Wijkmeester* was chosen through a selection process. Those who are interested must first fill out an application letter issued by the Resident. Language proficiency (particularly Malay and Dutch) is the main requirement. If the candidate masters martial arts, he will be more favored—provided he has no “history” of being involved in crime. The task of a *wijkmeester* is to provide administrative services to the *wijk* residents (issuing travel permits, marriage licenses, death certificates, and even permits for slaughtering animals). Keeping the environment

clean and safe is also an important task for a *wijkmeester*—perhaps because of that, the requirements for mastering martial arts are quite decisive. Another important task, if not the most important, is collecting taxes.

What is the purpose of this strange policy? Historian Ong Hok Ham—through his book, *History of Chinese Peranakans in Java* (2005)—called this part of an effort to divide the population. Hence, it is easier to control them. Before the 19th century, even long before the arrival of the Dutch to Indonesia, relations between residents, especially between the Chinese and Javanese, were very close. There has even been assimilation between the Chinese and the Javanese. The assimilation went so deep that many people of Chinese descent could no longer be recognized,

apart from the fact that their physical characteristics no longer “indicated” their Chineseness and their names did not indicate Chineseness at all—especially among those of Chinese descent who later converted to Islam. There is something more “exciting.” Chinese were appointed into the Javanese nobility. As happened in Surabaya for example, just to mention one example, it is the forerunner to the inception of the name Sambongan. There was a Chinese descent named Sam Hong. According to Ong Hok Ham, Sam Hong is a close friend of the Duke of Surabaya’s son. Sam Hong did a lot for his friend so that the son of the Duke of Surabaya felt indebted to Sam Hong. It is impossible to repay this debt with money because Sam Hong was a rich man. So, when the Duke of Surabaya’s son later became

the Regent of Surabaya, he asked Sam Hong to “become a Javanese” and he said yes. Furthermore, the Regent of Surabaya asked his uncle, the Regent of Bolang, to resign because he was old. His nephew’s request was granted and his position as Regent of Bolang was replaced by Sam Hong. Next, Sam Hong’s daughter was also married to the Regent of Surabaya. From this marriage, Tjokronegoro IV was born. He received a huge inheritance from Sam Hong. Sam Hong’s wealth is so great that there is a block of houses in Surabaya called Sambongan. It is considered that the word “Sambongan” comes from Sam-Hong-An—which the people pronounce as Sambongan.

“After the 19th century,” said Ong Hok Ham continued, “the close relationship was distorted,



WIKICOMMON

national groups were separated by sharp lines, so that until now we can still feel the boundaries that isolate national groups...

This Dutch colonial policy can be seen clearly in Staatsblad No. 37, 1835. There the Dutch government saw a tendency to mix (latent amalgameren) various 'nations', such as Foreign East, Chinese, Bugis, and others. The government didn't like seeing this, they want the various "nations" to be separate and not to be mixed up. That's what the Wijkenstelsel is for."

Why was the Dutch government so worried about the symptoms of what it calls latent amalgameren? Apparently, this is related to past trauma when what happened in Dutch is called Chineezenmoord. It is a riot that led to a large-scale massacre of Chinese people in Batavia in 1740 by VOC soldiers. The violence lasted from October 9 to 22, 1740. According to historians, at least 10,000 Chinese were killed. As written by many historians, this event originated from the occurrence of anxiety among Chinese people in Batavia which was triggered by government repression and the fall in the price of sugar. The VOC governor-general at the time, Adriaan Valckenier, announced that any rebellion or resistance would be met with a "death squad." On October 7, 1740, hundreds of Chinese, some of whom were sugar factory workers, killed 50 Dutch soldiers. This then triggered the Dutch army to take action to confiscate all

weapons from the Chinese people. The government also imposed a curfew on the Chinese population.

Two days later, rumors of Chinese atrocities sparked other ethnic groups in Batavia to burn Chinese houses along Kali Besar and also triggered the Dutch army to fire cannons at Chinese houses. The riots continued, although on a small scale, even though Governor-General Valckenier had announced an amnesty on 11 October 1740. Outside Batavia, clashes between the Dutch army and the rampaging sugar factory workers continued. New clashes stopped after Dutch troops attacked the Chinese "defense" bases in the sugar factories throughout the riot area. The attacks on Chinese people throughout Java, in the following year, sparked an event that became known as the "Java War" (Java War) which pitted the armed forces of the Chinese and Javanese people against the Dutch army which took place in Central and East Java. In the war that lasted about two years (1741 – 1743), it is estimated that no less than 28,900 armed troops were involved; 23,500 on the combined Chinese and Javanese troops, while on the Dutch side, there were around 3,400. Although in the end, the Dutch won, this war drained their energy. This war marked and became the cause of the fall of the Mataram Sultanate and indirectly became the "founder" of the Surakarta Sunanate and the Yogyakarta Sultanate.

Therefore, it was the fear that

the Javanese and Chinese (as well as other ethnic groups in the Dutch East Indies) would join in against the Dutch government. That was the reason for the maintenance (even strengthening) of the wijkstelsel—which was then "added" with passenstelsel. If these two "brotherly" policies did not exist, perhaps the assimilation between Chinese people and ethnic groups in Indonesia in general, especially with the Javanese, would have been much more intense, as happened in the centuries that preceded the 18. Thus, the process of "becoming Indonesian" for those of Chinese descent is no longer a mandatory issue due to law but is already a sociological fact that is formed naturally.

Thereafter, what happened to Governor General Valckenier? After the Chineezenmoord incident, he left Batavia for Cape Town, South Africa. However, he was arrested and sent back to Batavia to be tried. He was charged with some counts, including his involvement in Chineezenmoord. He was found guilty and charged with the death penalty and all his wealth was confiscated. However, in 1974, after he made a lengthy statement of defense, the case was reopened. He asked the Dutch Government for more evidence. However, before the investigation was completed and before the demands that he made were fulfilled, he died in detention. ****

Grab a copy of
KONSTITUSI
Magazine in digital format through
www.mkri.id





Mohammad Agus Maulidi, S.H., M.H
Alumni of the Faculty of Law
Universitas Islam Indonesia

CONSIDERING THE AUTHORITY TO DETERMINE THE GOVERNMENT REGULATION

The use of Government Regulations in Lieu of Law (Perpu) as a manifestation of the State Emergency Law, quantitatively after the reforms increase significantly. The interesting thing is that every time the determination of the Perpu, controversy always appears to accompany it. The controversy at least leads to 2 (two) things, first is the condition of formation, which is related to the matter of forcing anxiety as outlined by Article 22 of the 1945 Constitution; the second is as content material that leads to the substance of the regulation of the Perpu. It is not infrequently suspected to deviate from the Constitution or crash into certain legal principles that are generally accepted, including those that animate the spirit of constitutionalism and the rule of law. Giving legal immunity for state administrators as material for Government Regulations in Lieu of Law About Coast Number 1 of 2020, is one example. All controversy regarding the determination of Perpu will eventually bring us to measure, is the authority to determine the Perpu in a rule of law like Indonesia is still important to be given?

Urgency and Danger

Research by William Feldman (2005) which compared state emergency law in France (known as a state of siege) with state emergency law in the United States

(known as martial law, because it was born in court decisions related to military cases) is very relevant to answering the question above. The parameters in the form of its adaptive ability to achieve an effective balance between protecting the state and its citizens from a crisis by not sacrificing the basic rights of citizens and the basic philosophy of the nation show that the state of siege in France, which has indeed been normative in its constitution, with changes and improvements are always made. It turns out to be better and better prepared for emergencies.

In contrast, the United States Constitution historically did not contain provisions regarding state emergencies, including special powers in the form of emergency powers given to the president to deal with extraordinary threats. It often creates uncertainty in responding to state emergencies. As a result, the policy choices taken often have a significant impact on the reduction of citizens' constitutional rights. The United States Government's response to emergencies is often excessive and misdirected. President Bush after the bombing of the World Trade Center on September 9, 2001, mentioned returning to old habits such as facing a cold war, even though the situation and threats were different.

Bush's presidency which always prioritized a military approach in dealing

with crises by using the commander-in-chief power exercised by the president, ultimately had a significant impact on reducing the spirit of separation of powers and guaranteeing the protection of individual rights at that time (Kim Lane Scheppele, 2004).

Something similar had occurred before. It was in 1919 after almost simultaneous bomb explosions in 8 (eight) different cities throughout the United States, the Department of Justice at that time arrested thousands of foreign nationals in a place now known as the Palmer Attack (David Cole, 2004). Being an anomaly, repressive action and suppressing human rights, but has no relevance to emergency management.

Comparison based on the empirical practice as described above is sufficient to illustrate that adopting a state emergency legal institution, which in the Indonesian context is in the form of Government Regulations in Lieu of Law (Perpu), is a set price. This is a constitutionally formulated form of anticipation of an emergency, as well as a form of constitutional flexibility that is not only accommodative to normal state conditions but can also adapt when the state is not normal or in an emergency. The expectation is to strengthen the spirit of a rule of law and strong protection of human rights, even though the country is in a state of emergency. One thing that cannot be ignored and is important to anticipate is the use of Perppu for coercive interests, not forcing exigencies. In practice in many countries, not a few state emergency instruments are used as a tool to suppress the spirit of democracy and the rule of law by perpetuating power.

The Nazi government (Hitler) in Germany, using the excuse of a state of emergency to abolish the 1919 Weimar constitution which was known to be very democratic, became a very authoritarian power (Herman Sihombing, 1996). Ferdinand Marcos in the Philippines did not want to step down from power as required by the constitution even though his second period ended in 1973, by taking advantage of the state of emergency in the form of a plan to impose laws of war and change the constitution. The opportunity to carry out this plan gained momentum in 1972 when a series of mysterious bombs occurred in Manila, and after an assassination attempt on the Minister

of Defense Juan Ponce Enrile (Steven Levitsky and Daniel Ziblatt, 2019). In India in 1957, the imposition of a state of emergency was followed by legal chaos, and even constitutional changes were made to justify government actions that caused serious violations of the fundamental rights of citizens (Jimly Asshiddiqie, 2007).

Arrangement of Perpu Determination

Closing the gap in the danger of misuse of the Government Regulations in Lieu of Law (Perpu) as a state emergency legal instrument consists of carrying out arrangements directed at 3 (three) things, first, the criteria of compelling crises to narrow the space for the president's interpretation of the coercive urgency following the spirit of constitutionalism. The Constitutional Court has determined 3 (three) criteria of coercive urgency as a condition for enacting a Perpu through Decision Number 138/PUU-VII/2009. Some of the criteria in the decision are important to be followed up by formalizing them in the Indonesian legislation system.

Second, the validity period of the Perpu must be clearly limited based on legal certainty. The essence of the Perpu as a state emergency legal instrument is temporary, which is used to return the country to normal as soon as possible. Therefore, the validity period should not be too long by providing detailed arrangements. Even though the Constitution has provided a limitation with the "following trial" clause in Article 22 paragraph (2) of the 1945 Constitution, in practice there has been a Perpu that actually goes through the "following trial" period to be objectified by the House of Representatives (Perpu Number 4 of 2009). Third, it is important for meaningful public participation to be formulated both when the Perpu is just enacted, as well as during the process of being objectified by the House of Representatives. This is important to note, bearing in mind that the process of forming a Perpu is not the same as forming other laws and regulations.

REGIONAL REPRESENTATIVE COUNCIL MEMBER CANDIDATE IS FORMER CONVICT



THE 1ST EXTRAORDINARY PLENARY SESSION OF REGIONAL REPRESENTATIVE COUNCIL OF THE REPUBLIC OF INDONESIA FOR SESSION I PERIOD 2016-2017, AT NUSANTARA V BUILDING.

Former convicts who will run as candidates for members of the Regional Representatives Council (DPD) must wait five years after completing their prison sentence.



The requirements for the candidacy of former convicts as participants in the general election (election) for members of the Regional Representative Council are different from the requirements for candidacy in the election for members of the House of Representatives and Regional People's Representative Assembly, as well as the election for regional heads (pilkada). Former convicts who run for the nomination of members of the House of Representatives, Regional People's Representative Assembly (Provincial and Regency/City) as well as regional head candidates, must wait five years after the former convict has completed serving the prison sentence based on a court decision that has permanent legal force and honesty or transparency regarding his background identity as a former convict. Meanwhile, in the nomination of Regional Representative Council members,

there is no requirement for a five-year gap period for former convicts.

This prompted the Association for Elections and Democracy (Perludem) to submit a request for a review of Law Number 7 of 2017 concerning General Elections (General Election Law) to the Constitutional Court (MK). The application was submitted to the Constitutional Court on January 13, 2023. The application was recorded in the Electronic Constitutional Case Registration Book (e-BRPK) with Number 12/PUUXXI/2023 on January 25, 2023. Furthermore, Perludem revised the application on February 13, 2023.

In the 23-page petition, Perludem reviewed Article 182 letter g of the Election Law. Perludem argued that the norms of Article 182 letter g of the Election Law contradicted Article 1 paragraph (2) and paragraph (3), Article 22E paragraph (1), and Article

Article 182 letter g of the Election Law

"Never been sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime punishable by imprisonment for 5 (five) years or more, unless openly and honestly conveying to the public that the person concerned is a former convict."

28D paragraph (1) of the 1945 Constitution.

The entry into force of Article 182 letter g of the Election Law resulted in direct or indirect losses, or at least potentially detrimental to the Association for Elections and Democracy's (Perludem) (Petitioner's) constitutional rights. The provisions of this article open space for former convicts to become candidates for Regional Representative Council members only by announcing to the public that the person concerned is a former convict. In fact, there have never been technical and detailed regulations regarding the mechanism for public announcements. The

announcement also tends to be done carelessly.

Political Corruption

Perludem in their request explained that post-reform democracy is still deadlocked. This is because political officials elected through elections rank first as perpetrators of corruption. According to KPK (Corruption Eradication Commission) data, until 2018 more than 30% of the perpetrators of corruption were political officials occupying both the executive and legislative branches (<https://acch.kpk.go.id/en/statistik/tindak-pidana-korupsi/tpk-based-profession-position>).

This political corruption is the excess of high political costs and massive money politics. This was recorded by ICW (2018) in data on several political corruption motives motivated by election funding. For example, bribes to import beef with the suspect Member of the Republic of Indonesia House of Representatives/Chairman of the PKS Luthfi Hasan Ishaq, Bribery for The Ministry of Public Works and Housing project with the suspect Member of the House of Representatives of RI Damayanti Wisnu Putranti, Management of health service funds at the Tegal City Hospital with the suspect Tegal Mayor Siti Masitha.



PERLUDEM'S ATTORNEY, FADLI RAMADHANIL ET AL, AFTER ATTENDING THE HEARING FOR REVIEWING THE ELECTION LAW AT THE CONSTITUTIONAL COURT, MONDAY (6/2/2023). PUBLIC RELATIONS/BAYU.

The Regional Representative Council Candidate Is A Former Corruption Convict

Several former corruption convicts have volunteered to run as candidates for the Regional Representative Council election. There is Regional Representative Council member Patrice Rio Capella who was caught in a corruption case. Currently, he is advancing to become a candidate for Regional Representative Council member from Bengkulu.

Then Irman Gusman, Chairman of the Regional Representative Council 2009-2014 and 2014-2019. Irman was convicted of corruption for accepting bribes. Currently, Irman has registered as a candidate for Regional Representative Council member from West Sumatra. In addition, Zaini Arony, former West Lombok Regent, who was also a former corruption convict has registered as a candidate for Regional Representative Council member from West Nusa Tenggara.

Political Officials with Integrity

Indonesia needs political officials with integrity and high quality. These political officials were elected through elections. Thus, it indicates the importance of good election governance to present candidates who are serious about implementing democracy and sustainable development for Indonesia's progress.

The provisions of Article 182 letter g of the Election Law clearly have made efforts to realize the holding of elections based on honest and fair principles, which must start from strict conditions for

candidates participating in elections that have been neglected. With this condition, based on the Petitioner, the provisions of Article 182 letter g of the Election Law are contradictory to Article 22E paragraph (1) of the 1945 Constitution.

Requirements for Regional Representative Council Members Candidates

To present candidates who are suitable for the expectations in elections, comprehensive requirements are needed. This has been stated by the Court in the Decision of the Constitutional Court Number 14-17/PUU-V/2007 (Paragraph 3.13, p. 124). It states that the mechanism for filling positions such as President, House of Representatives, Regional Representative Council, Regional People's Representative Assembly, and Regional Head, is indeed based on people's will. Therefore, the filling mechanism cannot be fully left to the people without any conditions at all and solely on the basis that the people will bear the risks of their own choices.

The Constitutional Court's decision also states that the public office is a position of trust (*vertouwenlijkambt*), thus, it demands public trust requirements. Therefore, candidates must meet certain requirements in order to obtain public officials who are clean, honest, authoritative, and have high moral integrity. This is the constitutional basis for the requirements set for candidates for public office who are directly elected through elections.

Regarding the requirements for candidates for public office, the Constitutional Court has decided to tighten the requirements for candidacy for candidates in regional head elections (*pilkada*), namely in the Constitutional Court Decision Number 56/PUU-XVII/2019). Furthermore, the requirements for candidates for members of the House of Representatives and DPRD, in the Constitutional Court Decision Number 87/PUUXX/2022. The tightening of these requirements relates to former convicts who will take part in elections, with the provision that they must pass five years after the former convicts have completed serving prison sentences based on a court decision that has permanent legal force. The five years is used as a process for former convicts to adapt to society after their convictions.

The two decisions are only imposed on candidates for regional heads and candidates for members of the Regional Representative Council and Regional People's Representative Assembly. Meanwhile, there are elections for Regional Representative Council members whose candidacy requirements do not contain provisions regarding the waiting period for former convicts. In fact, the authority of the Regional Representative Council institutionally is quite broad and is at the national level. Thus, it will greatly affect broad public policy. Moreover, in terms of the type of election, regional election and the election of members of the House of Representatives and Regional People's Representative Assembly, both elected official positions are

Article 22D of the 1945 Constitution

- (1) The Regional Representatives Council can submit bills to the House of Representatives relating to regional autonomy, central and regional relations, formation and expansion and merger of regions, management of natural resources and other economic resources, as well as those relating to central and regional financial balances.
- (2) The Regional Representatives Council participates in discussing draft bills relating to regional autonomy; central and regional relations; formation, expansion, and merging of regions; management of natural resources and other economic resources, as well as the balance between central and regional finances; as well as considering the House of Representatives on draft laws on the state revenue and expenditure budget and bills related to taxes, education, and religion.
- (3) The Regional Representative Council can supervise the implementation of laws regarding regional autonomy, formation, expansion, and merger of regions, central and regional relations, management of natural resources and other economic resources, implementation of the state revenue and expenditure budget, taxes, education, and religion and convey the results of the supervision to the House of Representatives for consideration to be followed up.
- (4) Members of the Regional Representatives Council can be dismissed from office, the conditions and procedures for which are regulated by law.

elected through an election process. It means that the requirements for the same problem must be regulated the same.

These provisions create legal uncertainty between the conditions for ex-convicts to elect members of the DPD and members of the Regional Representative Council and Regional People's Representative Assembly, including the requirements for regional head elections. Therefore, according to Perludem, it is important for the Court to declare this provision to be conditionally unconstitutional, and equate the interpretation of this provision with the requirements for candidates for members of the

Regional Representative Council and Regional People's Representative Assembly, including the requirements for candidates for regional heads.

The Authority of Regional Representatives Council

Indonesian constitutional system adheres to the bicameral concept in the institutional format of parliament. One of the chambers in the Indonesian, parliament is the Regional Representative Council (DPD), following The House of Representatives. According to Article 22C paragraph (1) of the 1945 Constitution, Regional Representative Council members are also elected

through general elections with provincial-based electoral districts and the same number of seats allocated for each province.

In the 1945 Constitution, the Regional Representative Council has several important authorities as part of the branch of legislative power, especially those relating to central-regional affairs and relations. In detail, some of the Regional Representative Council's powers are explained in Article 22D of the 1945 Constitution.

This great authority will affect public policies and state legislation products, especially those related to central-regional affairs and

relations. The role of the Regional Representative Council is urgently needed in the state's decreasing commitment to the idea of regional autonomy.

Political Costs of Regional Representative Council

During the situation of high political costs and the low integrity of political officials, the presence of Regional Representative Council members who have integrity and are highly committed to state duties is a little hard to imagine. This is because high political costs force some candidates to have clientelistic relationships with investors as clients, who expect to get illegal benefits after the candidate is elected (Muhtadi, 2020; Aspinall & Berenschot, 2019). The power of Regional Representative Council members is vulnerable to being channelized in the form of certain benefits to investors or being forced to return the capital used during the campaign period. Both forms have the potential to lead to criminal acts of corruption.

The application of Article 182 letter g of the Election Law which does not provide a five-year gap for former convicts to run for Regional Representative Council members, will further foster the practice of clientelism and further undermine people's sovereignty. Elections are a means of guaranteeing people's sovereignty. Thus, the objectives of elections must be maintained properly. Therefore, this article can be considered unconstitutional and contrary to Article 1 paragraph (2) of the 1945 Constitution which states,



THE PETITIONER WAS ACCOMPANIED BY THEIR ATTORNEYS FADLI RAMADHANIL ET AL, DURING THE HEARING FOR TESTING THE ELECTION LAW AT THE CONSTITUTIONAL COURT, MONDAY (6/2/2023). PUBLIC RELATIONS/BAYU.

“Sovereignty is in the hands of the people and implemented according to the Constitution”.

Based on this description, according to Perludem (Association for Elections and Democracy), it is important to apply the requirements for the nomination of members of the Regional Representative Council which are similar to the requirements for the election of members of the House of Representatives and Regional People's Representative Assembly, especially in the context of the requirements for former convicts. This is intended so that the candidates presented in the Regional Representative Council Election have integrity, can meet expectations, side with the community, and are able to strengthen regional autonomy.

Rationalization of the Waiting Period of Former Convicts

The provisions of Article 182 letter g of the Election Law can present candidates for former convicts, especially corruptors, in the election for Regional Representative Council members. This will potentially repeat corrupt behavior.

Furthermore, the provisions of Article 182 letter g of the Election Law which only require an announcement that the person in question is a former convict, is only considered as a formality. Even though this requirement is intended so that the public understands the candidates he will choose. Besides, in the Constitutional Court Decision Number 56/PUU-XVII/2019, the Court also considered that the



HEARING FOR JUDICIAL REVIEW OF ELECTION LAW AT THE CONSTITUTIONAL COURT, MONDAY (6/2/2023). PUBLIC RELATIONS/BAYU.

requirement to state that the person concerned was a former convict was no longer sufficient (Paragraph [3.12], p. 60).

In the Constitutional Court Decision Number 56/PUU-XVII/2019 and the Constitutional Court Decision Number 87/PUU-XX/2022, the Court decided that the requirements for the nomination of regional heads and the nomination of members of the House of Representatives and Regional People's Representative Assembly, especially in the context of candidates who have been convicted, are the requirements for announcing such status. also declared no longer relevant. Because these requirements are still not effective in fulfilling political officials (elected officials) who are honest, responsible, socially sensitive, spiritual, respect the values in society, and have integrity.

Moreover, several Constitutional Court decisions related to the requirements for political officials

emphasized the importance of the requirements in their candidacy for former convicts. Four important conditions must be met, such as (1) apply to elected public positions, (2) apply limitedly for five years after the former convict has completed serving his prison sentence based on a court decision that has permanent legal force, (3) honesty or openness regarding his identity background as a former convict, and (4) not as a repeat offender. In the Constitutional Court Decision Number 56/PUU-XVII/2019, the objective of the four conditions is that there are strict conditions because the candidates for public office who are elected must have sufficient character and competence, personality traits and integrity, honesty, responsibility, social sensitivity, spirituality, values in life, respect for others, etc (Paragraph [3.12.1], p. 51).

The provisions of Article 182 letter g of the Election Law only meet the requirements regarding

elected public positions and honesty or transparency regarding the background of former convict candidates. Meanwhile, the provisions of this article cannot prevent candidates from having repeated crimes and a five-year gap as stated in the four conditions determined by the Court above.

Based on this description, the provisions regarding the five-year term for former convict candidates who have completed their sentence must also be implemented in the requirements for selecting candidates for Regional Representative Council members. This is not only to be consistent with the Constitutional Court Decision Number 56/PUU-XVII/2019 and the Constitutional Court Decision Number 87/PUU-XX/2022, but it is also a form of adaptation of the former convict to socio-cultural conditions, as well as improving the criminal behavior they have committed.

The five-year term/gap actually cannot be used as a guarantee for former corruptors or other convicts not to re-commit the crime when they occupy positions as elected public officials. However, the span after the sentence ends can at least minimize the potential for corrupt behavior to recur, improve the nomination of Regional Representative Council members, and indirectly prevent everyone, especially elected public officials, from committing acts of corruption and/or other crimes.

A person can serve as a member of the Regional Representative Council within five years and there is no term periodization. This means that a Regional Representative

Council member can run for re-election in the next election period. Therefore, this requirement is important to indirectly prevent Regional Representative Council members or other political officials from committing acts of corruption or other crimes.

Therefore, Perludem (the Association for Elections and Democracy) in their petition requested the Court to declare that Article 182 letter g of the Election Law is contrary to the 1945 Constitution and does not have binding legal force as long as it is not construed, as follows: “An individual as referred to in Article 181 can become an election contestant after fulfilling the requirements:g. Never been sentenced to prison based on a court decision that has permanent legal force for committing a crime punishable by imprisonment for 5 (five) years or more, except for the convict who committed a crime of negligence and a political crime in the sense of an act declared as an act of punishment in positive law only because the perpetrator has a different political view from the regime in power; not subject to additional punishment in the form of revocation of the right to vote by a court decision that has permanent legal force; for a former convict, the period of 5 (five) years has passed after the former convict has completed serving a prison sentence based on a court decision that has permanent legal force; be honest or open about his identity background as a former convict; and not as a repeat evildoer.”

Partially Accepted

The handling of application Number 12/PUU-XXI/2023 in the case of Judicial Review of Article 182 letter g of the Election Law was relatively fast. The Court only took about one month to decide on this case. The application was registered with the Constitutional Court Registrar’s Office on January 25, 2023. Furthermore, the hearing to pronounce the decision was held on February 28, 2023.

The hearing of the case was brief. This was because the Constitutional Court considered Perludem’s request to be clear. Thus, the Constitutional Court believes that there is no urgency and relevance to requesting information from the parties (The House of Representatives and the President) as referred to in Article 54 of the Constitutional Court Law.

The Constitutional Court has only held examination sessions twice, namely the Preliminary Examination Panel I on 6 February 2023 and the Preliminary Examination Panel II (revision of the application) on 20 February 2023. The last session was the plenary session for pronouncing the decision on 28 February 2023.

That afternoon, Tuesday 28 February 2023, the Constitutional Court held a plenary session with the agenda of pronouncing the decision. A total of nine decisions were read out in trials that were open to the public. One of them is the pronouncement of Decision Number 12/PUU-XXI/2023 in the case of Reviewing the Election Law.

In the verdict, the Constitutional Court granted a portion of Perludem’s

request. “Partially granted the Petitioner’s request,” said Chief Justice of the Constitutional Court Anwar Usman together with eight constitutional judges at the hearing for pronouncing Decision Number 12/PUU-XXI/2023.

Furthermore, in this decision the Constitutional Court emphasized that the norms of Article 182 letter g of the Election Law are contrary to the 1945 Constitution and do not have conditionally binding legal force as long as they are not interpreted as follows: Individuals as referred to in Article 181 can become election contestants after fulfilling the requirements: ... g. (i) never been a convict based on a court decision that has permanent legal force for committing a crime punishable by imprisonment for 5 (five) years or more, except for a convict who commits a crime of negligence and a political crime in the sense of an act that declared as a criminal act in positive law only because the perpetrator has a different political view from the regime in power; (ii) for a former convict, a period of 5 (five) years has passed after the former convict has completed serving a prison sentence based on a court decision that has permanent legal force and honestly or openly announces his/her identity background as a former convict; and (iii) not as a repeat offender.

Cumulative Terms

The legal considerations of the Constitutional Court in the decision, among other things, stated that concerning public positions

that were elected through elections (elected officials) both through elections, namely the election of the President and Vice President as well as the general election of members of the House of Representatives, The Regional Representative Council, and The Regional People's Representative Assembly and regional elections namely the election of the Governor, Regent, and the Mayor, the Court through Constitutional Court Decision Number 85/PUU-XX/2022 has emphasized that there are no longer any differences between the electoral regime and the regional elections. Based on these developments, in the Constitutional Court Decision Number 87/PUU-XX/2022. The Court has imposed cumulative conditions for former convicts who wish to submit themselves as candidates for members of the House of Representatives and The Regional People's Representative Assembly as cumulative conditions are imposed in the Constitutional Court Decision Number 56/PUU-XVII/2019 which intended for former convicts who will run for regional heads.

The alignment of the norms for candidate requirements for former convicts who will run for regional heads and candidates for the House of Representatives and The Regional People's Representative Assembly members has provided legal certainty. At the same time, it also restores the essential meaning of the election of candidates for regional heads and candidates for members of the House of Representatives and The Regional People's Representative Assembly, namely to produce people who have the quality and integrity

to become public officials. At the same time, it does not eliminate the political rights of citizens who have been convicts to continue to participate in government.

Norm Alignment

However, not all public positions elected in elections have the same meaning. The difference in meaning referred to can be read from the requirements to become a candidate for DPD member.

One of the conditions for becoming a candidate for Regional Representative Council member is in the norm of Article 182 letter g of the Election Law which basically regulates the conditions for former convicts to become candidates for Regional Representative Council members. When it is read carefully, the norms that have been given the meaning above, essentially regulate the same thing as the norms of Article 182 letter g of the Election Law, namely concerning public positions elected in elections.

Therefore, with no meaning given to Article 182 letter g of the Election Law, candidates for Regional Representative Council members with former convict status can nominate themselves without first fulfilling the meaning as intended in the Constitutional Court Decision Number 56/PUU-XVII/2019 and the Constitutional Court Decision Number 87/PUU-XX/2022.

The substance of the norms of Article 182 letter g of the Election Law is not yet in line with the spirit contained in the two Constitutional Court decisions. Whereas regional heads, members of the House

of Representatives and Regional People's Representative Assembly as well as members of the Regional Representative Council, are elected public positions in elections (elected officials).

The existence of this distinction results in inconsistency and disharmony in the application of norms to legal subjects who actually have the same goal, namely to be equally elected in elections. The difference in the requirements to become a Regional Representative Council member candidate for former convicts can result in the violation of citizens' constitutional rights as stipulated in Article 28D paragraph (1) of the 1945 Constitution.

Based on these considerations, the Court believes that it is necessary to confirm and harmonize the provisions of the norms of Article 182 letter g of the Election Law. The affirmation and alignment meant by also imposing a waiting period of five years after the former convict has completed serving a prison sentence based on a court decision that has permanent legal force and the existence of honesty or openness regarding his identity background as a former convict as a condition for candidates for Regional Representative Council members, in addition to other conditions which are also added as cumulative requirements as conditional constitutional meaning contained in Article 7 paragraph (2) letter g Law 10/2016 and Article 240 paragraph (1) letter g Law 7/2017. ■

NUR ROSIHIN ANA.

IDENTITY OF PETITIONER



Perludem

THE ASSOCIATION FOR ELECTIONS AND DEMOCRACY

The Association for Elections and Democracy (Perludem) is a Non-Governmental Organization or Non-Governmental Organization (NGO) that grows and develops independently of its own will and desires in the community. It was founded based on concern and in the framework of participating in realizing democratic elections and democratization in Indonesia.

The duties and roles of Perludem in carrying out activities that encourage the implementation of democratic elections and democratization in Indonesia, in this case, have utilized their

institutions as a means to involve as many members of society as possible in realizing democratic elections and democratization in Indonesia. This is reflected in the Articles of Association and/or the founding deed of Perludem. In Article 3 of the Establishment Deed of the Perludem Foundation Number 279 dated 15 November 2011, it is stated that Perludem carries out activities that include studies on elections and democracy, providing education on elections and democracy, providing training to the public on elections and democracy, as well as monitoring elections and democracy.

VISION AND MISSION OF THE REGIONAL REPRESENTATIVE COUNCIL OF REPUBLIC OF INDONESIA

VISION

“The Regional Representative Council of The Republic of Indonesia becomes a strong and aspirational parliament to fight for regional interests within the Unitary State of the Republic of Indonesia”

MISSION

1. Strengthening the authority of The Regional Representative Council of the Republic of Indonesia under the 1945 Constitution of the Republic of Indonesia and Law.
2. Strengthening The Regional Representative Council of the Republic of Indonesia as the Indonesian parliament to fight for regional interests at the national level.
3. Optimizing institutional relations of The Regional Representative Council of the Republic of Indonesia and State Institutions, Government, and other stakeholders.
4. Improving institutional relations of The Regional Representative Council and domestic and foreign parliaments.

Functions, Duties, and Authorities of The Regional Representative Council of the Republic of Indonesia

The Function of the Regional Representative Council of the Republic of Indonesia

Referring to the provisions of Article 22D of the 1945 Constitution and the Rules of Procedure of the Regional Representative Council of The Republic of Indonesia as a legislative body the Regional Representative Council of The Republic of Indonesia has legislative, supervisory, and budgeting functions which are carried out within the framework of the representation function.

Duties and Authorities of The Regional Representative Council of The Republic of Indonesia

1. Submission of Proposals for Draft Bill. Submitting Draft Bills to the House of Representatives related to regional autonomy, central and regional relations, formation and division and merger of regions, management of natural resources and other economic resources, as well as those relating to central and regional financial balances.

2. Discussion of Draft Bill. Participating in discussing draft bills related to regional autonomy; central and regional relations; establishment, expansion, and merger of regions; management of natural resources and other economic resources as well as central and regional financial balances.
3. Considerations on Draft Bill and Election of Audit Board Members Considerations on draft laws on the state revenue and spending budget and bills related to taxes, education, and religion. As well as considering the DPR in the election of Audit Board members.
4. Supervising the Implementation of the Law Supervision of the implementation of the law regarding regional autonomy, formation, expansion, and merger of regions, central and regional relations, management of natural resources and other economic resources, implementation of the state revenue and expenditure budget, taxes, education, and religion as well as conveying the results of its supervision to the House of Representatives as material for consideration to be followed up.
5. Compiling of the National Legislation Program Compile the National Legislation Program (Prolegnas) related to regional autonomy, central and regional relations, formation and division and merger of regions, management of natural resources and other economic resources, as well as those related to central and regional financial balances.
6. Monitoring and Evaluating of Ranperda and Perda Conduct monitoring and evaluation of draft regional regulations (Raperda) and regional regulations (Perda).

SOURCE: SPD.GO.ID



WRITTEN SANCTIONS FOR VIOLATION OF ETHICS TO CHANGE THE DECISION

In early 2023, the Constitutional Court (MK) was suspected by allegations of changing the Constitutional Court Decision Number 103/PUU-XX/2022. Responding to these allegations, it did not take long for the Constitutional Court to immediately form the Honorary Council of the Constitutional Court. In 30 days, the Honorary Council of the Constitutional Court also decided on this allegation.

On January 27, 2023, the public was shocked by the news released by the KOMPAS daily with the headline “*Substansi Putusan MK Diduga Diubah Setelah Dibacakan* (The Substance of the Constitutional Court’s Decision Was Allegedly Changed After It Was Read)”. The news revealed that there was an alleged change in the substance of Decision Number 103/PUU-XX/2022 which materially tested Law Number 7 of 2020 concerning the Constitutional Court. The contents of the news stated that the decision was different from what was read out by the Panel of Constitutional Justices in the courtroom and the decision written in the copy of the decision and the

minutes of the trial. The public is also wondering whether the change in decision actually occurred and who the subject was. How was it originally discovered that there was an allegation that a change in decision could occur?

In his written statement to the Honorary Council of the Constitutional Court, Zico Leonardo Djagardo Simanjuntak stated that at first, he suspected that there had been a change when he was re-watching a YouTube recording related to hearing decision Number 103/PUU-XX/2022 because the Petitioner, he did not attend the hearing when it was read out (on 28 November 2023). He also found something odd because in the video recording of the hearing of the

verdict, Constitutional Justice Saldi Isra uttered the word “thus”, while what was imprinted in his mind was “in the future” so he felt odd.

“I checked the file of decision copy where in the file of the copy of the decision, the words used were ‘in the future’. Then I also downloaded the meeting minutes file where the words used were also ‘in the future’. I became furious because I think there is a considerable change due to intentional differences. I contacted Bivitri Susanti to discuss this matter. However, she doesn’t seem to have read my message. I contacted Viktor Santoso Tandiasa to discuss this matter. He only said that this matter could not be followed up because there is currently no ethical council at the Constitutional

Substansi Putusan MK Diduga Diubah

Substansi putusan uji materi perkara UU No 7/2020 tentang MK diduga diubah. Putusan yang dibacakan ataupun salinan putusan dan risalahnya berbeda. MK didesak mengusut dan menindak.

JAKARTA, KOMPAS — Mahkamah Konstitusi diduga diterpa skandal perubahan substansi putusan uji materi perkara nomor 103/PUU-XX/2022 tentang Undang-Undang Nomor 7 Tahun 2020 tentang MK. Putusan yang dibacakan oleh hakim di ruang sidang berbeda dengan salinan putusan, dan risalah sidang perkara tersebut. MK pun dikesak menyelidiki perubahan substansi putusan dan menentukan pihak-pihak bertanggung jawab.

Saat dihubungi Kamis (26/1/2023), di Jakarta, Advokat Zico Leonard Djagardo Si-manjuntak, yang mengajukan perkara itu, terkejut saat membaca Putusan MK Nomor 103/2022 pada halaman 51. Isinya berbeda dengan apa yang dibacakan hakim di sidang pembacaan putusan pada 23 November 2022. Sebab, ada perbedaan yang sangat signifikan.

Sebelumnya, Zico memper-salahkan Pasal 87 huruf b UU No 7/2020, khususnya terkait pemberhentian secara hormat hakim konstitusi Aswanto di tengah masa jabatannya. Aswanto di-*recall* oleh DPR sebagai lembaga pengusung dengan alasan telah membatalkan produk DPR, atau dinilai tak punya komitmen terhadap DPR.

Waktu itu, putusan MK atas perkara tersebut dibacakan beberapa jam setelah Sekretaris Jenderal MK Guntur Hamzah dilantik menjadi hakim konstitusi menggantikan Aswanto.

Perubahan frasa

Dari penelusuran Kompas, dalam pertimbangan putusan yang dibacakan hakim konstitusi Saldi Isra, ada perubahan frasa. Dari kata "Dengan demikian, ..." menjadi "Ke depan, ..." Lengkapnya demikian, "Dengan demikian, pemberhentian hakim konstitusi sebelum habis masa jabatannya hanya

dapat dilakukan karena alasan mengundurkan diri atas permintaan sendiri yang diajukan kepada ketua Mahkamah Konstitusi, sakti jasmanti atau rohani secara terus-menerus selama 3 (tiga) bulan sehingga tidak menjalankan tugasnya yang dibuktikan dengan surat keterangan dokter, serta diberhentikan tidak dengan hormat karena alasan sebagaimana termaktub dalam Pasal 23 Ayat (2) UU MK..."

Sebaliknya, dalam salinan putusan dan risalah persidangan tertulis: "Ke depan, pemberhentian hakim konstitusi sebelum habis masa jabatannya hanya dapat dilakukan karena alasan, dan seterusnya..."

Zico mengaku yakin perubahan tersebut bukan sekadar salah tik atau typo, melainkan kesengajaan yang sangat terang-benderang. Selain itu, ada perbedaan signifikan terhadap makna kata-kata yang diubah. Ia juga yakin perubahan secara sadar untuk menguntungkan pihak-pihak tertentu.

"Permasalahan yang sekarang harus dicari jawabannya adalah siapakah pelakunya," kata Zico. Pihaknya menduga perubahan putusan tersebut adalah mereka yang menanganai putusan dan sidang sehingga terduga pelaku ada di kepaniteraan MK ataupun individu hakim konstitusi.

Ia mengatakan, akan memerkakan persoalan tersebut dengan menempuh berbagai upaya hukum. "Dalam lingkup pidana, pelaku yang memerintahkan perubahan substansi putusan ini secara terang-terangan memenuhi unsur Pasal 211 dan 421 Kitab Undang-undang Hukum Pidana (KUHP). Dalam lingkup tata usaha negara, perubahan ini terang-terangan bertentangan dengan asas-asas umum pemerintahan yang baik," ujarnya.

Dalam lingkup tata negara dan institusi MK, menurut Zico, hal itu harus dilakukan penye-



Suasana sidang di Gedung Mahkamah Konstitusi, Jakarta, Kamis (26/1/2023).

lidikan oleh Majelis Kehormatan MK. Hanya saja, saat ini Majelis Kehormatan MK dinilai mautisuri. Untuk itu, ia berharap MK segera membentuk Majelis Kehormatan agar dugaan perubahan substansi putusan tersebut diadakan ke institusi pengawas hakim MK.

Menguji UU MK kembali

Selain majelis kehormatan yang dinilai mati suri, Zico mempersoalkan ketentuan bahwa salah satu unsur anggota Majelis Kehormatan berasal dari kalangan hakim konstitusi aktif. Ketentuan itu bisa merugikan pemohon uji materi. Apalagi Majelis Kehormatan

hingga kini, belum ada.

Ia mempersoalkan kasus perubahan putusan melalui uji materi Pasal 23 UU MK. Pasal itu mengatur alasan-alasan pemberhentian hakim MK (seperti meninggal, mengundurkan diri dan lainnya). Dalam berkas permohonannya, ia memasukkan persoalan perubahan substansi putusan No 103/2022. Kemarin, perkara baru ini telah didaftarkan ke Kepaniteraan MK.

Dalam pengujian ini, Ketua MK Anwar Usman dan Hakim Konstitusi Guntur Hamzah diminta tak turut menyidangkan perkara terbaru. "Terduga pelaku penggantian substansi pu-

utusan hanya bisa dilakukan oleh kepaniteraan ataupun hakim konstitusi. Terkait kepaniteraan, sebagai sebuah organisasi, kepaniteraan MK di bawahnya akan mengecek terlebih dahulu informasi tersebut.

Sejauh ini, keputusan presiden (keppres) tentang pengangkatan Guntur Hamzah tengah digugat di Pengadilan Tata Usaha Negara Jakarta. Gugatan yang diajukan Priyanto Hadisputro dengan nomor perkara 2/G/2023/PTUN.JKT. Perkara itu masih diperiksa hakim.

"Seharusnya dengan bermodal putusan 103 yang tidak diubah, gugatan tersebut akan

Saat dikonfirmasi soal dugaan perubahan isi putusan, Juru bicara MK, yang juga hakim konstitusi, Enny Nurbaningsih mengatakan, pihaknya akan mengecek terlebih dahulu informasi tersebut.

Sejauh ini, keputusan presiden (keppres) tentang pengangkatan Guntur Hamzah tengah digugat di Pengadilan Tata Usaha Negara Jakarta. Gugatan yang diajukan Priyanto Hadisputro dengan nomor perkara 2/G/2023/PTUN.JKT. Perkara itu masih diperiksa hakim.

"Seharusnya dengan bermodal putusan 103 yang tidak diubah, gugatan tersebut akan

memiliki standing kuat untuk dikabulkan. Namun, putusan 103 diubah. Karena perkara ini sangat berkaitan erat dengan Guntur Hamzah, maka sepatutnya-lah dia tidak mengadili perkara itu," ujar Zico.

Penyelundupan hukum

Terkait dugaan perubahan, pengajar hukum tata negara Universitas Gadjah Mada, Yance Arisona, sepakat adanya makna yang sangat berbeda antara frasa "dengan demikian" dan "ke depan".

Menurut Yance, yang diucapkan di persidangan yang memiliki kekuatan hukum, bukan yang ditulis dalam salinan putusan. "Untuk putusan 103 ini perlu dicek, apakah ada kesengajaan. Kalau ada kesengajaan, bisa jadi ada penyelundupan hukum," ungkap Yance.

Hal senada diungkapkan pendiri kantor hukum Themis Indonesia, Feri Amsari. Kemungkinan pertama, diduga ada kesepakatan di balik layar di antara para hakim. Kemungkinan kedua, adanya yang "bermain" mengubah substansi putusan. "Yang mengubah, bisa hakimnya, bisa juga panitera pengganti," tuturnya.

Untuk itu, Feri menyarankan perlunya penyelidikan oleh pengawas internal MK atau membentuk tim independen seperti pada era Mahfud MD saat menjabat Ketua MK. Waktu itu, Mahfud, menunjuk Tefly Harun menjadi ketua satuan tugas untuk menyelidiki dugaan adanya praktik suap di kalangan MK.

Adapun pengajar hukum Fakultas Hukum Universitas Andalas, Charles Simabura, mengungkapkan, perubahan substansi putusan bisa menjadi bukti bagi pihak-pihak yang menggugat keppres tentang pengangkatan Guntur Hamzah ke PTUN Jakarta. Ia meminta penanganan serius dan tegas dugaan skandal tersebut. (ANA)

Court," Zico explained, quoted from the Constitutional Court Decision Number 01/MKMK/T/02/2023.

Zico also thought about resubmitting the same petition to the Constitutional Court and in the end submitted the application file on January 26, 2023. It was there, Zico said, that he met Susana Rita, a KOMPAS daily reporter who wrote a story entitled "Substansi

Putusan MK Diduga Diubah Setelah Dibacakan (The Substance of the Constitutional Court's Decision Was Allegedly Changed After It Was Read)." On this occasion, he told about his suspicions regarding the change in the decision of the case he submitted. The next day, he found that what happened to him was published in the KOMPAS daily and went viral.

Formation of the Honorary Council of the Constitutional Court

Three days after the news spread, Chief Justice Anwar Usman accompanied by Constitutional Justices Enny Nurbaningsih and Arief Hidayat held a press conference. During the meeting, Constitutional Justice Enny



ZICO LEONARDO DJAGARDO SIMANJUNTAK (WEARING A TOGA) AS PETITIONER FOR CASE NUMBER 103/PUU-XX/2022.

Nurbaningsih as Keynote Speaker for Case Affairs announced the results of the agreement in the Judge Deliberative Meeting (RPH) that the Constitutional Court would form an Honorary Council of the Constitutional Court as stipulated in Article 27A of the Constitutional Court Law. This is for the sake of maintaining justice, independence, and impartiality in investigating the alleged alteration of Decision Number 103/PUU-XX/2022.

Following Article 27A of the Constitutional Court Law, the membership of the Honorary Council of the Constitutional Court consists

of one active constitutional judge, one academic, and one public figure. The Panel of Constitutional Justices chose Constitutional Justice for the 2003 – 2008 and 2015 – 2020 periods I Dewa Gede Palguna to represent a community figure to occupy the position of Chairman of the Honorary Council of the Constitutional Court. In addition, UGM Law Faculty Lecturer Sudjito—who was previously part of the Ethics Council—and Constitutional Justice Enny Nurbaningsih is a Member of the Constitutional Court's Honorary Council.

During the meeting, Enny

also stated that the Constitutional Court also drafted and signed the Constitutional Court Regulation regarding the Honorary Council of the Constitutional Court (PMK MKMK)—PMK Number 1 of 2023 concerning MKMK which was ratified on 2 February 2023. “Therefore, this can be fairer and more independent, it is left to MKMK to resolve this issue. So, in principle, we will soon have a decree appointing this matter to work as soon as possible so that things become clear,” said Enny.

Taking The Oath

On February 9, 2023, the elected Honorary Council of the Constitutional Court took the oath. In his remarks at the swearing-in, Chief Justice of the Constitutional Court Anwar Usman said that the Honorary Council's oath-taking was a very important activity to be carried out in response to developments in the latest legal conditions. The formation of the Constitutional Court's Honorary Council is an integral part of the endeavor to uphold the principles of constitutionality in a constitutionally based constitutional state. Because the task carried out by the Honorary Council of the Constitutional Court, to protect the honor of constitutional judges, is also an integral part because judges are actors of judicial power who have the responsibility to uphold law and justice.

Therefore, given the importance of the role and responsibilities of the Honorary Council of the Constitutional Court, Anwar as Chief Justice of the Constitutional Court is obliged



CHIEF JUSTICE OF THE CONSTITUTIONAL COURT, ANWAR USMAN ACCOMPANIED BY CONSTITUTIONAL JUSTICES ENNY NURBANINGSIH AND ARIEF HIDAYAT HELD A PRESS CONFERENCE REGARDING THE FORMATION OF THE CONSTITUTIONAL COURT'S HONORARY COUNCIL ON MONDAY (30/1) IN THE HALL OF BUILDING 1 MK. PHOTO: PUBLIC RELATIONS/IFA

to support every implementation of the duties of the Honorary Council of the Constitutional Court as well as possible. Support for the implementation of the duties of the Honorary Council of the Constitutional Court is not limited to purely administrative support, but also support for matters of a substantive nature.

On 9 February to 14 March 2023, the Constitutional Court's Honorary Council also examined the sources of the findings and requested information and testimony from some parties under oath. Not only among employees within the

Parties Providing Information/Testimony

NO	NAME	INFORMATION
1	Leonard Djagardo Simanjuntak	Attorney and Petitioner 103/PUU-XX/2022
2	Muhidin	Registrar of the Constitutional Court
3	Wiryanto	Junior Registrar II
4	Nurlidya Stephanny Hikmah	Substitute Registrar Level II
5	Achmad Dodi Hariyadi	Hearing Manager
6	Supriyanto	Hearing Manager
7	Tatang Garjito	Head of Bureau of Legal and Administrative Registrar
8	Johan Yustisianto	Head of the Hearing Section
9	Yohana Citra Permatasari	Head of Hearing Service Subdivision
10	Dellafirayama	Reviewer
11	Isyaiyas Andhito	Reviewer
12	Muhammad Aminuddin Ramlan	Legal Analyst



MAJELIS KEHORMATAN MK MENGUCAP SUMPAH PADA KAMIS (9/2) DI AULA GEDUNG 1 MK. FOTO: HUMAS/PANJI

Registrar's Office and the Secretariat General of the Constitutional Court, the Honorary Council of the Constitutional Court also examines constitutional judges.

On March 20, 2023, the Honorary Council of the Constitutional Court issued Decision Number 1/MKMK/T/02/2023. In this decision, the Honorary Council of the Constitutional Court decided that Constitutional Justice M. Guntur Hamzah as the alleged judge had been proven guilty of violating the Code of Ethics and Behavior of Constitutional Judges as stated in Sapta Karsa Utama—in this case part of the application of the Principle of Integrity. For this violation, M. Guntur Hamzah was subject to a written warning against the alleged judge. In the conclusion read by the

Chairman of the Honorary Council of the Constitutional Court I Dewa Gede Palguna, the Honorary Council of the Constitutional Court found the fact that it was true that there had been a change in the phrase “Thus” to “In the future” in the legal considerations of the Constitutional Court Decision Number 103/PUU-XX/2022 on 23 November 2022. This change is the reason for the discrepancy between the text of the decision pronounced/read out in the hearing for pronouncing the decision on November 23, 2022, and what is stated on the website of the Constitutional Court which was signed by nine constitutional judges. Constitutional Justice M. Guntur Hamzah as the Defendant Judge admitted that this change was made

with the reason being a proposal or suggestion for an amendment to the legal considerations of the Constitutional Court Decision Number 103/PUU-XX/2022.

“That legally, the alleged judge has the right to take action and it has been a custom that has been going on for years at the Constitutional Court, as long as it gets the approval of other judges who take part in deciding, at least the drafting judge, regardless of the issue of the absence of standard operating procedures (standard operational procedure/ SOP) regarding the matter in question,” added Palguna.

Furthermore, Palguna argued the impact of changing the phrase “Thus” to “In the future” in the Constitutional Court Decision

Number 103/PUUXX/2022 caused the loss of coherence of legal considerations in reaffirming the essence of the legal considerations of the Constitutional Court in Decision Number 96/PUU-XVIII/2020. In addition, he stressed that it was not true that there had been a conspiracy to change the minutes of the Constitutional Court Decision Number 103/PUUXX/2022 which replaced the phrase “Thus” with “In the future”. This is because, he continued, what actually happened was that there was a difference in the way the minutes were prepared between the minutes of an ordinary hearing which were not a hearing for pronouncing decisions, and the way the minutes for pronouncing judgments.

“Regarding the difference in phrases in the legal considerations section of the Constitutional Court Decision Number 103/PUU-XX/2022 on 23 November 2022, between what was said/read out in the hearing for pronouncing the decision on 23 November 2022 and what was stated on the website of the Constitutional Court and in the signed copy of the decision by the nine constitutional judges, what applies is the pronouncement of the decision, namely the decision whose legal considerations are in Paragraph [3.13.3] page 51 which contains the phrase ‘Thus’,” explained Palguna.

Aggravating Matters

The Honorary Council of the Constitutional Court also revealed several things that were aggravating and mitigating for the Suspected Judge. The things that were aggravating include the actions of the Defendant Judge who were committed in an atmosphere when the public had not yet calmed down in debating the issue of the validity of the dismissal of Constitutional Justice Aswanto and the appointment of the Suspected Judge as his replacement. Meanwhile, the part in the legal considerations of the Constitutional Court Decision Number 103/PUU-XX/2022 whose phrase has been changed is part of the legal considerations with the debate.

“So that the actions committed



THE HEARING FOR TAKING THE DECISION OF THE HONORARY COUNCIL OF THE CONSTITUTIONAL COURT WHICH TOOK PLACE ON MONDAY (20/3) IN THE PANEL COURT ROOM OF THE CONSTITUTIONAL COURT.

by the Suspected Judge in the public perception cannot be avoided if they are perceived as an attempt by the Suspected Judge to save himself from the presumption of the invalidity of his appointment as a constitutional judge,” added Palguna.

The next aggravating reason is that even though legally, the Suspected Judge has the right to propose changes, ethical considerations should have prevented the Suspected Judge from doing so. Because Palguna continued, the alleged judge did not participate in deciding Case Number 103/PUU-XX/2022. “In fact, when the case was decided, the alleged judge was not yet a constitutional judge,” he added.

Another aggravating thing, namely as a new judge, the Suspected Judge should have asked beforehand about the procedure to be followed when he wanted to propose changes to the text of the decision that was being read out. “Besides the fact that until now this practice is still common practice, this cannot be considered as a lack of procedure. This will prevent negative prejudice against the inappropriate will of the alleged judge,” said Palguna.

Mitigating Matters

On this occasion, Palguna also explained things that relieved the Defendant’s Judge. One of them is the act of changing a decision as was done by the Suspected Judge, which is a common practice in the Constitutional Court as long as it is not done secretly and obtains the approval of other judges, at least

the drafting judge.

“There is no SOP for this common practice. Thus, whether we like it or not, it must be accepted as a factor that helps reduce the weight of the guilt of the actions of the Suspected Judge,” said Palguna.

Furthermore, the Honorary Council considered the Constitutional Court’s slow response to the impact of the alleged judge’s actions as a mitigating factor. This is because the Constitutional Court Decision Number 103/PUUXX/2022 which has been amended and published on the Constitutional Court’s website has been known by several judges and has been recognized by the Suspected Judge from the start.

“As well as being notified to the Registrar to be discussed at the Judge Deliberation Meeting (RPH), but the said RPH was never implemented for technical-psychological reasons. If the Constitutional Court responds to this circumstance, for example by reviewing the phrase which is the source of the problem in question, this problem does not become prolonged, an honorary assembly does not need to be formed,” explained Palguna.

The honorary panel emphasized the right of the alleged judge to change the decision not necessarily that the act could be ethically justified as stated in Sapta Karsa Hutama which is the code of ethics and behavior of constitutional judges of the Republic of Indonesia. “In this case, the alleged judge was proven to have violated the principle of integrity in Sapta Karsa Utama,” added Palguna.

MKMK Recommendation

In the decision, the Honorary Council of the Constitutional Court also made several recommendations. Among these recommendations, the Constitutional Court needs to form an SOP related to constitutional judges wishing to propose amendments to decisions that are read out or pronounced in hearings for pronouncing decisions that are open to the public. In addition, the Constitutional Court must also form SOPs related to the preparation of the minutes of the hearing which are not a hearing for pronouncing decisions or minutes of proceedings for pronouncing decisions.

“It is necessary to immediately form a permanent Honorary Council of the Constitutional Court by giving careful attention and consideration to the credibility and integrity of figures who are rarely appointed as members who are able to build public trust in the Constitutional Court,” explained Palguna.

Regarding Decision Number 103/PUU-XX/2022, the Honorary Panel of the Constitutional Court recommended that the panel of constitutional judges make a review of the decision for the sake of legal certainty. “That is by returning the phrase ‘Thus’ to the intended decision,” continued Palguna.

The final recommendation of the Honorary Council of the Constitutional Court is the need to provide further guidance to the Court Registrars by authorized officials under statutory provisions by considering the aspects of decency and proportionality. ■

(LULU ANJASARI P.)

RINGKASAN HASIL TEMUAN MENGENAI DUGAAN PELANGGARAN TERDUGA

NOVEMBER 17, 2022

RPH made a decision on Case Number 193/PUU-XX/2022 after previously being postponed because the Chief Justice of the Constitutional Court and the Head of the Panel carried out outside assignments.

NOVEMBER 23, 2022

Decision Number 103/PUU-XX/2022 was scheduled to be read at 13.30 WIB, but was postponed because M. Guntur Hamzah was sworn in as a Constitutional Justice at 09.00 WIB.

JANUARY 27, 2023

KOMPAS headline appears with the title "The Substance of the Constitutional Court's Decision Was Allegedly Changed After It Was Read"



On the same day, RPH was held to introduce new judges and refine decisions;

- Replaced the word "affirm" on pages 50 and 51
- Constitutional Justice Suhartoyo proposed that different opinions be included in dissenting opinions.

JANUARY 30, 2023

Responding to the viral news, the Panel of Judges held a RPH at 14.00 WIB. In RPH, Each Constitutional Justice gave a statement and Constitutional Justice M. Guntur Hamzah admitted that he had proposed changing the phrase "Thus" to "In the future". RPH also decided to form a Constitutional Court Honorary Council to investigate the alleged change in the decision.



- At 15.24 WIB, Constitutional Justice M. Guntur Hamzah proposed changing the phrase "Thus" to "In the future" and submitted it to the Registrar of MK Muhidin to obtain approval from other constitutional judges.
- The Registrar only submitted the proposal to Constitutional Justice Arief Hidayat, not to the drafting judge because according to the Registrar's statement, Constitutional Justice M. Guntur Hamzah requested that the proposal be submitted to Constitutional Justice Arief Hidayat and the Registrar was deemed to have given his approval.
- The Registrar notified PP Nurlidya Stephanie to amend it before returning it to Constitutional Justice M. Guntur Hamzah and then giving it to Hearing Officer M. Ramlan A. to change the decision and upload it to the MK website.



FEBRUARY 9, 2023

The Honorary Council took the oath

FEBRUARY 8, 2023

Constitutional Court formed the Constitutional Court Honorary Council Secretariat Team

FEBRUARY 14 - MARCH 14, 2023

The Honorary Council of the Constitutional Court asked for information from a number of Witness and Experts



MARCH 20, 2023

The Honorary Council of the Constitutional Court asked for information from a number of witness and Experts

*) Source: Decision of the Honorary Council of the Constitutional Court Number 01/MKMK/T/02/2023

EXPERTS ATTENDED TO GIVE EVIDENCE TO THE HONOR COUNCIL

In the follow-up examination session, some experts were presented both by the Honorary Council of the Constitutional Court and by Constitutional Justice M. Guntur Hamzah as the Suspected Judge. The following are the statements of the experts presented:

Experts presented by the Honorary Council of the Constitutional Court

Prof. Dr. Jimly Asshiddiqie, S.H.



“Regarding the change in decision, according to the expert, it must be the same. The Constitutional Court, which has dared to cancel the formal review, must now be prepared to be assessed from the point of view of the formal review in terms of making decisions. If it has been decided in the Plenary Session of the Open Session, materially the text is final, it cannot be added. Then the formal approval is done by tapping the gavel and entering the State Gazette. The State Gazette is now considered the State Gazette. In fact, the State Gazette is for promulgation, while the function of the State Gazette is for reporting, and publication so that the Constitutional Court’s decision is included in the State Gazette for official publication. After the hammer knocks, it is unlawful to make further changes between material approval and publication. According to the Expert, the phrase changed. ‘Thus’ becomes ‘In the future’ has a different meaning, so it

can cause problems in interpretation. Whereas the Expert proposes that the text that has been published in the State Gazette be changed immediately, it must be replaced with a new text immediately. This is a sanction for those who are responsible, namely, they must immediately fix it according to the procedure for loading it in the State Gazette.”



Prof. Dr. Bagir Manan, S.H., M.C.L.

“Regarding whether a judge who does not take part in deciding can propose a change, according to the expert, legally the judge who has been sworn in is authorized, but because he did not take part in the discussion of deciding the case, he is ethically not entitled to propose a change. Whereas concerning which decision is applicable, according to the Expert, the Judge’s decision is pronounced. Because the decision that is pronounced becomes the law. Whereas regarding the change in decision, as long as it does not change the dictum, the Constitutional Court can correct it and as long as it does not involve the substance of the case, a renvoi can be carried out.”

Expert Presented by the Suspect Judge

Prof. Dr. H. M. Laica Marzuki, S.H. (via WhatsApp chat)



“According to the Expert, Judge M. Guntur Hamzah’s proposal was put forward concerning carrying out a judicial function guaranteed by the constitution according to Article 24 paragraph (1) of the 1945 Constitution. However, the proposal is not binding as a Constitutional Court Decision according to Article 24C paragraph (1) of the 1945 Constitution juncto Article 47 Law no. 24 of 2003 concerning the Constitutional Court. 2 Whereas the act of the Registrar who sensibly makes changes is *onrechmatig* which cannot be charged to the Constitutional Justices.”

Prof. Dr. Aidul Fitriada Azhari, S.H., M.Hum.



“That is whether the phrase ‘Thus’ becoming ‘In the future’ is a change in judicial error, according to the Expert, it is not. It is because reading the whole does not change the judgment. This means that in interpreting the said decision it also refers to other decisions. Therefore, the intended change in the Decision is purely a clerical error. That concerning the actions committed by Judge M. Guntur Hamzah did not change the consideration

in the sense of applying the law, namely the ratio decidendi as a whole and only relates to editorial, even though there is debate about editorial, and this is part of the independence of judges Then related to clerical errors must be seen which may not involve Judge M. Guntur Hamza.”

Dr. John Fresly Hutahean, S.H., LLM.



“Whereas the information provided in the form of a decision will be uploaded, it will be read out, it is appropriate that there is a procedure. However, if it turns out that after being uploaded, there are differences in phrases in the decision which could be misleading information, then corrections are made immediately because it is deemed that there was a mistake. Whereas Article 2 in conjunction with Article 7 paragraph (2) of the KIP Law concerns the principle of maximum access limited exemption. Then, Article 17 Letter 1 is important article relating to the decisions of judges of the Constitutional Court which need to be specifically regulated by the Documentation Information Management Officer, strictly stipulated in Article 9 PP 61 of 2010 regarding the classification of information. It is because the public body of the Constitutional Court has not provided accurate information regarding decisions that have been uploaded. Yet, there are still procedures that have not been properly followed, the Constitutional Court has the authority to withdraw all of this information.”

JUDICIAL REVIEW DECISIONS

No.	Case Number	Case Subject	Petitioners	Decision	Date	Decision Link
1	23/PUU-XXI/2023	Material Judicial Review of Law Number 6 of 2014 concerning Villages and Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 67 of 2017 concerning Amendments to Regulation of the Minister of Home Affairs Number 83 of 2015 concerning Appointment and Dismissal of Village Officials	Belly Respati	Withdrawn	March 28, 2023	Click Decision
2	11/PUU-XXI/2023	Material Judicial Review of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations	Umar Husin (Petitioner I), Zentoni (Petitioner II), Sahat Tambunan (Petitioner III), and Paulus Djawa (Petitioner IV)	Unacceptable	March 28, 2023	Click Decision

3	13/PUU-XXI/2023	Material Judicial Review of Law Number 40 of 1999 concerning the Press	Moch. Ojat Sudrajat S.	Denied the Petitioner's application in its entirety	March 28, 2023	Click Decision
4	15/PUU-XXI/2023	Material Judicial Review of Law Number 6 of 2014 concerning Villages	Eliadi Hulu	Unacceptable	March 28, 2023	Click Decision
5	16/PUU-XXI/2023	Material Judicial Review of Law Number 7 of 2017 concerning General Elections	Partai Kebangkitan Nusantara (PKN) in this case represented by Gede Pasek Suardika (General Chairperson) and Sri Mulyono (Secretary General)	Unacceptable	March 28, 2023	Click Decision
6	17/PUU-XXI/2023	Material Judicial Review of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court	Zico Leonardo Djagardo Simanjuntak	Unacceptable	March 28, 2023	Click Decision



THE TERMINATION OF THE CONSTITUTIONAL JUDGE AND THE AMENDMENT OF THE CONSTITUTIONAL COURT'S DECISIONS ARE QUESTIONED

An Attorney, Zico Leonard Djagardo applied for review of Article 23 paragraph (1) and paragraph (2), as well as Article 27A paragraph (2) of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (Constitutional Court Law). The first hearing on Case Number 17/PUU-XXI/2023 was held in the Plenary Session Room of the Constitutional Court on Thursday (2/16/2023).

"This case is a repeat case of decision 103 (Decision Number 103/PUU-XX/2022) regarding the replacement of Constitutional Judge Aswanto," said Zico starting the description of the application before the Panel Session led by Constitutional Justice Daniel Yusmic P. Foekh with Constitutional Justice Wahiduddin Adams and Constitutional Justice Suhartoyo as member judges.

Zico (Petitioner) in his petition stated that as a party to a lawsuit at the Constitutional Court, he needs the independence of constitutional judges in deciding cases. Therefore, when the House of Representatives intervened in the Constitutional Court by replacing the judge who became their "representative", this violated Zico's constitutional rights to obtain

justice through an independent judicial power. The independence of the Constitutional Court was undermined by the House of Representatives through efforts to replace constitutional judges to conform with them.

Zico also expressed his surprise when he re-watched the recording of the hearing pronouncing Decision Number 103/PUU-XX/2022, and read the decision files along with the minutes of the hearing. He found that there was a discrepancy in the pronunciation of the decision with the decision files and minutes of the hearing which were uploaded on the Constitutional Court's website. The occurrence of this made the Petitioner the aggrieved party, and negative thoughts emerged. The Petitioner believes that this is intentional for the benefit of certain parties. The Petitioner is also trying to find the answer to find out who the perpetrators are. In addition, the Petitioner brought this case to the competent authorities through legal action.

In the main petition of the case, Zico asked the Constitutional Court to declare Article 23 paragraph (1) of the Constitutional Court Law contrary to the 1945 Constitution. Besides, it is not legally binding conditionally as long as it is interpreted as "including being recalled

by the bearer's institution because the carrier's institution does not like it because it turns off the product. made by the bearer institution". Furthermore, declaring Article 23 paragraph (2) of the Constitutional Court Law is contrary to the 1945 Constitution and is not legally binding conditionally as long as it is not interpreted, "including changing the substance of the decision that has been read out in a trial open to the public".

Clarifying the Reasons for the Application

Regarding this request, Constitutional Justice Suhartoyo said this case was like repeating Case Number 103/PUU-XX/2022. Therefore, Suhartoyo advised the Petitioner to explain reasons different from the previous petition, especially regarding the legal standing of the article aimed at harming the constitutional rights of the Petitioner.

In addition, Suhartoyo also asked the Petitioner to pay attention to the petition that filed a request for the unconstitutionality of Article 23 paragraph (1) of the Constitutional Court Law. For this request, the Petitioner is expected to be able to make clear arguments and constructions on the statements of this norm. Besides, Suhartoyo suggested that the Petitioner mention the MKMK requirements from the constitutional judges because in fact, this is a statutory order.

Furthermore, in his advice, Constitutional Justice Wahiduddin Adams stated several things that needed to be perfected in the petition. Wahiduddin highlighted the illegal standing of the Petitioners who must include arguments against the review of Article 27A paragraph (2) of the Constitutional Court Law which is deemed detrimental to their constitutional rights. Furthermore, Wahiduddin also requested that the Petitioners include evidence related to the arguments in this petition.

Meanwhile, Constitutional Justice Daniel Yusmic P. Foekh observed the need for the Petitioner to pay attention to the revision of the PPP Law which needed to be adjusted and in legal standing the Petitioner who applied did not always get it automatically. Thus, it is necessary to focus on constitutional rights in filing this case. (Sri Pujianti/Nur R/Tiara Agustina)

LEGAL MEASURES ON HALAL PRODUCTS FATWA

Rega Felix, a culinary business owner with the trade name “Felix Burger” reviewed Article 34 paragraph (2) of Law Number 33 of 2014 concerning Guaranteed Halal Products (UU JPH) and Article 48 number 19 and number 20 of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation (Perppu Cipta Kerja) which contains changes to the norms of Article 33 paragraph (5) and Article 33A paragraph (1) of the JPH Law. The first hearing to examine petition Number 18/PUU-XXI/2023 submitted by Felix, was held at the Constitutional Court on Wednesday (2/22/2023). The hearing was carried out by a panel of judges led by Constitutional Justice Arief Hidayat accompanied by Constitutional Justice Wahiduddin Adams and Constitutional Justice Saldi Isra.

In submitting his request at the hearing, Rega said she had a culinary business in the form of burgers and hot dogs which are food products from Western society. Many consumers question the halal elements of the products they sell. Therefore, he also intends to apply for halal certification. However, when reading the Halal Assurance System 23000 (HAS 23000), one of the points required to obtain a halal certificate is, “Brands/product names may not use names that refer to something that is forbidden or worship that is not under Islamic sharia.”

According to the Petitioner, there is no legal effort that can be made against the decision of a fatwa that is not halal as referred to in Article a quo. Therefore, it is possible that later there will be a double standard regarding the meaning of a word/name that is halal or haram from a product. Thus, each fatwa may give a different interpretation of a word/name. Moreover, since the Job Creation Government Regulations in Lieu of Law stated that there was a new institution, namely the Halal Product Fatwa Committee which was different from the MUI which through the halal fatwa decision it issued had fulfilled the elements of a State Administration Decree.

In the petitem, Felik asked the Constitutional Court to declare Article 34 paragraph (2) of the Halal Product Guarantee Law contrary to the 1945 Constitution and not conditionally binding as long as it is not construed “against the Halal Fatwa which states non-halal products can be filed for legal action through the Religious Courts.” Stating that Article 48 point 19 of the Work Creation Regulations in Lieu of Law which contains changes to the norms of Article 33 paragraph (5) of the Halal Product Guarantee Law is contrary to the 1945 Constitution and is not conditionally binding as long as it is not construed “against the Decision of the Halal Product Fatwa Committee a legal remedy can be filed through the Religious Courts.” Furthermore, it

states that Article 48 point 20 of the Work Creation Perppu which contains changes to the norms of Article 33A paragraph (1) of the JPH Law is contrary to the 1945 Constitution and is not conditionally binding as long as it is not interpreted “against the Decision of the Halal Product Fatwa Committee, legal action can be filed through the Religious Courts.”

The Correlation of Norm

Responding to this Petitioner’s request, Constitutional Justice Wahiduddin Adams in the advice of the Panel Session said that the Petitioner needed to be careful with the object of the application being tested, considering that this norm has merged into the Job Creation Regulations in Lieu of Law because this will also greatly affect the subject matter of the application. In this petition, Wahiduddin observed that the Petitioner was concerned about the decentralized authority to issue fatwas with the authority of the MUI at the regional level. However, the Petitioner has not explained this matter and has mostly mentioned the naming of products that contain elements that are not halal/haram.

Furthermore, Constitutional Justice Saldi Isra gave a note regarding the Petitioner’s views regarding the expansion of the authority of the religious courts and the decentralization of halal products. It is because the Petitioner assumed the different perceptions of each institution that issued a fatwa on halal product guarantees.

Meanwhile, Constitutional Justice Arief Hidayat paid close attention to the Petitioner’s petition starting from the systematics that were still not well-organized, the hierarchy of regulations and institutions that had authority in this case, the authority of the Court, and constitutional and petitem losses. Then for the legal issues at issue, Arief advised the Petitioner to pay attention to the articles being tested against the 1945 Constitution with the building of arguments. Thus, the Court becomes convinced of the arguments stated by the Petitioners in this case petition (Sri Pujianti/Nur R/Andhini SF).





WORKER UNION ALLIANCE REVIEW FORMAL GOVERNMENT REGULATION IN LIEU OF LAW ON JOB CREATION

The Constitutional Court (MK) held a hearing for a formal Judicial review of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (Perppu Cipta Kerja) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution), on Wednesday (2/22/2023) in the Court Panel Meeting Room. An application registered with Number 22/PUU-XXI/2023 was filed by the Alliance of Trade Unions/Labor Unions.

In the hearing presided over by Constitutional Justice Arief Hidayat, Ari Lazuardi as the attorney stated that the Petitioners were the heads of the federation and workers' unions at the central level. The Petitioners believe that the Job Creation Government Regulation in Lieu of Law has created new norms that can be detrimental to the interests of the Petitioners. Losses experienced by the Petitioners consist of the status of employment relations which tend to legalize the practice of certain prolonged work agreements, the blurring of the minimum wage concept, the loss of the sectoral minimum wage, reduced labor union negotiating rights, reduced severance pay, unclear social values and the potential for many disputes to occur due to the lack of clarity in the transitional regulations governing the new norms and the omitted norms in Chapter IV of Manpower.

With the reasons above, Ari said that if it is appropriate for the applicant to have potential or loss that is considered to have the qualifications, they can apply for a formal examination as referred to in Article 1 paragraph (1) of the Constitutional Court Law. Furthermore, Ari continued, the constitutional touchstone used specifically refers to Article 22 paragraph (1) of the 1945 Constitution. However, based on Article 22A of the 1945 Constitution which has delegated arrangements regarding the procedure for forming a law with a law. This regulatory authority has spawned Law Number 12 of 2011 concerning the Establishment of Laws and Regulations as amended by Law Number 13 of 2022. Thus, the formal review in this application is a review of the process for establishing the Job Creation Perppu which is inconsistent with the constitution as stipulated regulated in Article 22 paragraph (1) of the 1945 Constitution.

Government disobedience

Furthermore, the applicants also stated that both in the preamble and the explanatory section of the Job Creation Government Regulation in Lieu of Law (Perppu), it was considered to be a form of follow-up to the Constitutional Court Decision Number 91/PUU-XVIII/2020. "Constitutional Court Decision 91/PUU-XVIII/2020 confirms that there

has been a procedural violation which has resulted in formal defects in the formation of the Job Creation Law," added Ari.

Regarding the findings of violations of this procedure, Ari quoted the decision, saying that the Constitutional Court ordered the legislators to correct existing violations and ordered that a standard legal basis be immediately formed to serve as a guideline in the formation of laws using the omnibus law method which has this specific nature. Concerning decision order number 4 and related to legal considerations the Constitutional Court Decision 91/PUU-XVIII/2020 basically states that it orders the legislators to make improvements to the process of forming Law Number 11 of 2020 concerning Job Creation in terms of improving the use of definite, standard, and standard methods, fulfills more meaningful community participation and substantial improvement of text changes. However, the Job Creation Perppu proves that the President has not complied with and is even far from the order of the Constitutional Court Decision Number 91/PUU-XVIII/2020.

Improvement of Legal Subjects

Responding to the petition of the applicants, Constitutional Justice Suhartoyo highlighted the legal subject of the Petitioners because the Petitioners are members of the Trade Union Alliance. He requested that the Petitioners clarify the legal subject regarding who has the right to represent the organization in court. Meanwhile, Constitutional Justice Daniel Yusmic P. Foekh focused on getting the Petitioners to improve their legal standing. According to him, the Petitioners are still individuals, although some are legal entities. He asked the Petitioners to elaborate on the legal standing.

Meanwhile, Chief Justice Panel Arief Hidayat stressed the authority of the Constitutional Court as an entry point. He explained that in compiling authority it must be based on a hierarchy of laws from the 1945 Constitution down to the lowest regulations. In addition, he asked that the reasons for the application be strengthened regarding the reasons why a formal review of the Job Creation Government Regulation in Lieu of Law had to be carried out. (Utami Argawati/Lulu Anjarsari P/M. Halim)

TESTING INDUSTRIAL RELATIONS CONCILIATOR MINIMUM AGE REQUIREMENTS



The Constitutional Court (MK) held the first hearing on the material judicial review of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (UU PPHI) on Thursday (2/23/2023). The hearing for case Number 19/PUU-XXI/2023 was filed by Nandang Rakhamat Gumilar (Petitioner I), Bayu Alhafizh Nurhuda (Petitioner II), Achmad Rizki Zulfikar (Petitioner III), Muhammad Alfian (Petitioner IV) and Sofyan Hadimawan (Petitioner V). The Petitioners are Industrial Relations Conciliators. The norm being tested is Article 19 paragraph (1) letter c of the Settlement of Industrial Relations Disputes Law.

The Petitioners represented by Muhammad Iqbal Sumarlan Putra said that initially on 6 December 2021, there was an invitation letter from Plt. Director of Industrial Relations Dispute Settlement, Directorate General of Development of Industrial Relations and Workers' Social Security, Ministry of Manpower of the Republic of Indonesia Number: Und.103/HI.04.02/XII/21. Regarding the invitation with the Pre-Recruitment Discussion agenda for Prospective Industrial Relations Conciliators to identify needs and potential interest in the position of Industrial Relations Conciliator and the financing scheme originating from non-PNS/Honorary employees in dense industrial areas on December 6, 2021.

The Petitioners have met the requirements to be appointed as conciliators and are just waiting for legitimacy. However, this was not given by the Minister of Manpower. After the Bekasi Regency Manpower Office sent a letter regarding the Consultation on the Implementation of Technical Guidance (Bimtek) for the Bekasi Regency Conciliator Candidates, only then did the Petitioners find out why they had not been able to obtain Conciliator legitimacy because they were hindered by the minimum age requirement to appoint a conciliator candidate which required a minimum age of 45 years as stated in the Settlement of Industrial Relations Disputes Law.

Based on the Petitioners, the determination of the minimum age requirement of 45 years for the Conciliator is baseless, because the age requirement is not a requirement that determines a person's competence. For a Conciliator, what is more, important is the fulfillment of all the requirements as contained in Article 19 paragraph (1) letter a, letter b, letter d, letter e, letter f, letter g, letter h, and letter i of the Settlement of Industrial Relations Disputes Law and Article 2, Article 3 of the Minister of Manpower Regulation Number 10 of 2005 are sufficient to prove that a prospective conciliator can conduct conciliation to settle an Industrial Relations Disputes.

Disparity of Minimum Age Requirements

Iqbal emphasized that one of the aggravating conditions for the Petitioners was the determination of the minimum age limit to become a conciliator, namely at least 45 years old as stated in Article 19 paragraph (1) Letter c of the Settlement of Industrial Relations Disputes Law causing harm to the Petitioners, especially when compared to the requirements to become a Mediator.

Thus, there is a disparity in terms of the minimum age requirements between the Conciliator and the Mediator. The minimum age requirement to be appointed as a conciliator is higher than the minimum age requirement to be appointed as an Industrial Relations Mediator with an age range of 18 years to 35 years. In fact, the minimum age requirement for conciliators is still higher than the minimum age requirement to be appointed as an ad hoc judge at the Industrial Relations Court, it is 30 years.

In the petitum, the Petitioners asked the Constitutional Court to declare that Article 19 paragraph (1) letter c of the Settlement of Industrial Relations Disputes Law is contrary to the 1945 Constitution and is not conditionally binding as long as it is not construed as including "candidate conciliators who have fulfilled all the requirements in Article 19 paragraph (1)) letter a, letter b, letter d, letter e, letter f, letter g, letter h, letter i Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes".

Application of Reconstruction

Before advising on improving the petition, Constitutional Justice Suhartoyo submitted the request in a fairly sequential and substantive manner. However, Suhartoyo suggests that the Petitioner needs to reconstruct the petition under the systematic application for judicial review cases at the Constitutional Court which includes

The same thing was stated by Constitutional Justice M. Guntur Hamzah who said that the systematic preparation of the application was not as stated in the Constitutional Court Regulation (PMK). Furthermore, Guntur also advised the Petitioners to be careful in giving interpretations (Utami Argawati/Nur R./Andhini SF.)



NOTARY QUESTIONING THE AUTHORITY OF THE PROSECUTOR TO APPLY JUDICIAL REVIEW

Hartono, who works as a notary public, tested the provisions of Article 30C letter h and Explanation of Article 30C of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia (Attorney Law) to the Constitutional Court. The Panel Session for case Number 20/PUU-XXI/2023 was held by the Panel Session Council which consisted of Constitutional Justice Manahan M.P. Sitompul, Constitutional Justice Wahiduddin Adams, and Constitutional Justice Arief Hidayat.

Singgih Tomi Gumilang as the Petitioner's attorney outlined the main points of the petition in the Constitutional Court Panel Courtroom on Thursday 2/23/2023). Singgih recounted a concrete case experienced by the Petitioner who became a

defendant in a criminal case and was found guilty by the Gianyar District Court, Bali, resulting in a 2-year prison sentence.

Due to this decision, the Petitioner on November 15 2019 appealed and the Public Prosecutor submitted it on November 14, 2019. Then the Denpasar High Court stated that the Petitioner had not been legally and convincingly proven guilty of committing the crime he was charged with, thereby acquitting him of all charges. However, later the Prosecutor/Public Prosecutor filed an appeal to the Supreme Court of the Republic of Indonesia on January 21, 2020. The Panel of Judges for Review decided that the Petitioner's decision was not proven legally and convincingly guilty of committing the acts as charged in the public prosecutor's indictment.

Comparison with Other Countries

Regarding this request, Constitutional Justice Arief Hidayat provided notes of advice, including regarding the article being tested which had been tested in the Constitutional Court through Decision of the Constitutional Court Numbers 33/PUU-XIV/2016 and 16/PUU-VI/2008. Hence, it is expected that the Petitioner can provide comparisons with other countries, where prosecutors actually represent the interests of the state and victims so that they are allowed to conduct Judicial Review.

Meanwhile, Constitutional Justice Wahiduddin Adams added that the advice regarding the judicial review conducted by the Constitutional Court was not a concrete case. Therefore, the losses suffered can be correlated with the legal standing of the Petitioners. In other words, the Judicial Review process was not only experienced by the Petitioner but also experienced by other people who needed to be supported by supporting data. Furthermore, on the description of legal uncertainty mentioned by the Petitioner, one reason alone is not sufficient. Thus, legal arguments need to be built.

Furthermore, Constitutional Justice Manahan M.P. Sitompul emphasized the legal position that needed to be elaborated in depth. Thus, it appears that the norm being tested has violated the constitutional rights of the Petitioner. Regarding the application that was decided by the Constitutional Court in the previous petition, in practice regarding this Judicial Review, there are still irregularities in its implementation (Sri Pujianti/ Nur R./Raisa Ayudhita).

MENGUJI KONSTITUSIONALITAS ATURAN PROSES PEMERIKSAAN MKDKI



Mahkamah Konstitusi (MK) menggelar sidang pemeriksaan pengujian Undang-Undang Nomor 29 Tahun 2004 tentang Praktik Kedokteran, pada Rabu (1/3/2023) di Ruang Sidang Panel MK. Perkara yang teregistrasi dengan Nomor 21/PUU-XXI/2023 ini diajukan oleh Gede Eka Rusdi Antara dan Made Adhi Keswara yang keduanya merupakan Dokter Spesialis Bedah.

Dalam sidang yang dipimpin Panel Hakim Konstitusi Suhartoyo, Viktor Santoso Tandiasa mengatakan pihaknya menitikberatkan pada legal standing dan *nebis in idem*. Dikatakan Viktor, Pemohon I dalam menjalankan praktik kedokteran memiliki persoalan yakni dilaporkan MK DKI berdasarkan pengaduan Nomor 7 tahun 2022. Padahal dalam melaksanakan praktik kedokteran operasi terhadap pasien, Pemohon I dan

Pemohon II telah menjalankan praktik berdasarkan disiplin keilmuan yang dapat dipertanggungjawabkan.

Lebih lanjut ia menjelaskan, Pemohon I dan Pemohon II didampingi oleh kuasa teradu, namun kuasa pihak teradu tidak dapat melakukan pembelaan ataupun memberikan keterangan menurut kuasa teradu perlu diberikan dalam rangka membela hak teradu sebagai pemberi kuasa atau hanya mencatat saja. Keempat, Viktor melanjutkan, saksi dan ahli yang dihadirkan oleh pemohon diperiksa oleh MPD tanpa dihadiri oleh pemohon. Sehingga pemohon atau teradu tidak mengetahui apa yang ditanyakan oleh MPD oleh Majelis. Menurutnya, UU Praktik Kedokteran oleh para pemohon diminta untuk dinyatakan bertentangan dengan Pasal 1 ayat (3), dan Pasal 28 ayat (1) sepanjang frasa “Mengikat dokter, dokter gigi dan Konsil

Kedokteran Indonesia” tidak dimaknai bersifat rekomendasi dan mengikat dokter, dokter gigi dan KKI serta tidak dapat dijadikan sebagai dasar untuk mengajukan gugatan perdata atau pidana.

Nasihat Hakim

Menanggapi permohonan tersebut, Hakim Konstitusi Wahiduddin Adams mengatakan perkara permohonan para pemohon berkaitan erat dengan Perkara Nomor 119/PUU-XX/2022. “Saya katakan berkaitan erat karena Pemohonnya sama dengan Pemohon perkara ini juga merupakan Pemohon Perkara Nomor 119/PUU-XX/2022 begitu juga kuasa hukumnya. Oleh sebab itu, titik beratnya ini bagaimana menjelaskan bahwa apakah ini nebis in idem itu nanti betul-betul dielaborasi atau diurai. Selain itu dalil yang diuraikan pemohon pada halaman 15 17 itu tergambar seperti itu. Dalil ini dipisah dari dalil mengenai pokok permohonan, bagian tersendiri,” ujar Wahiduddin.

Selain itu, Wahiduddin juga mengatakan karena ini merupakan berkaitan erat dengan perkara 119/PUU-XX/2022 tersebut yang tampak adalah meminta penegasan MK mengenai sifat putusan MKDKI apakah mengikat atau bersifat rekomendasi. Sementara Hakim Konstitusi M. Guntur Hamzah menyarankan para pemohon untuk berhati-hati agar permohonan ini tidak kabur. (Utami Argawati/Lulu Anjarsari P./Fitri Yuliana)



REACHING JUSTICE SEEKERS TO COMMUNICATION OF PHPU SOCIALIZATION 2024

As a single institution that has no branches in the regions, the Constitutional Court seeks to reach justice seekers by placing judicial facilities assets. Placement of a mini courtroom smart board that replaces video conferencing as well as socialization of the Constitutional Court's preparations for handling disputes on general election results (PHPU) simultaneously in 2024. Let's look at the discussion portrait below.

Optimizing The Utilization of "Smart Board" in "Access to Justice" Efforts

MAHKAMAH KONSTITUSI REPUBLIK INDONESIA DAN UNIVERSITAS MUHAMMADIYAH SUMATERA UTARA

Medan, 9 Sya'ban 1444 H / 3 Maret 2023 M



Constitutional Justice Enny Nurbaningsih giving a public lecture on the theme "Upholding the Constitution through a Modern and Trusted Judiciary" in the Inauguration of the Smart Board Mini Court Room at Muhammadiyah University of North Sumatra, Medan, Friday (3/3/2023).

The Authority of the Constitutional Court in Resolving Election and Regional Head Elections Cases



Constitutional Justice Wahiduddin Adams in a public lecture held by Palembang PGRI University (UPGRIP) on Friday (3/3/2023) at Aidil Hall, UPGRIP, Palembang. The theme is "Constitutional Court in the Republic of Indonesia's Administrative System", Wahiduddin invited UPGRIP students and academics to get to know the Constitutional Court more closely.

Model of the Constitutional Court's Decision on Findings of Election Violations



Constitutional Justice Daniel Yusmic P. Foekh was a speaker in a public lecture with the theme "Readiness of the Constitutional Court in Dealing with Cases of Disputes over the 2024 General Election and Regional Head Election Results". This activity was held at the Faculty of Law, University of North Sumatra (FH USU) Medan on Friday (3/3/2023). In this activity, the Dean of the USU Faculty of Law Mahmud Siregar, and students and the Indonesian Christian Student Movement (GMKI).

The Authority of the Court to Examine Regulations in Lieu of Law (Perppu)



Regulations in Lieu of Law (Perppu) are one of the important and interesting topics in the study of constitutional law (HTN), especially emergency HTN. This was conveyed by Constitutional Justice Daniel Yusmic P. Foekh who was the speaker in a public lecture entitled "The Authority of the Constitutional Court in Examining Government Regulations in Lieu of Laws" at Pelita Harapan University (UPH) Lippo Plaza Medan Campus, North Sumatra, on Saturday (3/4/2023).



Regional Head Dismissal Mechanism



Constitutional Justice Saldi Isra gave material in a Focus Group Discussion (FGD) held by the Supreme Court (MA) Kumdil Education and Training Agency on Wednesday (3/8/2023) in Jakarta. This activity carried the theme "Draft Supreme Court Regulation Concerning Guidelines for Procedures in Deciding Regional People's Representative Assembly Opinions Regarding the Dismissal of Regional Heads/Deputy Regional Heads by the Supreme Court".

The Village Becoming the Base for Community Development



The Constitutional Court in collaboration with the College of Village Community Development "APMD" carried out the inauguration of the use of the smartboard mini courtroom for remote trials as well as holding a National Seminar on Friday (3/10/2023) in Yogyakarta. Constitutional Justice Wahiduddin Adams was present along with Sutoro Eko Yunanto as Chair of the STPMD "APMD" as resource persons.

The Authority of the Constitutional Court in Handling Election Disputes



Chief Justice of the Constitutional Court (MK) Anwar Usman in a Seminar entitled "2024 General Election and Simultaneous Regional Elections: Potential Disputes and Challenges", on Friday (3/10/2023) at the State Islamic University of Maulana Malik Ibrahim Malang, East Java.

Interpretation of the Constitution in the Constitutional Court Decision



Constitutional Justice Manahan MP Sitompul while giving a keynote speech at the 2023 World Indonesian Student Association (PPI Dunia) Constitutional School Activities with the theme "The Role of the World PPI in the 5th Amendment to the 1945 Constitution of the Republic of Indonesia" on Friday (3/10/2023) online.



The Idea of a Green Constitution in The Constitutional Court Decision



Constitutional Justice Suhartoyo was the keynote speaker at the Gadjah Mada National Law Conference 2023 National Seminar with the theme "The Role of National Law in the Green Economy for Sustainable Development in Indonesia". This activity was held at the Auditorium of Building B of the Faculty of Law, Gadjah Mada University, Yogyakarta, on Friday (3/17/2023).

The Urgency of the Role of the Constitutional Court



Constitutional Justice Suhartoyo answered this question directly in a public lecture at the Faculty of Law, Ahmad Dahlan University on Friday (3/17/2023) at Campus 4 Ahmad Dahlan, Yogyakarta.

The Concept of Implementing Democratic Elections in Indonesia



Constitutional Justice M. Guntur Hamzah officially opened the 2023 VII Constitutional Festival Event which was carried out by the Legal and Constitutional Debate Institute (LeDHak) Faculty of Law, Hasanuddin University (FH Unhas) in collaboration with the Constitutional Court (MK) on Friday (3/17/2023).

System of Government of the Republic of Indonesia



Deputy Chief Justice of the Constitutional Court Saldi Isra in a National Seminar with the theme "Dynamics of Government System Practices After Amendments to the 1945 Constitution", on Friday (17/3/2023) at Padang State University (UNP), Padang, West Sumatra.



Constitutional Court Procedural Law in UIN Law Fair VI



Constitutional Justice Wahiduddin Adams giving material at the UIN Law Fair VI at the Harun Nasution Auditorium, UIN Syarif Hidayatullah Jakarta, Friday (17/3/2023). The theme for this year's UIN Law Fair VI is "New Directions for Upholding the Constitution and Democracy in Global Instability".

Openness is a Main Pillar of Modern Judicial Governance



Constitutional Justice M. Guntur Hamzah in a National Seminar entitled "The Constitutional Court and its Strategic Role in Improving the Quality of the State" on Saturday (3/18/2023). This activity, which was organized by the Constitutional Court (MK) in collaboration with UIN Alauddin Makassar, was held at the Lecture Theater Prof. Muin Salim, UIN Alauddin, Makassar. This activity was also attended by Darussalam as Warek III for Student Affairs, M.Saleh Ridwan as Deputy Dean III UIN Alauddin Makassar, Supriansa as Member of the Republic of Indonesia House of Representatives (speaker), and Rahman Syamsudin as Chair of the Legal Studies Program (moderator).

The Dynamics of Proceedings in Examining Laws in the Constitutional Court



Constitutional Justice Daniel Yusmic P. Foekh gave a public lecture to the academic community of the Indonesian Christian University of Maluku (UKIM), Ambon, Maluku Province, Saturday morning (18/03/2023).

Advocates Are Representatives For Justice Seekers



Constitutional Justice M. Guntur Hamzah shared knowledge about the legal procedures for reviewing laws at the Constitutional Court with 26 participants in the Advocate Profession Special Education (PKPA). The activity with the theme "Constitutional Court Judiciary Procedures" was held by the Sharia and Law Faculty of UIN Alauddin Makassar in collaboration with the Indonesian Advocates Association (Peradi) on Sunday (3/19/2023).



LEGAL TECHNICAL GUIDANCE IN DISPUTES ON ELECTION RESULTS

Ahead of the simultaneous celebration of democracy to be held in 2024, the Constitutional Court held a series of technical guidance on legal procedures for disputes over election results. The following are party cadres who have the opportunity to take part in the training in February - March 2023.

Cadre of Golkar Party



Constitutional Justice Wahiduddin Adams and Constitutional Justice Enny Nurbaningsih became resource persons at the 2024 Disputes on General Election Results (PHPU) for the Golongan Karya Party (Golkar Party) on Monday (2/27/2023) at the Pancasila and Constitutional Education Center (Pusdik MK) Cisarua, Bogor.

Cadre of Nasdem Party



Chief Justice of the Constitutional Court Anwar Usman when officially opening the Legal Technical Guidance of the 2024 Disputes on General Election Results (PHPU) for the Nasdem Party, Monday (3/6/2023) at the Pancasila and Constitutional Education Center, Bogor.

Cadre of Labor Party



Chief Justice of the Constitutional Court (MK) Anwar Usman when officially opening Technical Guidance on the 2024 Disputes on General Election Results (PHPU) for the Labor Party on Monday (3/13/2023) at the Pancasila and Constitutional Education Center (Pusdik MK) Cisarua, Bogor.

STRENGTHENING INSTITUTIONAL COOPERATION

In strengthening institutional performance, the Constitutional Court cooperates with domestic and foreign institutions. The following is a portrait of the institutional coordination meeting that was run by the Constitutional Court in February - March 2023.

National Center for State Course hearings



Chief Justice of the Constitutional Court (MK) Anwar Usman welcomed the presence of Vice President of the National Center for State Course (NCSC) Jeffrey A. Apperson and International Education Program Manager Isabelle L. Schrank on Wednesday (22/2/2023) in Building 1 MK. On that occasion, Anwar attended accompanied by Plt. Secretary General Heru Setiawan, Head of the Subdivision Head of the MKRI Foreign Cooperation Subdivision Immanuel Hutasoit, and some other staff.



Tracing the Role of the Constitutional Court in Indonesian Foreign Policy



Chief Justice of the Constitutional Court Anwar Usman, Plt. Secretary General Constitutional Court Heru Setiawan, Director of Polkam International Agreements Ministry of Foreign Affairs Purnomo Achmad Chandra, Director of American and European Intra-Regional and Inter-Regional Cooperation Directorate General of America and Europe Ministry of Foreign Affairs Nidya Kartikasari attended the International Cooperation Workshop which was held on Friday in Bekasi (3/3/2023).

The importance of the 5th Congress of the WCCJ



Constitutional Justice Daniel Yusmic P. Foekh representing the Constitutional Court of the Republic of Indonesia (MKR) at the 20th Meeting of the WCCJ Member Bureaus on Saturday (11/3/2023) at Scuola Grande, San Giovanni Evangelista, Venice, Italy. The world-level meeting was also attended by representatives from the Association of Asian Courts of Justice, the Association of Courts of French Language, the Conference of Constitutional Courts of Portuguese-speaking countries, the Conference of Courts of Africa, the Association of Courts of Europe, the Ibero-American Association of Courts of Justice, the Association of Arab Courts, as well as several Constitutional Courts that became bureau member.

INSTITUTION'S INTERNAL STRENGTHENING TO FACE DISPUTES ON GENERAL ELECTION RESULTS IN 2024

Resolving disputes on the results of the election vote acquisition is part of the authority of the Constitutional Court which has been determined by the constitution. In order to carry out the tasks optimally, the Constitutional Court also held a series of activities to strengthen the human resources who will carry out these tasks. The illustrations can be seen below.

Workshop on Preparation for Handling Election Result Disputes Cases



The Constitutional Court (MK) held a Public Administration Support Workshop in the Context of Preparation for Handling Disputes on General Election Results (PHPU) for Members of the Legislature, Disputes on the Results of the Presidential/Vice Presidential Election for Candidates for the 2023 Task Force and/or Employees, on Thursday (2/23/ 2023) in Bogor.

Fraud Potential in Elections



The Constitutional Court held a Consignment Meeting for Drafting Regulations of the Head of the Constitutional Court in the Context of Handling Disputes on the Results of the Presidential/Vice Presidential Election and Disputes on the Results of the 2024 General Election for Members of the Legislature, on Thursday (3/2/2023) in Bekasi, West Java. This activity was opened by Chief Justice of the Constitutional Court Anwar Usman.

ALS IK EENS RECHTSPOSITIVIST WAS,...

BISARIYADI

Expert Assistant of Constitutional Justices

The title of this article was inspired by a pamphlet written by RM. Suwardi Suryadiningrat, as published in the daily *De Express* on July 13, 1913. During his middle age, Suryadiningrat abandoned the name that was related to nobility and replaced it with “Ki Hajar Dewantara”. RA’s wife also followed the change of name. Sutartinah was changed to “Nyi Hajar Dewantara”.

Suryadiningrat’s short writing shocked the Dutch kingdom. This is because the contents criticize and criticize the government’s policy of withdrawing donations from the Dutch East Indies population to hold Dutch Independence Day celebrations. His writing is entitled “*als ik eens nederlander was,...*” which in free translation means “if I were a Dutchman”.

During the struggle to the post-independence revolution, the tradition of writing among the educated at that time was generally published in the form of opinions in media columns published daily or weekly. This tradition seems to be rooted in contemporary Indonesian academics who tend

to prefer to express their ideas in short, more populist writings in daily print media. Besides the wage factor for writing, the consideration of getting a name in society more quickly is also a driving force for academics to write in newspapers rather than scientific journals. Satjipto Rahardjo, as an Indonesian legal officer, often fills out columns in the form of short opinions in daily print media. The book “Let the Law Flow” is a collection of short articles in newspapers.

The tradition of writing short stories in popular media for academics does not necessarily have to be changed. There are times when short articles aim to disseminate ideas to the general public and have a strategic role. It should not neglect the status of a scientist. The idea of a scholar must be supported by scientific methods which contain scientific concepts to solve problems in society. For the latter, the choice of media as a place to express his ideas is in the form of publishing books and scientific journals. Indeed, the scope of the target audience is different and narrower. However, writing scientific papers

is a medium for scientifically testing intellectual ideas among scientists. Newspapers and daily publications are not the right media for that. It would also be inappropriate to measure the expertise of a scholar by looking at the number of brief opinion articles published in daily newspapers.

Therefore, a paradigm shift within the intellectual community is needed to pursue popularity through short articles in newspapers. On the other hand, a scholar must really devote their time and effort to publishing their ideas in scientific journals and books.

Currently, there is also a growing notion that filling in short articles in opinion columns in newspapers is nothing but a stepping stone for academics to be able to sit in public positions. After gaining a name in the community and being frequently invited as an observer in talk shows broadcast on national television, the door to getting a seat as a public official has been knocked. It’s just how the owner of the house responds, by opening the door and letting him in or letting the guard dog

bark as a sign that the owner of the house is not there.

Stigma toward Positivists

The title of this paper focuses on the word “*rechtspositivist*”. More or less, this article will review the supposition of being an adherent of a school that views law in a positivistic way. The word “*positivis*”, especially among legal language users, in Indonesia has experienced a narrowing of meaning and even tends to be pejorative.

Not only ordinary people, but legal academics who use the word “*positivis*” or “*positivistik*” also refer to the meaning that the term is aimed at the process of interpreting legal documents in a literal way. People who try to grasp the meaning of a rule, both in legislation and in contracts, by looking at it based on the meaning contained in a series of words are called “positivists”. There is also an assumption that the positivistic approach used is a conservative way, too traditional in viewing law, and even “outdated”.

In terms of terminology, the use of the word “positivist” to refer to the meaning above is not entirely correct. The word “positivism” was first expressed by Auguste Comte in the field of philosophy of science. Comte’s grand ideas about positivism were applied specifically to the science of law. Until then it is emerged the school of thought about legal

positivism.

Jeremy Bentham was lined up as the person who was the initiator of the legal positivism school. Bentham’s thought that law must stand alone (*morally neutral*), has an impact on the distinction between “as it is” (what is - *das sein*), and “as it should be” (what ought to be - *das sollen*). As it is a fact while it should be a value. Philip Schofield’s article entitled “Jeremy Bentham and the Origins of Legal Positivism” provides more explanation about the origins of Bentham’s big ideas.

In the realm of the philosophy of law, there is an ongoing debate between legal positivism and natural law schools. The basic difference between the two lies in the relationship between law and morals. The natural law school holds that law and morals are inseparable. Meanwhile, legal positivism seeks to see law independently, apart from other elements including morals. Until now, both camps have their respective supporters.

The debate in the realm of philosophy is reduced to the procedure of law. It is in this derivative area that chaos ensues because clear boundaries cannot be measured. The “hardline” group of legal positivism represented by Hans Kelsen departs from the view that law must be purified. The law should not be confused with other fields of knowledge. Kelsen proposed a theory that he called *Reine Rechtslehre* or the

pure theory of law.

In the school of legal positivism, a methodology that is often used is developing, namely the doctrinal approach. The word doctrinal has no equivalent in Indonesian. However, the word “doctrine” has been absorbed into the language even though doctrinal cannot necessarily be equated with the word “doctrinal”. The origin of word “doctrine” is rooted in the Latin “*doctrina*” which means command, knowledge, or learning.

Doctrinal legal research methods have a long history. The history of law records that the development of law originates from the hereditary teachings of a legal scholar to his students, as happened in the development of religious law such as Islamic law (*shari’ah*) and church law in the Christian religion (*canonical law*).

The doctrinal approach pays close attention to the use of the word in the rule of law. The main concern with the use of these words is that it invites criticism. The law is considered limited to the words in the applicable rules. Another term that is then widely used is “black letter law”. Legal interpretation is confined to a series of words in legislation products and court decisions. One interesting article about the doctrinal approach was written by Terry Hutchinson and Nigel Duncan with the title “Defining and Describing What We Do: Doctrinal Legal Research” (2012).

It seems that the meaning of the doctrinal approach or black letter law is then attached to the term “positivistic” by many legal academics in Indonesia. At this point, the argument above needs to be repeated that there is a narrowing of meaning that tends to be even worse than the original.

Positivism: Normative and Realism Sects

Contrary to the doctrinal approach, the legal methodology is the empirical approach (empirical legal studies). The emergence of empirical legal studies coincided with the Legal Realism movement, which took the form of American Legal Realism and Scandinavian Legal Realism. In fact, the legal realism movement owes its debt to the free law movement which initially developed in Germany as shown in the research by James E. Herget and Stephen Wallace entitled “The German Free Law Movement as the Source of American Legal Realism” (1987).

The big idea of the legal realism movement actually entered Indonesia. The embryo of this movement was driven by Satjipto Rahardjo by proposing “Progressive Law”. Satjipto Rahardjo’s students calling themselves “*tjiptians*” tried to live and developed their big ideas. Although what appeared more to the surface are were idioms regarding “Progressive Law” without any development of more meaningful and rooted ideas. When tracing the works of Satjipto

Rahardjo, there are actually signs of interest in and attachment to Satjipto Rahardjo’s thoughts with the legal realism movement, especially America, which is very obvious. The references to which his writings refer to American scholars with jargon in line with the realism movement. However, at present, it seems that the *tjiptian* movement has stagnated.

In simple reading, it seems as if there is a sharp conflict between the doctrinal and empirical parties. The doctrinal party is oriented towards Continental Europe, especially Germany, while the empirical approach group looks at legal developments in the United States, through the legal realism movement. This phenomenon also cannot be separated from the capture of academics. Kristoffel Grechenig and Martin Gelter (2008) argued that although the roots of legal realism originate from the free law movement in Germany, this movement has not developed in Europe. In contrast, legal realism was welcomed in the United States.

His second article entitled “The Transatlantic Divergence in Legal Thought: American Law and Economics vs. German Doctrinalism” further expresses the conclusion that the doctrinal approach fronted by Savigny’s thought includes customs as part of law. When the custom is set forth as legislation, the task of a legal scholar is to provide an interpretation of the custom which

becomes law without questioning the rationality behind it. This view is rejected by legal realism. This movement departs from the notion that law cannot stand alone. Therefore, the approach taken by the legal realism movement is to use interdisciplinarity, looking at law from various disciplines.

The interdisciplinary approach has come under fire from Jack Balkin. In Balkin’s view, even though it looks impressive, an interdisciplinary approach can have an impact on the domination of one scientific discipline over other disciplines. Balkin’s article “Interdisciplinary as Colonization” (1996), in essence, stands on the argument that

“... interdisciplinarity results when different disciplines try to colonize each other. If the takeover is successful, work is no longer seen as interdisciplinary; rather, it is seen as wholly internal to the discipline as newly constituted. Interdisciplinary scholarship, then, is the result of an incomplete or failed takeover.”

Between the doctrinal and empirical approaches, it is as if an ideological battle is taking place which is difficult to end in peace. Gareth Davies’ writing, “The Relationship between Empirical Legal Studies and Doctrinal Legal Research” which was published in the *Erasmus Law Review* (2020), showed that there is a balance

between the advantages and disadvantages of both.

The advantage offered by adopting the empirical method with its interdisciplinary approach is the addition of color to the legal research that is being carried out. Legal research not only enhances the image of legal education but is also more likely to attract funders to invest in research budgets. In addition, students are also increasingly interested in studying legal cases because they are not only seen from the point of view of laws and regulations but are also involved in social issues. For academics, the advantages offered by the empirical method are that the analysis side is richer in perspectives and the research conducted has a wider impact on actual issues and is useful for policymakers.

The advantages of the empirical approach are a challenge for the development of doctrinal methods. Thus, they do not seem static and do not offer novelty. The advantages of legal research using the doctrinal method are from the academic side. The doctrinal approach emphasizes the development of ideas and concepts regarding law and power. Though the ideas put forward are hypothetical and unproven, they can trigger public debate and have an impact on change, for example, the concept of “government by judges”. By looking at the development of

court authority, especially in judicial reviews that examine government policies contained in laws and regulations, legal academics develop the hypothesis that judges also have implied authority to become part of the government. The panel of judges who examine policies determines the direction of government in the name of constitutionalism.

Only Perspective

In Indonesia, the debate over the use of doctrinal and empirical methods seems to lead to ideological divisions in legal schools. In fact, when looking at the writings of Sulistyowati Irianto (2012) when “introducing socio-legal studies and their methodological implications” at the beginning he emphasized, “law has many faces, therefore among scientists (law) there is no single agreement about its meaning”.

Irianto’s opinion above is also reflected in the opinion of Roscoe Pound in his writing “Law and the Science of Law in Recent Theories” (1934).

“... the analytical jurist saw in the positive legal precepts of each particular jurisdiction the “pure fact of law”;

The historical jurist saw legislative imperatives as mere illusions. There was no life except in the principles of human or social action revealed by experience and formulated in continuous historical development;

The philosophical jurist thought of legislation and empirical formulations alike as crude gropings for ideals that alone have significance; The positivist told us that he alone had grasped reality through observation verified by further observation;

The economic realist asserted that precepts and principles and ideals and positivist observations through the spectacles of jurists and lawyers were equally illusory and that reality was to be found in the self-interest of the dominant social class of the time and place, imposing its will upon those who are weaker by a skillful camouflage of rules and principles and ideals and positivist observation.”

How to see the law then determines someone’s understanding of the paradigm of the concept of law. Therefore, it becomes a mistake when we judge someone on the way he understands the law that he applies when interpreting.

The important thing is to measure consistency. When a person understands the law and then applies it consistently, then it can be considered that she/he is acting on his knowledge and understanding. However, if someone with unconventional thought interprets the law then it can be ascertained that he/she is acting out of ignorance and misunderstanding.

REGARDING PARTIES AND ELECTIONS

The existence of political parties cannot be separated from the implementation of general elections and also the laws that govern them. However, throughout the Indonesian constitution, especially since the 1999-2002 constitutional reform, it was found that there was disharmony in the arrangements between the two. This book, which is the result of a dissertation by a writer whose competence has been recognized and discussed related to the relationship between the two and their influence on quality election administration, as well as an effective presidential government system.

There are at least five keywords discussed comprehensively in this book. First is the harmonization of laws governing political parties and elections. Second, the party system is the key to the democratic process. Third is the election system (electoral law) which is closely related to the election process (electoral process). Fourth is the government system which is a working relationship between the president and the House of Representatives in a scheme of checks and balances. Fifth is effective governance, which looks at the government's ability to create an effective and efficient public administration system and management.

Studies on political parties need to be distinguished from party systems. This distinction is intended to clarify analyzing the functions, roles, and models



BOOK TITLE: HUKUM PARTAI POLITIK DAN HUKUM PEMILU DI INDONESIA: PENGARUHNYA TERHADAP PENYELENGGARAAN PEMILU YANG BERKUALITAS DAN SISTEM PEMERINTAHAN PRESIDENSIAL YANG EFEKTIF

AUTHOR: DR. AGUS RIWANTO

PUBLISHER: THAFA MEDIA NUMBER OF PAGES: XII + 424 PAGES

ISBN: 978-602-1351-42-0

in a democratic system (p. 36). Quoting Gutriandri, political parties are organizations that aim to influence and gain power through elections, while the party system is the interaction between one party and another and its relationship with the political system as a whole (p. 36).

Herbert Kitschelt distinguished three types of political parties, namely programmatic parties, charismatic parties, and clientelistic parties. The party system is divided into five models, Aurel Croissant and Wolfgang Merkel describe, namely: the dominant party system, the two-party system, the limited pluralism party system, and the extreme pluralism party system.), and a party system that is blurred because of very small fragments like atoms (atomized party system) (pp. 37-38).

Concerning the general election system, in general, two systems are mostly used in the world, namely the proportional system and the non-proportional system or district system. "Classified according to the electoral formula, those two types are the plurality system and the proportional system. Based on their effects on the votes-seats, relation as well as some additional combinations of technical elements (district magnitude, electoral thresholds, supplementary seats, etc.), we can differentiate ten subtypes of the electoral system," explained Aurel Croissant.

Based on the author of the book quoting Denny Indrayana, in the theory of state science and political science, they are distinguished in three ways: the system of government is different from the form of government and the form of the state is different. There are two forms

of government: republic and kingdom. There are three forms of state, namely unitary, federal, and confederation. Although they are different, the system of government has a strong correlation with the form of government. Presidential is a system of government in the form of a republic, while the royal government is a monarchical system of government (p. 69).

What makes this book interesting is that the author finds the cause of disharmony between the party system and the electoral system in Indonesia, especially in the 2009 and 2014 elections. In fact, the legislative products of the election system law are from political parties, by political parties, and only for the interests of political parties in the House of Representatives and not for the interests of the nation and state. According to the author of the book, this is the political phenomenon of Indonesian legislative law in drafting laws in the political field.

Well, the offer from the author of the book is very interesting. According to him, the model of harmonization of political party law and election law to create quality elections and an effective presidential government system is carried out by choosing the Tinkering Harmonization model, namely harmonization of law through optimizing the application of existing laws with several adjustments taking into account efficiency.

Another thing that needs to be conducted is the importance of codifying laws and regulations in the political field which contain the Law on Political Parties, the Law on Legislative Elections and Presidential/Deputy Elections, the People's consultative assembly, Regional Representative Council,

Regional People's Representative Laws in one law book. Why is this important? According to the author of the book, this is useful so that there are no routine revisions to political laws before each election and the process of ratifying products in the political field does not have a compromising and transactional nuance between factions in the House of Representatives. It is also expected that this law on politics will not be biased towards the interests of the drafting parties and will be more objective and functional for the interests of the nation and state.

The author of the book recommends the need for further amendments to the articles in the 1945 Constitution which have the nuances of a parliamentary system in a presidential system, in order to purify the presidential system. In addition, placing the function of political parties at the level of the 1945 Constitution will have stronger binding power than only at the level of the law. This is intended to make the institution of political parties placed in a position that is quite important in its role as a means of managing and regulating aspects of the state and society in Indonesia.

This book is very relevant for understanding the context of Indonesian constitutional politics, especially regarding the development of parties and the holding of elections. The author of this book, Dr. Agus Riwanto, is an expert on constitutional law who was previously also an election organizer practitioner. Thus, his competence and capacity have not hesitated. This book deserves to be a reference for academics and observers of democracy in Indonesia.

PROPOSAL THAT THE ATTORNEY GENERAL'S OFFICE BE REGULATED IN THE CONSTITUTION

LUTHFI WIDAGDO EDDYONO
Researcher of Constitutional Court

The existence of the Attorney General's Office as a state institution regulated in the 1945 Constitution was once written in the Amendment to the 1945 Constitution. One of them was the 3rd Meeting of the PAH III BP MPR on Saturday, October 9, 1999. The meeting was related to "Empowerment and Accountability of Judicial Institutions or Supreme Court". Based on the Comprehensive Text on the Amendments to the 1945 Constitution of the Republic of Indonesia, Background, Process, and Discussion Results, 1999-2002, Book VI Judicial Power, (Jakarta: Secretariat General and Registrar Office of the Constitutional Court; Revised Edition, July 2010), written various opinions that want the Attorney General's Office to also be included in the constitution.

Yusuf Muhammad from F-KB proposed that the Supreme Court

Chapter be continued with the Attorney General's Chapter.

"First, this chapter is continued in the next chapter with the Attorney General's Chapter. Thus, there is a Chapter for the Supreme Court, there is a Chapter for the Attorney General's Office.... In Chapter X concerning the Attorney General's Office, we propose three paragraphs, which means Article 28. First [Paragraph (1)]: "Attorney General, Junior Attorney General, and Prosecutor have the positions of state officials." Second [Paragraph (2)]: "The Attorney General and the Junior Attorney General are elected by the House of Representatives." The third [Paragraph (3)]: "The composition and position of the Attorney General's Office shall be regulated by law." I think this is all an effort so that what we want by increasing the role of law enforcement, law enforcement, can obtain clear guarantees from our Constitution."

Hamdan Zoelva from the F-PBB also agreed with the F-KB's proposal to include the Prosecutor's Office in the 1945 Constitution. Here's his opinion.

"We agreed earlier with the PKB, we also include this prosecutor's office in our constitution, we will discuss how to arrange it later.... Regarding the Attorney General's Office, we need to add a separate article: "The Attorney General's Office is a state institution whose job is to prosecute criminal cases and act as a state attorney in state administrative matters." Then: "The Attorney General is chosen by the President after obtaining approval from the House of Representatives."

Continuing the desire to adopt the Attorney General's Office to become part of the state institutions contained in the constitution, Zain Badjeber from F-PPP argued that the chapter title "Judicial Power" was changed

to “Supreme Court” and proposed a new chapter “Law Enforcement”.

“Then we proposed that there be a Law Enforcement Chapter. It is a new chapter where: courts, prosecutors, police, and other bodies are governed by law.” Hence the other bodies could later be lawyers if they couldn’t because some were lawyers, some were legal advisors, and so we’ll just call them three and other bodies regulated by law.

Then the Prosecutor’s Office, article regarding [Prosecutor’s Office]: [Paragraph (1)]: “The Prosecutor’s Office is a tool of the state which has the main task of carrying out prosecutions in criminal cases and acting as a state attorney in civil and state administration according to the rules stipulated by law.” [Paragraph (2)]: “The composition, position, and powers of the attorney general are determined by law.” [Paragraph (3)]: “The Attorney General’s Office is led by the Attorney General who is responsible to the President as head of state.” The next article [concerning the Police]: [Paragraph (1)]: “The police are an instrument of the state whose job is to protect, maintain public order and security and carry out investigative and

investigative duties in criminal cases and so on...” [Paragraph (2)]: “The Chief of Police is led by the Chief of Police of the Republic of Indonesia who is responsible to the President as head of state.” [Paragraph (3)]: “The composition of powers is regulated by law.”

Andi Mattalatta from the Golkar Party suggested that the chapter on judicial power be split into two, namely the Supreme Court Chapter and the Attorney General’s Office Chapter.

“In line with colleagues from other factions, we also split the chapter on judicial power into two. One chapter on the Supreme Court and one chapter on the Attorney General’s Office, with the expectation that the Leader will not ask us for clarification why it has to go to the Attorney General’s Office. Never even met? Just coincidence...”

Furthermore, the next chapter that we broke into two is the chapter on the Attorney General’s Office. The first [Paragraph (1)]: “The Attorney General’s Office is a state institution that exercises state power in the field of public prosecution.” Second [Paragraph (2)]: “The Attorney General’s Office is an independent power that is free from the influence of state

agencies and other parties.” The third one [Paragraph (3)]: “The Attorney General’s Office carries out administrative, financial, and staffing matters on its own.” This is the implication of the Attorney General’s freedom. And the fourth [Paragraph (4)]: “Other matters regarding the Attorney General’s Office are further regulated by law.”

Responding to the formulation of norms related to the Attorney General’s Office which developed during the meeting discussing the Chapter on Judicial Power, Chairman of the Meeting Amin Aryoso explained that the integrated criminal justice system includes the components of police, advocates, prosecutors, and judges. So, according to Amin, if the articles only regulate judges, police, and prosecutors. Furthermore, they are incomplete so Amin suggests the need for input from advocate professional organizations to explain this judicial power.

In the end, the Attorney General’s Office is not regulated in the Constitution. Article 24 paragraph (3) of the 1945 Constitution states that other bodies whose functions are related to judicial power are regulated by law.

STEMBUS ACCORD IN THE 1971 ELECTION

LUTHFI WIDAGDO EDDYONO

Researcher of Constitutional Court

What is a stembus accord? Based on Nikmatul Huda in Fikri Ilham Yulian's article entitled "Problematics Due to the Law of Dissolving Political Parties by the Constitutional Court", the stembus accord mechanism is the mechanism for agreements between certain political parties in the context of combining votes to meet the electoral threshold/parliamentary threshold. If previously the stembus accord was applied only to overcome the loss of people's votes due to not meeting the electoral threshold, in this stembus accord, an expansion of interpretation is conducted.

It was further stated that the stembus accord was carried out for the possibility of dissolving political parties in the future. Political parties that have the same platform, make a collective agreement if there is a shortage of votes, each party will support the other party to meet the parliamentary threshold. In addition, the parties also agree that if in the future there is dissolution of political parties then the seats

occupied by the disbanded party cadres are delegated to the parties participating in the Stembus Accord.

This mechanism was also known in the 1971 Election. As outlined in the Comprehensive Text on Amendments to the 1945 Constitution of the Republic of Indonesia, Background, Process, and Results of the 1999-2002 Discussion, Book V General Elections, (Jakarta: Secretariat General and Clerk of the Constitutional Court; Revised Edition, July 2010), in the 1971 election, all seats were completely divided in each electoral district. The distribution of seats in the 1971 election was carried out in three stages, this was in the case of a party carrying out a stembus accord, but in an electoral district where no parties were carrying out a stembus accord, the distribution of seats was only carried out in two stages.

Based on the Comprehensive Text, the stages of the distribution of seats in the 1971 Election were as follows. First, the party's vote is divided by the *kiesquotient* in the constituency. In the second stage, if there are parties that carry out a *stembus accord*, then

the remaining number of votes of the parties that combine the remaining votes is divided by the *kiesquotient*. In the next stage, if there are still seats remaining, one seat each will be handed over to the party that won the largest remaining votes, including the combined remaining votes of the parties that carried out the stembus accord from obtaining seats for the second stage distribution. If no party conducts a stembus accord, then after the first distribution, the remaining seats will be distributed directly to the party that has the largest remaining votes.

Meanwhile, in Law Number 16 of 1969 concerning the Composition and Position of the People's consultative assembly, House of Representatives, and Regional People's Representative it is stated that not all members of the House of Representatives are elected through general elections. The number of House of Representatives members is set at 460 people consisting of 360 members elected through general elections and 100 members appointed; 75 people representing the Armed Forces Working Group and 25 from the

non-ABRI Working Group. This provision lasted until 1997.

Regarding People's consultative assembly membership, the same law states that the People's consultative assembly has 920 members, consisting of 460 House of Representatives members, 130 regional delegates elected by Regional People's Representative I, 123 political party delegates and working groups according to the balance of the House of Representatives general election results. 207 people were appointed by the President to represent the Armed Forces Working Group and not the Indonesian Armed Forces (ABRI). Meanwhile, political parties that do not obtain seats in the House of Representatives get at least one seat in the People's consultative assembly.

Moreover, it is interesting to study the electoral formula in elections in Indonesia. According to Bosman, Marthen Arie, and Aswanto in the article "TINJAUAN HUKUM SISTEM PERWAKILAN BERIMBANG DALAM PEMILIHAN UMUM ANGGOTA DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA" The electoral formula in the House of Representatives election in Indonesia can be classified into 4 (four) categories. First, the Hare variant quota technique with a combination of national and stembus accord, namely the Hare variant quota technique where the distribution of seats does not end in the

electoral district by combining the remaining votes as applied to the 1955 House of Representatives Election.

Second, the Hare variant quota technique with stembus accord without a combination, namely the Hare variant quota technique which enforces the combination of the remaining votes in the calculation of seats, and the seats was completely divided in the electoral districts which were applied in the 1971, 1977, 1982, 1987, 1992, 1997 elections and 1999. Third, the pure Hare variant quota technique without a stembus accord, without a combination, where the conversion of votes into seats was completely divided in the electoral district without the combination of the remaining votes as in the 2004 election.

Fourth, the Hare variant quota technique with a limited combination and parliamentary threshold, namely the Hare variant quota technique in which some of the seats are divided up in the constituency (for constituencies where there is only one electoral district in the province), and some were not used up in the regions. election (for provinces consisting of more than one electoral district), provided that the election participants' national vote acquisition reached the parliamentary threshold as in the 2009 Election.

Dogmatically, according to Bosman, Marthen Arie, and

Aswanto, based on district magnitude, the electoral system can be divided into two categories, namely (i) an electoral system with a single member district; and (ii) an election system with a plural number of seats (multi-member district). Meanwhile, based on the electoral formula, the electoral system can be classified into three types, namely: (i) Plurality Formula (plurality); (ii) Majority Formula; and (iii) Balanced Representative Formula. A balanced representation system, namely an electoral system in which the proportion of seats won by each party more or less reflected the proportion of the number of votes each party has won.

It is further explained that the general characteristics of this system consist of: (i) the party provides a list of candidates whose number is at least the same as the available seat allocation in the electoral area (district); (ii) The number of seats obtained by each party is balanced with the number of votes it has obtained in the electoral district concerned; (iii) The number of seats won by each party is determined using the method of the largest remainder or the highest average method; and (iv) Usually a certain threshold is required that must be met by each party to be included in the distribution of seats.



REVIEW

REQUIREMENTS TO BECOME PRESIDENT AND VICE PRESIDENT CANDIDATES

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

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

In a democratic country, post-amendment elections for President and Vice President are carried out through direct election by the people. The election of the President and Vice President is a constitutional commitment of the Indonesian people as a manifestation of the implementation of the highest sovereignty in the hands of the people. Its democratic value is reflected in the freedom and involvement of political parties or a combination of political parties participating in the elections to nominate candidates for President and Vice President as long as they fulfill the requirements specified in the laws and regulations.

As mandated by Article 7 of the 1945 Constitution, it regulates a certain time to hold the office of President and Vice President and is not hereditary. The President as Head of State as well as Head of Government, needs restrictions by the state to prevent abuse of power. It is the limitation on the term of office of the President and Vice President. This limitation is needed so that there are no more than two presidential terms, for example, the election of President Soekarno as President of the Republic of Indonesia in the PPKI session on August 18, 1945,

until the issuance of TAP MPRS Number XXXIII/MPRS/1967 (for 22 years). Furthermore, President Soeharto was elected President of the Republic of Indonesia for life and was inaugurated on March 12, 1967. During the Soeharto government, a single candidate always appeared in presidential elections. Suharto's power ended on May 21, 1998, after resigning following the 1998 riots. Suharto served as President of Indonesia for 32 years.

Through an amendment to Article 7 of the 1945 Constitution, on 14-21 October 1999, the term of office of the President and Vice President was limited to only two terms of office by the same president. With the limitation of term of office, the term of office becomes clearer and more limited, they can only serve for 2 different periods. This term limit is also intended to prevent authoritarianism from occurring and abuse of power by the President who serves as head of state and has authority over his position.

Furthermore, regarding the requirements to become a candidate for President and candidate for Vice President, a judicial review has also been submitted to the Constitutional

Court, and the Constitutional Court has decided through Decision of the Constitutional Court Number 117/PUU-XX/2022, dated 31 January 2023.

Constitutional Court Decision Number 117/PUU-XX/2022

The Constitutional Court Decision Number 117/PUUXX/2022, on January 31, 2023, postulates the norms of Article 169 letter n and Article 227 letter i Law 7/2017 contrary to Article 1 paragraph (3), Article 7, Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution, which was proposed by the Petitioner, namely the Berkarya Party, which is a legal entity in the form of a political party and was a participant in the 2019 election. Yet, in 2024, the Petitioner is not included in a political party participating in the election. According to the Petitioner, as a political party, they have the constitutional right to nominate pairs of candidates for President and Vice-Presidential candidates, including candidates who are currently in office or elected as President or Vice-President in the previous election (incumbent) to run again in the next election and

hold office for five years.

However, the existence of Article 169 letter n and Article 227 letter i Law 7/2017 has limited or reduced the constitutional rights of the Petitioner in the past 2019 Election to nominate a candidate for President or candidate for Vice President. It is because a quo provision has regulated the requirements for candidates for President or Vice President who have not served as President or Vice President for 2 (two) terms of office in the same position or often referred to for 2 (two) periods as evidenced by a statement letter. Thus, in the 2019 Election, the Petitioner as an election participant could not nominate one of the candidates who have already has served 2 (two) times in the same position for re-nomination. Even though there is nothing in the 1945 Constitution that mentions and requires not having served as President or Vice President for 2 (two) terms of office in the same position. According to the Petitioner, Article 7 of the 1945 Constitution clearly does not limit the right of the elected President or Vice President to run for another term of office. The Petitioners have been able to describe their constitutional rights guaranteed by the 1945 Constitution which were considered to be harmed or potentially harmed by the enactment of the norms of the laws being petitioned for review. The Petitioners have also been able to explain the existence of a causal relationship (causal verband) between the alleged loss of potential constitutional rights according to reasoning which naturally can be ensured by the enactment of the legal norms being petitioned for review. According to the Court, the Petitioner has

the legal standing to act as the Petitioner in a quo petition.

In its legal considerations, the Court believes, because Article 7 of the 1945 Constitution has provided clear limitations regarding the term of office and the periodization of the term of office of the President or Vice President, it is normatively necessary to have other provisions in the Constitution and followed up in statutory regulations under the constitution to support. Thus, this was manifested in the process of filling the positions of President and Vice President, especially concerning the requirements to become President and Vice President. The requirements to become President and Vice President are constitutionally regulated in Article 6 of the 1945 Constitution. In this case, the norm of Article 6 paragraph (1) of the 1945 Constitution states, "The candidate for President and Vice President must be an Indonesian citizen since birth and not has ever accepted another nationality of his own free will, has never betrayed the country, and is physically and mentally able to carry out his duties and obligations as President and Vice President". Since it is impossible for constitutional norms to regulate these requirements in detail, Article 6 paragraph (2) of the 1945 Constitution further regulates by stating, "The conditions for becoming President and Vice President are further regulated by law".

Furthermore, the Court believes, currently the law governing the election of the President and Vice President is Law 7/2017. As a regulation that receives a delegation from the 1945 Constitution, Article

169 of Law 7/2017 stipulates the requirements for becoming a candidate for President and Vice President as follows:

- a. Believe God Almighty;
- b. Indonesian citizen since birth and has never accepted another nationality of his own free will;
- c. the husband or wife of the candidate for President and the husband or wife of the candidate for Vice President is Indonesian Citizens;
- d. never betrayed the state and never committed corruption and other serious crimes;
- e. mentally and physically able to carry out the duties and obligations as President and Vice President and free from narcotics abuse;
- f. reside in the territory of the Unitary State of the Republic of Indonesia;
- g. has reported his/her wealth to the agency authorized to examine reports on the wealth of state administrators;
- h. not currently having debt dependents individually and/or as a legal entity for which they are responsible which is detrimental to state finances;
- i. not being declared bankrupt based on a court decision;
- j. never commit a disgraceful act;
- k. not currently being nominated as a member of the House of Representatives, Regional Representative Council, or Regional People's Representative;
- l. registered as Voters;
- m. has a taxpayer identification number and has carried out the obligation to pay taxes for the last 5 (five) years as evidenced by an annual income tax return letter for an individual taxpayer;
- n. never served as President or Vice President for 2 (two) terms of office in the same position;
- o. loyal to Pancasila, the 1945 Constitution of the Republic of Indonesia, the Unitary State of

- the Republic of Indonesia, and Bhinneka Tunggal Ika;
- p. has never been sentenced to prison based on a court decision that has permanent legal force for committing a crime punishable by imprisonment for 5 (five) years or more;
- q. at least 40 (forty) years old;
- r. education at least graduated from senior high school, madrasa aliyah, vocational high school, vocational aliyah madrasa, or other schools of the same level;
- s. not a former member of the banned Indonesian Communist Party, including its mass organizations, or not a person directly involved in the G.30.S/PKI; And
- t. has a vision, mission, and programs for carrying out the government of the Republic of Indonesia.

Furthermore, Article 227 of Law 7/2017 states that the registration of the candidate pair for President and Vice President must complete the following requirements:

- a. electronic identity cards and birth certificates of Indonesian Citizens;
- b. Police Records and Headquarters of the Indonesian National Police Certificate;
- c. health certificate from a government hospital appointed by the General elections commission (KPU);
- d. a letter of receipt or proof of submission of a personal wealth report to the Corruption Eradication Commission;
- e. a statement letter that is not in a state of bankruptcy and/or does not have dependents on debt issued by a district court;
- f. statement letter not being nominated as a member of the House of Representatives, Regional Representative Council, and Regional People's Representative Assembly;
- g. Copy of the taxpayer identification number and proof of delivery or receipt of the Annual Income Tax Return of the Individual Taxpayer for the last 5 (five) years;

- h. curriculum vitae, brief advantages, and track record of each prospective candidate;
- i. statement letter that has never served as President or Vice President for 2 (two) terms of office in the same position;
- j. statement of allegiance to Pancasila as the foundation of the state, the 1945 Constitution of the Republic of Indonesia, and the ideals of the August 17, 1945, Proclamation as referred to in the Preamble to the 1945 Constitution of the Republic of Indonesia;
- k. a statement from the district court stating that each prospective candidate has never been sentenced to prison based on a court decision that has obtained permanent legal force for committing a crime punishable by imprisonment of 5 (five) years or more;
- l. proof of graduation in the form of a photocopy of a diploma, certificate of completion of the study, or other certificate legalized by the education unit or secondary education program
- m. certificate of not being involved in banned organizations and G.30.S/PKI from the police;
- n. sufficiently stamped statement regarding the willingness of the person concerned to be proposed as a candidate for President and candidate for Vice President in pairs;
- o. letter of resignation as a member of the Indonesian National Armed Forces, Indonesian National Police, and Civil Servants from the time they are appointed as Election Contesting Candidate Pairs; and a letter of resignation from employees or officials of state-owned enterprises or regionally-owned enterprises from the time they are appointed as Election Contesting Candidate Pairs.

Furthermore, the Court believes that one of the requirements for becoming a candidate for President and

candidate for Vice President as stipulated in Article 169 letter n and Article 227 letter i Law 7/2017 as mentioned above is that they have never served as President or Vice President for 2 (two) years) terms of office in the same position. It is followed by a statement of not having served for 2 (two) periods is the norm intended to maintain the substance of the norms of Article 7 of the 1945 Constitution. The meaning of "has not served 2 (two) terms of office in the same position" is that the person concerned has never served in the same position for two terms of office, either consecutively or not consecutively, even though the term of office is less than 5 (five) years is also an affirmation of the intent of Article 7 of the 1945 Constitution. Thus, the provisions contained in Article 169 letter n and Article 227 letter i Law 7/2017 are guidelines that must be followed by general election organizers in assessing the fulfillment of the requirements to become a candidate President and vice president. In addition, the two norms referred to are to maintain consistency and to avoid degradation of the norms referred to in Article 7 of the 1945 Constitution.

Therefore, the Court considers that the Petitioner's petition regarding the norms of Article 169 letter n and Article 227 letter i Law 7/2017 does not raise issues of legal uncertainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. Therefore, the Petitioner's argument is groundless according to the law in its entirety.

"Everyone's unique. Be yourself with confidence, bravery, agility, intelligence, wisdom, (then) colour the world..."

Join The CONSTITUTIONAL COURT'S SOCIAL MEDIA

 **@officialMKRI**
(Facebook)

 **mahkamahkonstitusi**
(Instagram)

 **@officialMKRI**
(Twitter)

 **Mahkamah Konstitusi RI**
(Youtube)

Understand Your Constitutional Rights

