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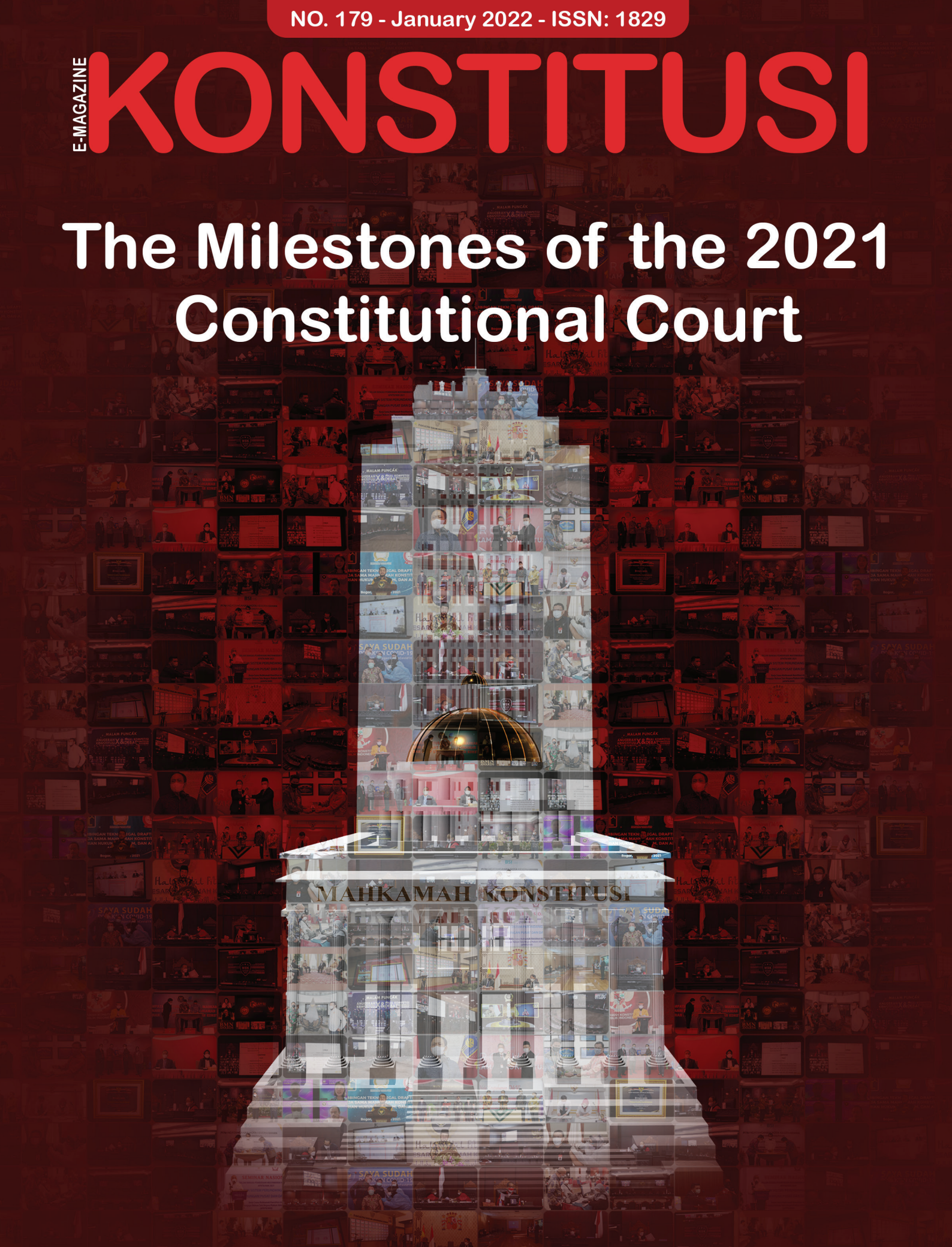
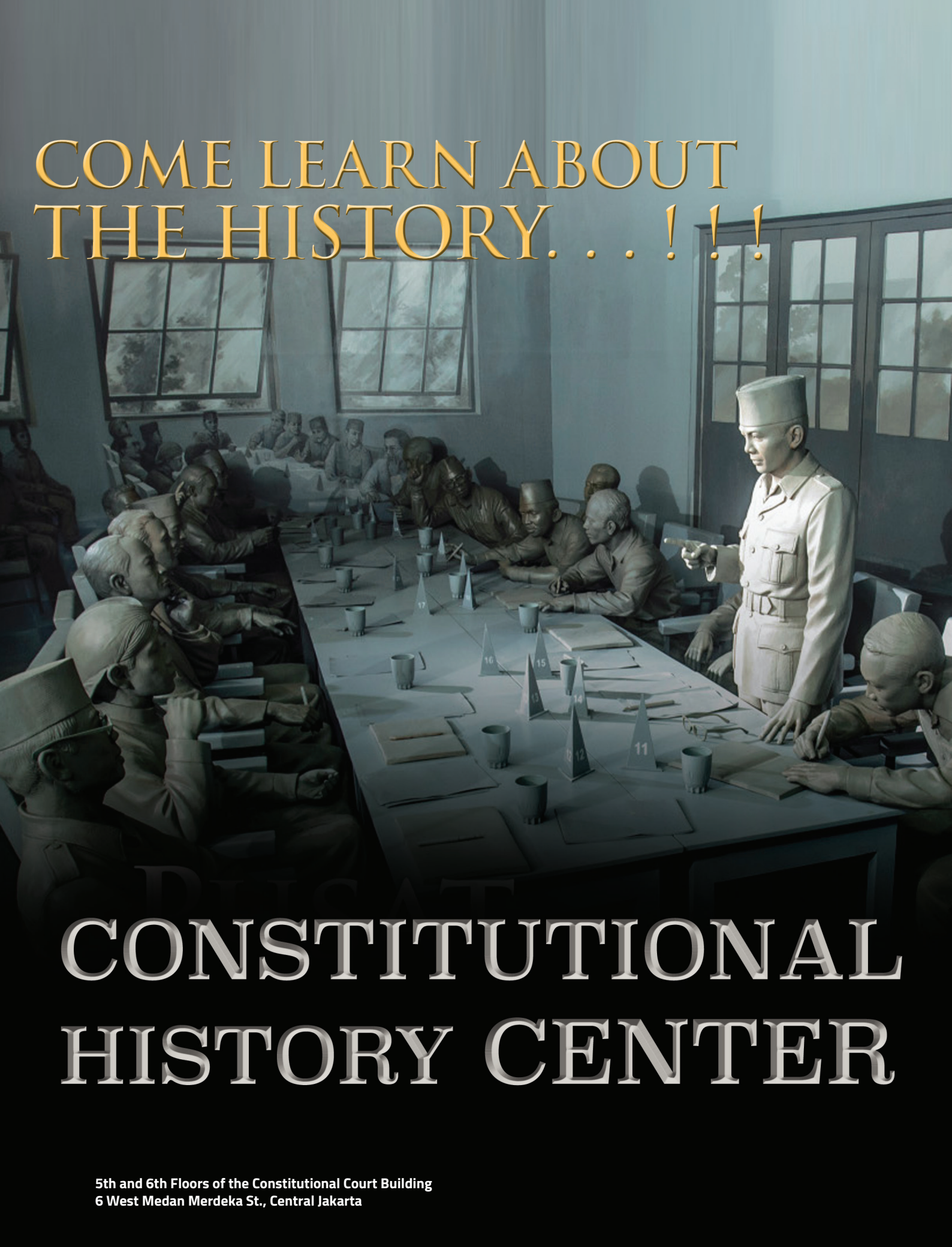
E-MAGAZINE

KONSTITUSI

The Milestones of the 2021 Constitutional Court




COME LEARN ABOUT
THE HISTORY. . . ! ! !
CONSTITUTIONAL
HISTORY CENTER
5th and 6th Floors of the Constitutional Court Building
6 West Medan Merdeka St., Central Jakarta

Editor's **Foreword**

Various events in 2021 became the editorial team of Konstitusi Magazine's records, including news of the Constitutional Court (MK) decision that drew public attention, non-hearing news, and other information. The January 2022 edition theme of Konstitusi Magazine raised the theme of "The Milestones of the 2021 Constitutional Court", which we present in the form of infographics.

Beginning in 2021, the Constitutional Court will concentrate on cases involving Disputes on Regional Head Election Results (PHP Kada) in the 2020 Simultaneous Regional Elections. In the midst of the Covid-19 pandemic, the Constitutional Court held a virtual PHP Kada session. A total of 151 PHP Kada cases have been decided by the Constitutional Court in 2021.

Following its decision on the PHP Kada cases, the MK examines and decides on judicial review cases. One of them is the decision to review the Job Creation Law which has received a lot of public attention. The Court in legal considerations declared the Job Creation Law conditionally unconstitutional. In Decision No. 91/PUU-XVIII/2020, the Court stated that the establishment of the Job Creation Law was contrary to the 1945 Constitution and did not have conditionally binding legal force as long as it was not interpreted as "no improvement has been made within 2 (two) years since this decision was declared."

Furthermore, a crucial moment occurred on March 20, 2021, when the Constitutional Court of the Republic of Indonesia was chosen to host the fifth congress of the World Conference of Constitutional Justice (WCCJ) in an online WCCJ bureau meeting in Jakarta. The Constitutional Court also obtained an Unqualified Opinion (WTP) on the Constitutional Court's Financial Statements for the 2020 Fiscal Year for the 15th consecutive year.

In 2021, the Constitutional Court's video conference was upgraded to a smartboard mini courtroom. The Constitutional Court facilitated the establishment of 53 smartboard mini courtroom devices in 50 universities and three villages designated as Constitutional Villages by the Constitutional Court, including (i) Galesong Village in Takalar Regency, South Sulawesi, (ii) Bangbang Village in Bangli Regency, Bali, and (iii) Nagari Pasia Laweh in Agam Regency, West Sumatra. The smartboard mini courtroom is used to facilitate remote hearings. Furthermore, it can be used to support activities aimed at increasing citizens' understanding of their constitutional rights, socializing the Constitutional Court's procedural law, public lectures, seminars, and other events.

This is just a brief introduction to the editorial, which contains a global list of important Constitutional Court events in 2021.

Finally, we wish you a pleasant reading experience!

KONSTITUSI

Number 179 ▪ January 2022

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JANUARY

14 The Constitutional Court granted the petition for judicial review of Law No. 40/2014 concerning Insurance requested by the Representative Body for Members of the Joint Life Insurance (AJB) of Bumiputera 1912.

19 136 petitions for 2020 Disputes on Regional Head Election Results were registered by the Registrar's Office of the Constitutional Court.

21 Special Plenary Session with the agenda of submitting the 2020 Annual Report with the theme "Sustaining the Supremacy of the Constitution During the Pandemic".

26 The Constitutional Court held the first hearing of the 2020 Disputes on Election Results (PHP) for the Governor, Regent, and Mayor.

FEBRUARY

3 Joint National Seminar by the Constitutional Court and the Association of Constitutional Law and State Administrative Law Lecturers.

15 The Constitutional Court decided on 100 cases of PHP Kada on 15-17 February 2021.

MARET

15 The Chief Justice of the Constitutional Court participates in the First Vaccination for handling COVID-19 in the front yard of the Constitutional Court Building.

19 The Constitutional Court ordered a re-voting in the PHP of Regent of Nabire, Regent of Yalimo, and Regent of North Morowali, as well as a recount of votes for the PHP of the Regent of Sekadau.

26 ACTION

TRANSFORMATION

Tremendous turbulence was experienced by Montego Air Flight 828 flying from Jamaica to John F. Kennedy Airport, United States. The lights flickered horribly. From the window, a flash of lightning flashed. The doors of the overhead compartment opened. Cabin bags and luggage fell scattered into the cabin aisle. The panicked passengers screamed in dismay. Before long, the situation was brought under control. From the cockpit, the pilot tried to calm down the passengers through the speakers. The airplane was back.

However, an oddity soon occurred. The pilot contacted ground authorities asking for permission to land but the request was denied. The pilots were confused. Ground officers were too. Then they told the pilot the plane was not detected by radar. The plane was not on the flight schedule. Surprisingly, ground officials said, Montego 828 had been declared missing 5 years ago. The two pilots gaped. This is Montego 828, flying from Jamaica in normal time, less than 3 hours!

Long story short, the plane made an emergency landing at an airport, far from their destination. There was a commotion. As soon as it landed, the plane was surrounded by many police, like carrying a big fugitive. While disembarking, passengers wanted an explanation of what happened. An officer said, Montego Air Flight 828 and all of the passengers, were declared missing 5 years ago, so it would be strange if you landed here today. Passengers were shocked. How was it possible, what seemed normal with only a few hours of flight, but in fact, they were stuck and scattered from the pace of the outside world which had been running for 5 years 6 months 28 days in front of them. The furor continued. That's a summary of the story of the early episodes of the famous mystery supernatural mystery genre full of enigmatic "Manifest."

From the story, we can imagine and make an analogy. The plane is an organization. The pilot is the leader of the organization. Passengers are us, members of the organization. We see how extraordinary changes can and are very likely to occur in the life course of an organization. Even changes beyond reason and unpredictable, and without compromise can also occur in an organization. During the fun and normality of travel, shock after shock must be faced and conquered, especially by organizational leaders who carry out the sacred task of ensuring members are calm and comfortable being escorted to their destination.

When a big problem suddenly strikes beyond the control and control of any creature, it finally forces us to face a situation of unexpected change. The decision to make an emergency landing is the first step to try to solve the problem. Moreover, the decision to change makes our position very backward, blind, and stuttering in the current situation. No one can blame a great shock that is believed to be the momentum of change. We must not curse ourselves, then declare ourselves as victims who suffered because of the shock. It is only conducted by resigned and conventional people. Meanwhile, a positive thinker will be challenged to draw wisdom and lessons.

We just need to understand that nothing lasts forever, except change itself. Those who can survive during change are people who are immediately ready to change and adapt to change. Not people who are resistant and smart to avoid either. We just need to be a little more patient, smart, and alert to face and interpret the wisdom of any great shock in life. We need more positive thoughts to be creative in the midst of change. We need a little practice to get rid of negative thoughts so that it is not difficult to find the good side of a problem.

Likewise, these two years, the virus pandemic and digital "attacks" in all fields are a great shock that deconstructs all forms of normality and the establishment of human civilization as well as their lives which bring big changes with dozens of challenges demands so that proactive attitude is needed in the changes. We must prepare mentally and culturally to participate in the transformation in change. Skills, competencies, and attitudes need to be improved. Believe me, those who resist change or don't want to change will be crushed. Those who don't know how to change will stumble, though there is hope. Those who are forced to change can survive if the compulsion is then accompanied by a positive spirit to be adaptive, not apathy and despair.

The year 2022 will still be marked by changes for the sake of very fast changes. Changes require flexibility on the one hand and certainty on the other. We are not and do not want to experience the panic and hassle that the crew and passengers of Montego Air Flight 828 felt. However, we are not forbidden to learn and take lessons from the characters in the series, especially how to build attitudes in dealing with complicated situations, distrust, strangeness, and other surprising new things. No matter how difficult it is to accept and do it, slowly but surely, the effort to dive into a new reality requires that we not only want and have to change but also prepare the courage to participate in coloring the new reality itself. Change after change will come and happen, and so on. Now it's up to us to join the change agenda or get ready to be sidetracked. Greetings Constitution!

Window

COMMON SENSE

I D.G.Palguna

"To argue with a man who has renounced the use and authority of reason, and whose philosophy consists in holding humanity in contempt, is like administering medicine to the dead, or endeavoring to convert an atheist by scripture"

Thomas Paine

On January 10, 1776, a pamphlet – which was later printed into a thin book – was published. The book contains only 50 pages – including the cover. The title is Common Sense written by Thomas Paine. Although thin, this book is stinging because it called out to the thirteen British colonies in America – namely, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia – to be completely independent of and no longer have any ties to the United Kingdom of Great Britain. The influence of this writing is magnificent – especially for the people in the thirteen British colonies who later actually declared their independence through the Unanimous Declaration of the Thirteen United States of America, better known as the Declaration of Independence on July 4, 1776. It means that the declaration of independence took place only six months after the book/pamphlet was published. These thirteen colonies became the forerunner of the United States of America, which now consists of fifty states. At that time, it was reported that the sales number of Common Sense in America and Europe reached 500,000 copies. That number does not include copies that were circulated "illegally." This number, apart from being a marker of commercial success, even for today's standards, also confirms the magnitude of the influence of the ideas it contains. The proof is, until now, Common Sense is still considered very influential writing on American political thought (a seminal text of American political thought).

The book (pamphlet), which consists of four parts, opens with a statement that is immediately striking and provocative. "Perhaps the sentiments contained in following pages, are not yet sufficiently fashionable to procure them general favor; a long habit of not thinking a thing wrong gives it a superficial appearance of being right, and raises at first a formidable outcry in defense of custom. But the tumult soon subsides. Time makes more converts than reason." What does the clause "a long habit of not thinking a thing wrong, gives it a superficial appearance of being right and raises at first a formidable outcry in defense of custom) mean?

This statement must be related to the context of the substance of Common Sense as a whole which is an invitation or call for independence and an end to the rule of the British Empire in America, c.q. in the thirteen colonies. Therefore, it appears that the message that Paine was trying to convey with this statement was that there was a need to shout out loud against the tyrannical rule of England – in this regard, in particular, King George III. Because, if it is not conducted, (read: keep the habit of stifling something wrong) it will be very dangerous. To end a bad habit (i.e. condone something wrong), at first will surely get resistance in the name of maintaining the habit, that's not a problem. Because, in the end, "But the tumult soon subsides. Time makes more converts than reason."

Paine, through Common Sense, seems to be present as a figure representing his era who was referred to by the Brazilian educational thinker, Paulo Freire, for his "proposition" that true words can change the world. In the eyes of many observers, Common Sense is a record of true words that represent the collective indignation of America's warriors, those who fought against the injustices of British rule, at least in these thirteen colonies. Thomas Paine's distinctive persuasion (or provocation) in Common Sense has been both a source of inspiration and a driving force for fundamental social change; the American Revolution. Therefore, despite using the pseudonym "an Englishman" – because of the substance the book calls

for and its "burning" style of language – everyone knew who the book's author was. When the book was published to coincide with the announcement of some royal proclamations by King George III demanding the total loyalty of the population in the British Empire's colonies, it became increasingly convincing to the public that the author was Thomas Paine. Through his activities and especially his writings, Paine was already known as a figure who was a very anti-British monarchy. "England, since the conquest, hath known some few good monarchs, but groaned beneath a much larger number of bad ones; yet no man in his sense can say that their claim under William the Conqueror is a very honorable one. A French bastard landing with an armed banditti, and establishing himself king of England against the consent of the natives, is in plain terms a very rascally origin." Imagine what kind of outrage would occur when the King or the British royal family, or even quite a loyalist, read Paine's statement.

One observer referred to Common Sense as a call to the residents of the thirteen British colonies to take up arms using King George III's Royal Proclamations as the lighter. In other words, the Royal Proclamation which contained the order of unconditional obedience to the "subjects" in the colonies of the United Kingdom of Great Britain was answered by Common Sense with an invitation to carry out total armed resistance for full independence for the thirteen British colonies and no longer dependent on the British at all. Therefore, the anger and suffering of the residents in the colonies that had been buried for a long time seemed to have immediately found a release hole. However, the fact was not like that. One analyst says that when Paine wrote Common Sense, he was dealing with the fact that most of the population in the colonies still identified as British, not colonists. They still hoped that the more frequent conflicts with the Kingdom – culminating in the proclamation of the Royal Proclamation – could be resolved peacefully and they still wanted to be under the control of the United Kingdom.

For Paine, such attitudes and stances were irresponsible cowardly attitudes and stances. Reconciliation was no longer an option.

The British had robbed the homes of the colonists, killed their families, and treated them very unfairly. Paine wrote, "If you can still shake hands with the murderers, then you are unworthy the name of husband, father, friend, or lover, and whatever may be your rank or title in life, you have the heart of a coward, and the spirit of a sycophant."

On the other part, Paine's words were even more sarcastic, Can you give the prostitution its former innocence? Neither can you reconcile Britain and America? The last cord is broken, the people of England are presenting addresses against us. There are injuries that nature cannot forgive; she would cease to be nature if she did. As well can the lover forgive the ravisher of his mistress, as the continent forgive the murders of Britain?"

Paine's candid confession that he was heavily influenced by Enlightenment thinkers, especially John Locke (1632-1704), makes us understand the origin of the radical ideas that fill this thin pamphlet, from which it finds its theoretical foundation, even its philosophy. We know, that the Age of Enlightenment was founded on basic propositions centered on rationality. The thinkers of this century tried to make reason a beacon to illuminate the thoughts and beliefs of each individual. The first half of the Enlightenment is known as the Age of Liberalism. It was at this time that the thought and belief developed that man is a rational being and therefore they have full freedom to make decisions for themself – including, or especially, to formulate a social contract to manage and fulfill their needs as a being that lives in society. Historically, (classical) liberalism was born as a response to a tyrannical system of government. This feature of the Enlightenment, particularly the Age of Liberalism significantly influenced Paine and is identified in Common Sense: Paine believed in the fundamental goodness of mankind as offered by Enlightenment thinkers.

Although he admired John Locke, especially his thoughts as outlined in his classic work, Two Treatises of Civil Government, it did not at all prevent Paine from criticizing the character he admired. Paine criticized Locke's idea of a Constitutional Monarchy which Locke said would limit the absolute power of the king because the power to make laws was separated from the power to enforce them. The power to make laws was in the hands of parliament, while the king only had the power to implement the law. Therefore, Locke said, the king could no longer act as he pleased and arbitrarily. It was what Paine attacked by saying it was not enough. In a concept of a constitutional monarchy, power still tends to be concentrated in the hands of the king – which will eventually allow the king to "jump over" any restrictions placed on him. For Paine, monarchy (even a constitutional one) was a dangerous and obsolete notion.

The magnitude of Common Sense's influence on the history of the birth of the United States does not necessarily mean that Paine will never be forgotten. As historian Gordon Wood says (if I'm not mistaken) that although Paine's death is forgotten and the role of Common Sense long disappears from the pages of history, the book's core message never dies: America is home to self-sustaining refugees who promise never to be under conquest again.

PRESIDENTIAL THRESHOLD (ONCE AGAIN)

Rino Irlandi
An alumnus of Constitutional Law, Faculty of Law, Sriwijaya University

The presidential threshold rule in the presidential election has received resistance from various circles. This resistance eventually led to a judicial review of the Constitutional Court (MK). Until now, there have been 13 petitions related to the presidential threshold which was decided by the Constitutional Court. However, all the petitions that had been decided had to run aground, none of which managed to penetrate the fortress of the Constitutional Court. As if they don't know the word of surrender, parties who reject the presidential threshold in the presidential election have again submitted a judicial review. Unmitigated, this time, as of January 10, 2022, the Constitutional Court was overflowed by 9 requests at once. A very serious effort amid a situation that drives people to feel pessimistic. How not, the previous 13 cases were always rejected. So, what to expect?

Overruling Practices

There is no need to feel pessimistic about the repeated attempts at a judicial review by the Constitutional Court. We know that if the previous 13 petitions were always rejected, but in the world of justice that knows the practice of overruling, the word surrender must be removed from our dictionary.

Overruling is a practice in which the court is not bound to make a previous decision as to the basis for making a decision. According to Ninon Melatyugra (2020), this practice aims to provide flexibility for judges to correct previous decisions that are considered wrong and erroneous. Therefore, as long as the judge believes that the previous decision was wrong, the judge can make a decision that is different from the previous decision, even though the issue being reviewed is the same.

In the Constitutional Court, the practice of overruling usually occurs in the adjudication of the authority to review laws. The Constitutional Court is bound to the text of the constitution as a touchstone, not previous decisions, in deciding cases of judicial review. It happened, for example, in the decision regarding the status of the KPK (Corruption Eradication Commission) in the Indonesian constitutional structure.

In Decision Number 012-016-019/PUU-IV/2006, the Constitutional Court in its legal considerations argued that the KPK (Corruption Eradication Commission) is part of the judicial branch of power.

However, this opinion was later rectified by Decision Number 36/PUU-XV/2017 which stated that the KPK was a state institution within the executive realm.

If the Constitutional Court was more committed to the previous decision, then the Constitutional Court's correction of the legal opinion in Decision Number 012-016-019/PUU-IV/2006 should not have occurred. However, because the Constitutional Court is only bound to the constitution, the change of opinion is understandable. It is because by binding themselves only to the constitution, the judge's understanding of a constitutional text can be different.

According to Caleb Nelson (2003), different understandings arise because each judge uses a different method of interpretation. Indeed, there are so many methods of interpreting the constitution. According to Jimly Asshiddiqie (2006), there are twenty-three methods of interpreting the constitution.

In different cases, the non-uniformity of the method of interpretation between one judge and another is also very evident from the various decisions of the Constitutional Court which must end in a dissenting opinion. For example, in the Constitutional Court's Decision Number 91/PUU-XVIII/2020 concerning the Testing of Law Number 11 of 2020 concerning Job Creation. In this decision, four judges gave dissenting opinions, namely Arief Hidayat, Anwar Usman, Manahan MP Sitompul, and Daniel Yusmic P Foekh.

Chances of Petition Granted?

After knowing that overruling opens the opportunity for the petition to abolish the presidential threshold to be granted, how big is the chance for the Constitutional Court to grant it?

Honestly, it's really hard to measure it, because it's not a math test question. If the math exam questions provide a definite answer, guessing the Constitutional Court's decision from the start of the hearing is something very uncertain.

Many variables can determine the final result. There are methods of interpretation by the judge, the legal arguments of the petitioners and their attorneys, statements from the government and the House of Representatives, the opinion of expert witnesses, and the judge's conviction.

Guessing the final result from the start is the same as guessing the final result of a football match from the first minute. No one knows who will win and who will lose before the referee blows the whistle signaling the end of the match.

THE MILESTONES OF THE 2021 CONSTITUTIONAL COURT

Throughout 2021, the Constitutional Court (MK) continued to take part in upholding justice and the constitution. Important events also colored the progress of the Constitutional Court in 2021. The following is a summary of important events of the Constitutional Court throughout 2021.

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MARCH

15 The Chief Justice of the Constitutional Court participates in the First Vaccination for handling COVID-19 in the front yard of the Constitutional Court Building.

19 The Constitutional Court ordered a re-voting in the PHP of Regent of Nabire, Regent of Yalimo, and Regent of North Morowali, as well as a recount of votes for the PHP of the Regent of Sekadau.

APRIL

22 MK memerintahkan pemungutan suara ulang dalam PHP Bupati Labuhanbatu Selatan, PHP Bupati Labuhanbatu, PHP Bupati Penukal Abab Lematang Ilir, PHP Bupati Rokan Hulu, PHP Bupati Mandailing Natal dan PHP Bupati .Halmahera Utara

5 The Constitutional Court held a second vaccination for employees to anticipate the spread of COVID-19.

MAY

30 The signing of the Memorandum of Understanding for the Constitutional Court and Bank Syariah Indonesia (BSI).

4 The Constitutional Court ruled on case Number 70/PUUXVII/2019 which stated that the KPK Supervisory Board and the KPK Chairman did not have a hierarchical structure. The two of them did not supervise each other but rather synergized with each other in carrying out their respective functions.

15 The Constitutional Court ruled on 3 PHP cases for the Regent of Sabu Raijua in 2020.

20 The first hearing of Case Number 4/PUUXIX/2021 in which 662 workers became applicants for the judicial review of No. 11/2020 concerning Job Creation, as the highest number of applicants in the history of judicial review.

25 The electronic signing of the Memorandum of Understanding between the Constitutional Court and Ministry of State Secretariat on Data Integration and Raising Awareness of Constitutional Culture.

27 The big family of the Constitutional Court held Halalbihalal Eid 1442 H.

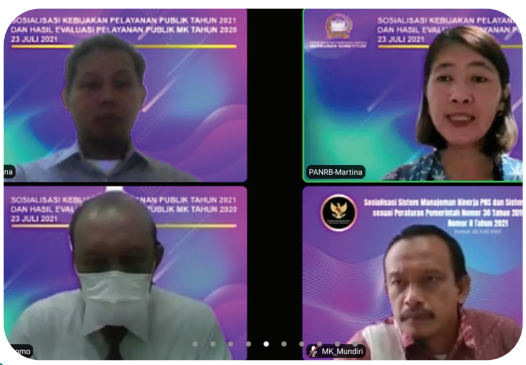
JUNE

4 The signing of the Memorandum of Understanding between the Constitutional Court and the University of Muhammadiyah Tangerang (UMT).

8 The Constitutional Court received 327 points out of an ideal 410 points for its application of the merit system, placing it in the "very good" category.

JULY

29 The Constitutional Court obtained an Unqualified Opinion (WTP) on the Financial Statements of the Constitutional Court for the 2020 Fiscal Year for the 15th consecutive time.



23 The Constitutional Court held a 2021 Virtual Public Service Policy Dissemination and the Results of the 2020 Public Service Evaluation.

9

The Constitutional Court received an award of the second rank from the National Archives of the Republic of Indonesia (ANRI) for the category of the State High Institution, Ministry Level Institution, Non-Structural Institution, and Public Broadcasting Institution for management and innovation in managing archives.

29

The Constitutional Court ruled on case Number 15/PUUXIX/2021 regarding investigators of predicate crimes not limited to six agencies authorized by laws and regulations to conduct investigations as stated in the Elucidation of Article 74 of Law No. 8/2010.

26

The Constitutional Court held Legal Drafting Technical Guidance collaborating with the Ministry of Law and Human Rights and APHTNHAN.

AUGUST

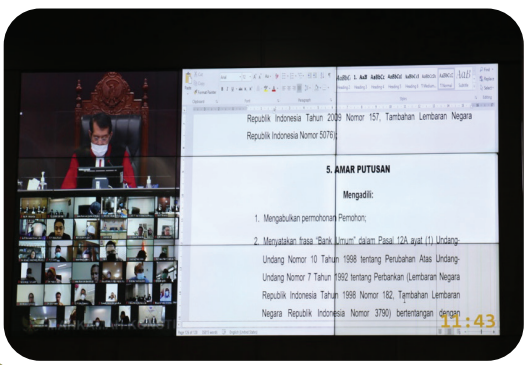
13

Chief Justice of the Constitutional Court Anwar Usman was the supervisor of the 18th Anniversary Commemoration Ceremony of the Constitutional Court in the Constitutional Court building yard.

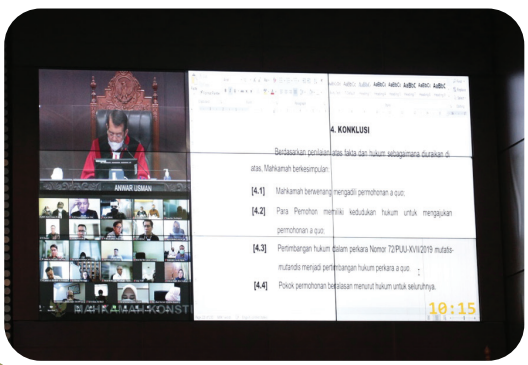
SEPTEMBER

13 The conferment of SIKD Award for work units in commemoration of the 18th Anniversary Commemoration of the Constitutional Court.

7 The Constitutional Court received an award from the Ministry of Finance for Unqualified Opinion on the presentation of financial statements for the 15th consecutive time.



29 Through Decision Number 102/PUUXVIII/2020, the Constitutional Court granted the petition for a judicial review of Article 12A paragraph (1) of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.



30 The Constitutional Court ruled on Case Number 72/PUU-XVII/2019 and Case Number 6/PUU-XVIII/2020 related to the BPJS judicial review.

13 The Constitutional Court received a merit system award, placing it in the "very good" category.

15 The Constitutional Court held the 4th Indonesian Constitutional Court International Symposium (ICCIS) with the theme "Constitutional Court, Religion and Constitutional Rights Protection".

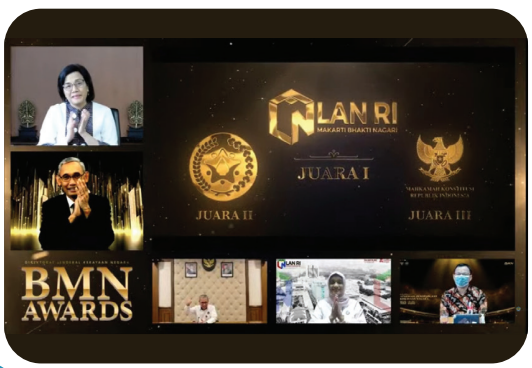
30 The Constitutional Court partially granted Case No. 42/PUU-XIX/2021 regarding the judicial review of Law No. 6 of 2014 concerning Villages proposed by Nedi Suwiran, Head of Sungai Ketupak Village, Cengal District, Ogan Komering Ilir Regency, South Sumatra.

OCTOBER

2 The Constitutional Court inaugurated the use of a smartboard mini courtroom at the Faculty of Law, the Islamic University of Indonesia, Yogyakarta.

26 The Constitutional Court received the 2021 Public Information Openness (KIP) Award as a Public Agency in the "Informative" Category.

27 The Constitutional Court ruled on Case Number 85/PUUXVIII/2020 related to the judicial review of Law No. 46 of 2009 concerning the Corruption Court, which opens the opportunity for ad hoc judges to participate in the third term selection.



15 The Constitutional Court won the 2021 BMN Awards, which were announced online by the Minister of Finance Sri Mulyani Indrawati.

23 The Constitutional Court became the first state institution visited by TNI Commander Andika Perkasa.

NOVEMBER

30

The Justice of the Constitutional Court held a discussion with the Galesong Indigenous Community, Takalar Regency, South Sulawesi following the inauguration of the use of the smartboard mini courtroom in Galesong Village.

9

Placement of the Constitutional Court's First Decision at the National Constitution Center by the National Archives of the Republic of Indonesia (ANRI) and Submission of the Constitutional Court's Static Archives to ANRI.

25

The Peak Night of the X Constitution Award and the Final of the XIV Inter-University Student Constitutional Debate Competition in Indonesia in 2021.

25

The Constitutional Court partially granted the petition for a formal judicial review of Law no. 11/2020 concerning Job Creation due to a formal disability as ordered by Decision Number 91/PUUXVIII/2020.

DECEMBER

1 The Constitutional Court signed a memorandum of understanding with the Spanish Constitutional Court in the Plenary Meeting Room of the Spanish Constitutional Court, Sala de la Vista.

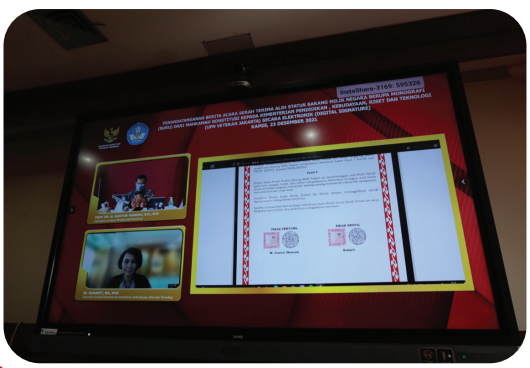
3 The Constitutional Court cooperates with the Portugal Constitutional Court (Tribunal Constitucional).

20 The Information and Communication Technology Center of the Constitutional Court won the Predicate of Corruption-Free Area (WBK).

22 The Constitutional Court held a farewell ceremony with the Ethics Council of the Justices of the Constitutional Court.

15 The oral sentence pronouncement of the Constitutional Court Decision Number 21/PUUXIX/2021 stated that the normative provisions of Article 293 paragraph (2) of the Criminal Code have no binding legal force, as long as it is not interpreted as "complaints can be made not only by the victim but also by parents, guardians, or authority".

15 The oral sentence pronouncement of the Decision Number 23/PUUXIX/2021 stated the rules that prohibit legal action against the decision to postpone the obligation to pay debts in Article 235 paragraph (1) and Article 293 paragraph (1) of Law No. 37/2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, conditional unconstitutionality.



23 The signing of the Minutes of the Transfer of State Property Status in the Form of a Monograph (Book) from the Constitutional Court to UPN Veteran Jakarta through the Ministry of Education, Culture, Research, and Technology electronically.

27 The Constitutional Court held a soft launching of the Citizen's Constitutional Rights Icon (i-HKWN) in collaboration with APHTN-HAN and the Faculty of Law, University of Jember.

JUDICIAL REVIEW DECISIONS IN JANUARY 2022

No.	Case Number	Case Subject	Petitioners	Decision	Date	Decision Link
1	69/PUU-XIX/2021	The Judicial Review of the Minister of Education and Culture's Regulation Number 50 of 2015 concerning General Guidelines for Indonesian Spelling	Muhtar Said	Nullified	18 January 2022	Click Decision
2	60/PUU-XIX/2021	The Judicial Review of Law Number 2 of 2002 concerning the Indonesian National Police	Leonardo Siahaan and Fransiscus Arian Sinaga	Denied in its Entirety	25 January 2022	Click Decision
3	61/PUU-XIX/2021	The Judicial Review of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia	Jovi Andrea Bachtiar	Unacceptable	25 January 2022	Click Decision
4	64/PUU-XIX/2021	The Judicial Review of Law Number 11 of 2020 concerning Job Creation	Indonesian Veterinary Association, and drh. Jeck Ruben Simatupang, et al.	Unacceptable	25 January 2022	Click Decision

THE DECISION ON THE DISPUTE OF 2020 REGIONAL HEADS ELECTION RESULTS IN JANUARY 2022

No.	Case Number	Case Subject	Petitioners	Decision	Date	Decision Link
1	152/PHP.BUP-XIX/2021	Yalimo Regent Election Results Dispute in 2021	Erdi Dabi and John W. Wilil	The Constitutional Court Has No Authority	18 January 2022	Click Decision
2	153/PHP.BUP-XIX/2021	Yalimo Regent Election Results Dispute in 2021	Lakius Peyon and Nahum Mabel	The Constitutional Court Has No Authority	18 January 2022	Click Decision

STANDAR PELAYANAN PENGAJUAN PERMOHONAN SECARA LURING (*OFFLINE*)

1 PERSYARATAN LAYANAN

2 SISTEM, MEKANISME DAN PROSEDUR

3 JANGKA PENYELESAIAN

4 BIAYA/TARIF

5 PRODUK LAYANAN

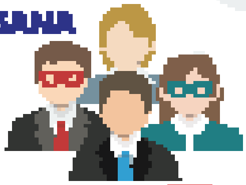
6 SARANA DAN PRASARANA/FASILITAS

7 KOMPETENSI PELAKSANA

8 PENGAWASAN INTERNAL

9 PENANGANAN PENGADUAN, SARAN DAN MASUKAN

10 JUMLAH PELAKSANA



11 JAMINAN PELAYANAN

12 JAMINAN KEAMANAN, KESELAMATAN PELAYANAN

13 EVALUASI KINERJA PELAKSANA

14 MASA BERLAKU IZIN

15 WAKTU PELAYANAN

Constitutional Gathering

As the year comes to a close, the justices of the Constitutional Court continue to establish constitutional gatherings with people from various backgrounds, including constitutional lectures to open seminars attended by students and academics from various local campuses.

The Justice of the Constitutional Court, Saldi Isra, in a public lecture with the theme "The Authority of the Constitutional Court in Strengthening the Constitutional System and Democracy in Indonesia" which was held on the 47th Anniversary of the Galunggung Law College (STHG) on Wednesday (12/22/2021) in Tasikmalaya.

The Justices of the Constitutional Court, Suhartoyo and Saldi Isra, gave a Public Lecture with the theme "The Authority of the Constitutional Court in Strengthening the Constitutional System and Democracy in Indonesia" on Wednesday (12/22/2021) afternoon at the Muhammadiyah University of Tasikmalaya Campus. This activity was a collaboration between the Constitutional Court (MK) and the Muhammadiyah University of Tasikmalaya (UMTAS).

The Justices of the Constitutional Court, Wahiduddin Adams, Suhartoyo, and Saldi Isra as well as the Registrar of the Constitutional Court (MK) Muhidin gave a public lecture at the College of Islamic Civilization and Culture and the Institute of Technology and Business of the Riyadul 'Ulum Wadda'wah Islamic Boarding School, Tasikmalaya, West Java, on Thursday (12/23/2021).

Deputy Chief Justice of the Constitutional Court (MK), Aswanto, opened and served as a keynote speaker at an offline and online public lecture entitled "Constitutional Court and the Challenge of Digital Technology Disruption" which was held in collaboration between the Constitutional Court and the University of Mataram, on Wednesday (29/12/2021).

Chief Justice of the Constitutional Court, Anwar Usman, in the National Seminar "Shaping the Character of Pancasila Students" on Thursday (30/12/2021) at the FKIP Campus of Muhammadiyah University of Mataram (UMM) as a collaboration between the Constitutional Court and FKIP UMM.

Institutional Visits

In order to strengthen the Constitutional Court's role in international justice, the Justices of the Constitutional Court conducted institutional visits to several friendly countries. During the meetings, each country shared information about the Constitutional Court and the dynamics of the development of legal practice, organization, and future institutional challenges. Let's take a look at the journey and cooperation carried out by the Constitutional Court with related institutions in several countries.

Aswanto, Deputy Chief Justice of the Constitutional Court, and Daniel Yusmic, Justice of the Constitutional Court, delivered their presentation in a bilateral meeting with the Constitutional Court of Uzbekistan on Monday (21/12) in Tashkent, Uzbekistan.

The MKRI delegation led by Justice of the Constitutional Court, Arief Hidayat, made a working visit to the office of the Consulate General of the Republic of Indonesia (KJRI) in Istanbul, Turkey, on Monday (20/12/2021).

Aswanto, Deputy Chief Justice of the Constitutional Court, and Daniel Yusmic, Justice of the Constitutional Court received a souvenir from the Chairman of the Supreme Judicial Council of Uzbekistan, Yodgorov Holmo'min Buvraboevich, after holding a bilateral meeting on Monday (21/12) in Tashkent, Uzbekistan.

Deputy Chief Justice of the Constitutional Court, Aswanto, handed over a souvenir to the Chief Justice of the Supreme Court of Uzbekistan, Komzidjan Kamilov, after holding a joint judicial dialogue at the Supreme Court of Uzbekistan, Tashkent (21/12).

Chief Justice Yoo Namseok of the Constitutional Court of South Korea and Justice of the Constitutional Court, Kiyoung Kim, took a photo with Justices of the Constitutional Court, Manahan MP Sitompul and Enny Nurbaningsih following a meeting at the South Korean Constitutional Court Building on Tuesday (21/12).

Justices of the Constitutional Court, Manahan MP Sitompul and Enny Nurbaningsih with Chargé d'Affaires ad Interim Zelda Wulan Kartika at the Indonesian Embassy in Seoul on Wednesday (22/12) in Seoul, South Korea.

Secretary-General of the Constitutional Court of South Korea, Park Jong Mun, posed for a photo with Justices of the Constitutional Manahan MP Sitompul and Enny Nurbaningsih who was accompanied by the Head of the AACC Secretary of State RA Indah Apriyanti following the meeting at the AACC SRD Building (21/12).

Justices of the Constitutional Court Talk about Legal Politics to the Future of Legal Education

Justice of the Constitutional Court, Arief Hidayat, was the resource person for the National Seminar on the Faculty of Law, Diponegoro University in collaboration with the United Nations High Commissioner for Refugees (UNHCR), which took place on Tuesday (21/12).

Justice of the Constitutional Court, Suhartoyo, was a speaker for the Special Advocate Profession Education (PLPA) organized by the Faculty of Law of Galuh University (UNIGAL) Ciamis in collaboration with the PERADI National Leadership Council, which took place on Friday (7/1).

Justice of the Constitutional Court, Manahan M.P. Sitpmpul, was a speaker for the Advocate Profession Special Education (PKPA) Batch V which was held virtually on Sunday (16/1/2022) afternoon.

Justice of the Constitutional Court, Saldi Isra, was a speaker in the Legal Education Seminar and Launching of the LEAP OKP Program Results organized by the Faculty of Law of Universitas Airlangga (FH Unair) in collaboration with the Faculty of Law of Maastricht University, which was held online and offline at the Pancasila Hall of FH Unair on Tuesday (18/1/2022).

The Importance of Transitional Law

LUTHFI WIDAGDO EDDYONO
Constitutional Court Researcher

Transitional Law is critical because it ushers in new regulatory conditions in the context of the previous law, ensuring that there is no legal vacuum that will cause a new commotion. Transitional Law is also stated with a proportional portion in the discussion of amendments to the 1945 Constitution.

A special discussion on Transitional Law took place at the 21st PAH I BP MPR Meeting on 28 March 2002, chaired by the Deputy Chairman of PAH I, Slamet Effendy Yusuf. As described in the Comprehensive Manuscript on Amendments to the 1945 Constitution of the Republic of Indonesia, Background, Process, and Discussion Results, 1999-2002, Book X of Amendments to the Constitution, Transitional Law, and Additional Provisions, this article was mentioned at various meetings meeting, but not specifically discussed.

One of the active speakers is I Dewa Gede Palguna from F-PDIP. Palguna emphasized and highlighted the importance of the Transitional Law in the Amendment to the 1945 Constitution.

> "I'd like to reiterate and give confirmation about our colleague's proposal, Mr. Harjono. But first, I'd like to respond to what is meant by Transitional Law. I'd like to confirm to Pak Fuad that Transitional Law is in its original language is Transitional Law. Its function is to prevent a legal vacuum. If an institution, legal entity, or an old legal provision has been abolished and a new one has not been formed, there will be a legal vacuum. A legal vacuum results in no legal certainty. If there is no legal certainty, it is contrary to the rule of law, which we have explicitly stated in Article 1."

I Dewa Gede Palguna explained that the Transitional Law is closely related to legal certainty and the concept of the rule of law as stated in Article 1 of the 1945 Constitution and most importantly not related to history. Here's how he explains it.

> "This has nothing to do with history, and even if it did, the historical issue is still listed in the original Constitution." That is the purpose of the Transitional Law. It is our responsibility to provide legal certainty about the changes we are making. If, for example, changes to which laws apply have been made, they must be made clear. That is the purpose of the Transitional Law."

Palguna then linked it to the existence of the Constitutional Court (MK) and its authorities, particularly related to the relationship between state institutions.

> "Second, I want to emphasize what Pak Harjono said earlier about the Constitutional Court's importance. The preceding discussion clearly shows the significance of the Constitutional Court. It's for example, Mr. Agun's proposal, which I actually want to propose later. Let's take a look at the Transitional Law. It is stated here that all existing state institutions and statutory regulations remain in force as long as new ones have not been established in accordance with the amendments to this Constitution. "As long as it is not contradictory

and no new one has been made in accordance with this Constitution."

The legal question is, who has the authority to declare it contradictory. Isn't it the Constitutional Court? That is why there is a rule governing the constitutional court, whose main responsibility is to uphold the constitutionality of the law in Indonesia's national legal system. It becomes a crucial point to convey to be regulated in this Transitional Law. That's why I also agree. President may then be delegated the authority to issue government regulations in lieu of laws for a set period of time, such as several months. Should have thought about it. This also emphasizes the significance of the Constitutional Court."

Furthermore, I Dewa Gede Palguna, who was also a judge of the constitutional court, saw the importance of the Transitional Law with the order in which the laws and regulations were ordered and the degree to which they were enforced, particularly in relation to the principle of a contrario actus. Here's the explanation.

"There are also other things to consider. First, there is the question of whether the law is contradictory or not. The Constitutional Court's existence is also important in order to review the MPR's products, such as the MPR Decrees that we have issued thus far. We must note that a number of MPR Decrees have already been mentioned. Some may run afoul of the Basic Law if it is enacted later. Second, we examine the MPR Decrees, the substance of which is the Constitution. For example, the previously drafted provisions on judicial review were actually made by colleagues from PAH II. Second, because the government regulations are placed under the law, the provisions regarding the order in which laws and regulations are currently in place raise legal concerns. In fact, the role of legislation is comparable to that of the Vice President. It is considered a law if the law does not yet exist. However, this is not the case. It is on an equal footing because it must obtain approval in the next DPR session. It was placed under a new statute, so how can it be a substitute for the law if it is lower in rank? This clearly contradicts the constitutional law principle of contrario actus. That's right. These are legal questions that must be addressed. That is, it emphasizes the significance of this chapter on Transitional Law."

The Transitional Law in the 1945 Constitution, as enacted in 2002, stated: Article I: All existing laws and regulations shall remain valid until new ones under this Constitution come into effect. Article II: All existing state institutions shall continue to implement the provisions of the Constitution as long as they have not been replaced by new ones under this Constitution. Article III: The Constitutional Court has to be established at the latest by 17 August 2003 and until such establishment, all its competencies shall be carried out by the Supreme Court." ■

The Prohibition of Communism/Marxism Leninism and Free Active Foreign Policy

LUTHFI WIDAGDO EDDYONO
Constitutional Court's Researcher

The ideological struggle at the beginning of the independence period was dominant in Indonesian politics. The dissolution of political parties is common as well. It is often discussed in various scientific journals and studies related to the PROVISION OF THE PROVISIONAL PUBLIC ASSEMBLY ASSEMBLY OF THE REPUBLIC OF INDONESIA NUMBER XXV/ MPRS/1966 CONCERNING THE DISSOLUTION OF THE INDONESIAN COMMUNIST PARTY. DECLARATION AS AN ORGANIZATION IS PROHIBITED IN THE ENTIRE TERRITORY OF THE REPUBLIC OF INDONESIA FOR THE COMMUNIST PARTY OF INDONESIA AND PROHIBITION OF ANY ACTIVITIES TO SPREAD OR DEVELOP THE COMMUNIST/MARXISM-LENINISM UNDERSTANDING OR TEACHINGS.

It was stipulated on July 5, 1966, by the MPRS chaired by AH. Nasution. This stipulation only consists of four articles. However, the effect exists because it is still being implemented today. Of course, it can be understood that the existence of the MPRS Decree was the impact of the events of the September 30, 1965 movement which was allegedly carried out by the Indonesian Communist Party (PKI) and dramatically changed the state of affairs.

Therefore, the section on Considering the MPRS Decree discloses the following matters: a. the ideology or teachings of Communism/Marxism-Leninism are essentially contrary to Pancasila; b. people and groups in Indonesia who are acquainted with the ideology or teachings of Communism/Marxism-Leninism, especially the Indonesian Communist Party, in the history of the Independence of the Republic of Indonesia have been proven several times to try to overthrow the legitimate power of the Government of the Republic of Indonesia using violence. c. In this regard, it is necessary to take firm action against the Indonesian Communist Party and against activities that cause or develop the ideology or teachings of communism/Marxism-Leninism.

From the deliberative sessions at MPRS meetings from June 20 to July 5, 1966, and based on Article 1 paragraph (2) and Article 2 paragraph (3) of the 1945 Constitution, it was decided that a decree concerning the dissolution of the Indonesian communist party was decided. It included the existence of a statement as a prohibited organization throughout the territory of the Republic of Indonesia, and the prohibition of any activity to spread or develop the ideology or teachings of communism/marxism-Leninism.

Article 1 states, "Welcoming and strengthening the policy of the President/Supreme Commander of the Armed Forces of the Republic of Indonesia/Great Leader of the Revolution /Mandate of the Provisional People's Consultative Assembly, in the form of the dissolution of the Indonesian Communist Party including all parts of its organization from the central to the regional levels along with all its similar organizations/ take refuge/ shelter under it and a statement as a prohibited organization throughout the territory of the Republic of Indonesia for the Indonesian Communist Party, which was stated in its Decree dated March 12, 1966, No. 1/S/1966, and increasing the policy above to become an MPRS Decree."

Previously, there was a Presidential Decree /Supreme Commander of the Armed Forces of the Republic of Indonesia/Great Leader of the Revolution/Mandate of the Provisional People's Consultative Assembly dated March 12, 1966 No. 1/3/Year 1966 concerning the disbandment of the PKI (Indonesian Communist Party) and the mass organizations that took shelter and shelter under it. President Soekarno's decision was followed by the Decree of the President of the Republic of Indonesia Number 104 of 1966 which dismissed several members of the National Development Planning Assistance Conference known as Mupenas who were involved with the PKI including D.N. Aidit.

Article 2 of the MPRS Decree then states, "Every activity in Indonesia to spread or develop the ideology or teachings of Communism/Marxism-Leninism in all its forms and manifestations, and the use of all kinds of apparatus and media for the dissemination or development of such ideas or teachings is prohibited." Furthermore, this resulted in the New Order era disbanding many activities and even banning books on the pretext of being related to the teachings of Communism/Marxism-Leninism.

Furthermore, there is also Article 3 which stipulates the provision, "Especially regarding scientific study activities, such as in universities, the notion of Communism/Marxism-Leninism in order to secure Pancasila can be carried out in a guided manner with the stipulation that the Government and DPR-GR/ House of Representative- gotong royong(Mutual cooperation) are required to enact legislation. invitation for security." This article gives discretion that it is permissible to conduct scientific activities discussing Communism/ Marxism-Leninism, but in the interest of strengthening the view of Pancasila. In addition, it must be regulated in advance through legislation.

The interesting matter is Article 4 which states, "The above provisions do not affect the basis and nature of the free and active foreign policy of the Republic of Indonesia." The nature of the free and active foreign policy is indeed stated in the Preamble to the 1945 Constitution and is in effect until now, including the prohibition of Communism/ Marxism - Leninism. What is free and active foreign policy?

In THE ELUCIDATION OF LAW OF THE REPUBLIC OF INDONESIA NUMBER 37 OF 1999 CONCERNING FOREIGN RELATIONS, the foreign policy was explained. The law regulates a. The implementation of foreign relations and the implementation of foreign policy, including the means and mechanisms for its implementation, coordination at the center and representatives, authority and delegation of authority in the implementation of foreign relations, and the implementation of foreign policy. b. The basic provisions regarding the making and ratification of international treaties, which are regulated in more detail, including the criteria for international agreements whose ratification requires the approval of the House of Representatives, are stipulated by a separate law. c. Protection for Indonesian citizens, including the provision of legal assistance and counseling, as well as consular services. d. foreign relations apparatus.

Furthermore, in the Elucidation of Article 2, it is stated that the implementation of the foreign policy of the Republic of Indonesia must be a reflection of the nation's ideology. Pancasila as the ideology of the Indonesian nation is the ideal foundation that influences and animates the foreign policy of the Republic of Indonesia. The implementation of a free and active foreign policy is based on the basic law, the 1945 Constitution as a constitutional basis that can't be separated from the national goals of the Indonesian nation as stated in the fourth paragraph of the Preamble to the 1945 Constitution. The Outlines of the State Policy are the operational foundation of the Republic of Indonesia's foreign policy, namely an implementation basis that emphasizes the basis, nature, and guidelines of the struggle to achieve the national goals of the Indonesian nation.

Therefore, according to the Elucidation of Article 2, the implementation of the foreign policy of the Republic of Indonesia can't be separated from the conception of National Resilience. National Resilience is the living condition of the Indonesian nation based on the Archipelago Insight to realize deterrence and endurance to be able to interact with the environment at a time in such a way that it can guarantee the survival and development of the Indonesian nation's life to achieve the national goal, namely a just and fair society prosperous in the Unitary State of the Republic of Indonesia based on Pancasila.

Furthermore, the Elucidation of Article 3 focuses on what is a free and active foreign policy? The meaning of "free and active" is a foreign policy that in essence is not a neutral policy, but a foreign policy that is free to determine attitudes and policies towards international problems. Besides, it does not bind a priori to one world power and actively contributes, either in the form of thoughts and active participation in resolving conflicts, disputes, and other world problems, to the realization of world order based on freedom, eternal peace, and social justice.

Can it answer why there is a discretionary rejection of the ideology of Communism/ Marxism-Leninism in a free and active foreign policy? ■

CONSTITUTIONALITY REQUIREMENTS FOR PRESIDENTIAL CANDIDATES MUST BE NATIVES OR INDONESIAN CITIZENS

DR. WILMA SILALAHI, 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

The definition of a citizen according to the 1945 Constitution is as stated in Article 26 as follows:

(1) Those who become citizens are people of the original Indonesian nation and people of other nations who are legalized by law as citizens.

(2) Residents are Indonesian citizens and foreigners residing in Indonesia.

(3) Matters concerning citizens and residents are regulated by law

From the definition above, according to the constitution, Indonesian citizens are people of the original Indonesian nation and people of other nationalities ratified by law as citizens. Meanwhile, in the Indonesian Dictionary (KBBI), the definition of 'citizen' is a resident of a country or nation based on descent, place of birth, and so on, who have full obligations and rights as a citizen of that country. Meanwhile, according to Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia (hereinafter referred to as Law 12/2006), a "citizen" is a citizen of a country determined based on statutory regulations. Therefore, citizens are people or residents who live in a country that is determined and ratified by the applicable laws and regulations.

In the laws and regulations, citizens are known as Indonesian and foreign nationals. Article 2 of Law 12/2006 states, "The Indonesian citizens are the original Indonesian people/Indonesian native and people from other nations who are legalized by law as citizens. Meanwhile, 'foreigners' according to Article 1 point 9 of Law Number 6 of 2011 concerning Immigration are people who are not Indonesian citizens. Furthermore, when it comes to 'original Indonesian people', the Elucidation of Article 2 of Law 12/2006 states that what is meant by "original Indonesian people" are Indonesians who have been Indonesian citizens since their birth and have never accepted another nationality of their own free will.

This discussion regarding citizens developed when it was related to the requirement that presidential candidates must come from original Indonesian citizens, which was one of the reasons for submitting a judicial review to the Constitutional Court as stated in the Decision of the Constitutional Court Number 50/PUU-XIX/2021, dated 27 October 2021. With the change in the constitution related to citizenship which is a requirement for a Presidential Candidate as regulated in the provisions of Article 6 paragraph (1) of the 1945 Constitution, an Indonesian citizen from birth and has never received another citizenship of his own free will has never betrayed the state and is legally capable spiritually and physically to carry out their duties and obligations as President and Vice President.

Constitutional Court Decree Number 50/PUU-XIX/2021

In the Decision of the Constitutional Court Number 50/PUU-XIX/2021, dated 27 October 2021, Heriffudin Daulay as the Petitioner is an individual Indonesian citizen who feels that his constitutional rights are guaranteed in Paragraph I of the Preamble to the 1945 Constitution, Article 28B paragraph (1),

Article 28C paragraph (1), Article 28D paragraph (2), Article 28I paragraph (2) and paragraph (4), Article 28J paragraph (2) of the 1945 Constitution which has the potential to be harmed, starting from the time the Indonesian natives of the archipelago were led

by another nation, thus confusing criteria for Indonesian citizens who are original and which are foreign nationals. In addition, it causes unequal competition because there are Indonesian citizens who come from foreign parents who give up citizenship and get Indonesian citizenship. So that the phrase "Indonesian citizen" in Article 169 letter b, Article 227 letter a, Article 229 paragraph (1) letter g of Law 7/2017 is declared contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as "Indonesian Citizen with Indonesian Nationality". Original Nusantara" and Article 2 of Law 12/2006 is declared contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as "Indonesian citizen whose ethnic origin comes from the territory of the Archipelago".

With the enactment of Article 169 letter b, Article 227 letter a, Article 229 paragraph (1) letter g of Law 7/2017, Article 2, and the Elucidation of Article 2 of Law 12/2006, according to the Petitioner, it has brought the opportunities for Indonesian citizens who are not Indonesian native to run for President and/or Vice President. According to the Petitioners, this is confiscation and abolition of the sovereignty of the Petitioners who are part of the Indonesian people, the seizure of sovereignty is also deprivation and elimination of the sovereignty of the Indonesian people, in the form of the abolition of the rights of the people as the highest authority holders of the state to elect a President who is an Indonesian national native to the archipelago. The president who comes from an Indonesian citizen who is not an Indonesian native will have different interests of the nation and state. Meanwhile, if there is a limitation on the criteria for presidential candidates to only come from Indonesian citizens native, then of course they will have the same interests of the nation and state. The President and/or Vice President who are not Indonesian native will 'open the door' to colonialism which will lead to discriminatory actions on the grounds of ties of inner nationality (origin of birth mother's nationality). For example, in the 2019 General Election, incidents occurred including the 2019 Election ballots that had gone through the voting process or had been intentionally punched before reaching the Suffrage Owners' hands and the existence of statutory regulations which had a vague and ambiguous meaning, for unilateral gain, but in the "writing" it is arranged vaguely as if it benefits all parties fairly. It is stated in the form of laws, government regulations, or Presidential Regulations. According to the Petitioner, this is a direct implication of the enactment of Article 227 of Law 7/2017. In addition, the limitation of the President and Vice President only from Indonesian citizens who are Indonesian natives does not conflict with the human rights enshrined in Article 28D paragraph (2), Article 28I paragraph (2), Article 28 J paragraph (2) of the 1945 Constitution.

In its legal considerations, the Court considers that Article 227 and Article 229 of Law 7/2017 have already been submitted for review and have been decided by the Court in the Decision of the Constitutional Court Number 33/PUU-XVI/2018, dated May 23, 2018, they are:

1. Whereas in Petition Number 33/PUU -XVI/2018, the Petitioner filed for review of Article 227 and Article 229 of Law 7/2017 based on reviewing Article 26 paragraph (1) of the 1945 Constitution. The Petitioner in their petite requested that the phrase "the candidate pair" in Article 227 of the Law 7/2017 is declared contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as it does not mean "each candidate has received the approval of 50% + 1 member of the Regional Representative Council of the Republic of Indonesia". Besides, states Article 229 Law 7/2017 is contrary to the 1945 Constitution and does not have conditional binding legal force as long as it does not include a "letter of approval from 50% + 1 members of the Regional Representatives Council as a result of the session of the Regional Representative Council of the Republic of Indonesia against each prospective candidate."
2. Whereas furthermore in a quo petition, case Number 50/PUU-XIX/2021, the Petitioner filed Article 227 and Article 229 of Law 7/2017 based on reviewing Paragraph I of the Preamble to the 1945 Constitution, Article 28B

paragraph (1), Article 28C paragraph (1), Article 28D paragraph (2), Article 28I paragraph (2) and paragraph (4), Article 28J paragraph (2) of the 1945 Constitution. In addition, the Petitioners also questioned the provisions contained in Article 169 letter b of Law 7/2017 and Article 2 and the Elucidation of Article 2 of Law 12/2006. The Petitioner in their petition requested that the phrase "Indonesian citizen" in Article 169 letter b, Article 227 letter a, Article 229 paragraph (1) letter g of Law 7/2017 be declared contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as "citizens". The Indonesian State has an Indonesian Nationality, the Original Archipelago" and Article 2 of Law 12/2006 is declared contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as "Indonesian citizen whose ethnic origin comes from the territory of the Archipelago".

Furthermore, in legal considerations, the Court believes that concerning the Petitioner's wish to state that without interpreting/adding the phrase "an Indonesian native to the Archipelago", the Court needs to state the points below:

1. referring to the history of the development of the Indonesian state administration, the phrase "Indonesian Native " requested by the Petitioner is closely related to the phrase "Indigenous Indonesian" as a constitutional requirement that must be fulfilled by a President as stipulated in Article 6 paragraph (1) of the 1945 Constitution and the issue of citizenship in the 1945 Constitution of the Republic of Indonesia. Article 26 paragraph (1) of the 1945 Constitution before the amendment to the 1999-2002 constitution;
2. regarding the requirements, after tracing the Minutes of Discussion of the 1945 Constitution in the session of the Investigating Committee for Preparatory Work for Independence (BPUPK) and the Indonesian Preparatory Committee Independence (PPKI), the Founders of the State tried to find a way out regarding who would become Indonesian citizens after Indonesia proclaiming independence as an independent state. The initial draft of the 1945 Constitution stipulates that citizens will be given to "original Indonesians". In the BPUPK session, there was the same view that the descendants should be accommodated as part of the Indonesian citizens. Therefore, there was a suggestion that the provisions regarding citizenship should only contain the phrase "people of the Indonesian nation" without using the word "original/native". However, before becoming a constitutional norm, one of the Founders of the State, namely Soepomo, warned that there would be juridical problems in international law if the descendants immediately obtained the status of Indonesian citizens. At that time, there were still some descendants who had status as citizens of other countries according to the Nederlandsch Onderdaan. Thus, Soepomo wanted to prevent the problem of dubbele nationaliteit from happening in the future (AB Kusuma 2004: 388). Therefore, Soepomo suggested that for the first time, people who could immediately become Indonesian citizens "must have a clearer group". Meanwhile, other descendants will de jure be legalized as citizens by law.
3. after the notes and proposals submitted by Soepomo, finally, the norm of Article 26 paragraph (1) of the 1945 Constitution was formulated as, "Those who become citizens are the original Indonesian people and people of other nations who are ratified by law as citizens. country";

4. constitutionally, the condition for "Indonesian native" is not only related to citizenship status as stated in Article 26 paragraph (1) of the 1945 Constitution but also becomes a requirement as President as regulated in Article 6 paragraph (1) of the 1945 Constitution before the amendment which states, "The President is an Indonesian native." The existence of the " Indonesian native" requirement is inseparable from the concern that without adding to these conditions there is an opportunity for Japanese people to become President;
5. tracing the further development of Indonesia's constitutional history, the requirement of "Indonesian native" to become President is no longer used in the 1949 Constitution of the United States of Indonesia (KRIS 1949) and the 1950 Provisional Constitution (UUDS 1950). In this case, Article 69 paragraph (3) of the 1949 KRIS states, "The president must be an Indonesian who is 30 years old; he may not be a person who is not allowed to participate in/or exercise the right to vote or a person whose right to vote has been revoked". Meanwhile, Article 45 paragraph (5) of the 1950 Constitution states, "The President and Vice President must be Indonesian citizens who are 30 years old and may not be people who are not allowed to participate in or exercise their right to vote or people whose rights have been revoked."

It is still under consideration by the Court that, after the amendments to the 1945 Constitution were made by the Founding Fathers, the phrase "Indonesian Native" in Article 26 paragraph (1) of the 1945 Constitution was not changed. However, this requirement has been changed and is no longer a requirement to become President as stipulated in Article 6 paragraph (1) of the 1945 Constitution before the amendment. After the amendment to the 1945 Constitution, the norm of Article 6 paragraph (1) was changed to, "A presidential candidate and a vice-presidential candidate must be an Indonesian citizen from birth and have never received another citizenship of his own free will, have never betrayed the state, and are physically and mentally capable to carry out their duties and obligations as President and Vice President.

With the changing of the requirements to become President in Article 6 paragraph (1) of the 1945 Constitution and the abolition of the phrase "Indonesian native", it means that there has been a fundamental change in the requirements to become President (including Vice President) in the Indonesian constitutional system. Even though it has been changed, it does not mean that the requirements to become President have become loose because Article 6 paragraph (1) of the 1945 Constitution after the amendment added other conditions, especially "must be an Indonesian citizen since his/her birth and have never received another citizenship of his/her own free will". Thus, if the provisions of Article 169 letter b, Article 227 letter a, Article 229 paragraph (1) letter g of Law 7/2017 as well as Article 2 and the Elucidation of Article 2 of Law 12/2006 are declared unconstitutional, it will contradict the principles in paragraph I Preamble of the 1945 Constitution, as well as the spirit of protection in Article 28B paragraph (1), Article 28C paragraph (1), Article 28D paragraph (2), Article 28I paragraph (2) and paragraph (4), Article 28J paragraph (2) of the 1945 Constitution, Therefore, the Petitioner's petition concerning Article 169 letter b, Article 227 letter a, Article 229 paragraph (1) letter g of Law 7/2017 and Article 2 and the Elucidation of Article 2 of Law 12/2006 contrary to the 1945 Constitution are groundless according to law.

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

First Step!

Immanuel B.B. Hutasoit
Head of Subdivision of Foreign Cooperation

Faith is taking the first step even when you don't see the whole staircase
(Dr. Marthin Luther King Jr.)

Have we ever thought or pondered for a moment; how would the story go if Sir Isaac Newton was not interested in seeing an apple tree that fell in front of his house? Or what would happen if Mahatma Gandhi did not leave the elite life that his parents inherited? Or what is the alternative way to Indonesian independence if Bung Hatta did not return from the Netherlands and became an effective negotiator for the Indonesian people? It must be admitted that how we can understand gravity, understand the equality of human degrees, and the freedom we enjoy is certainly because of the figures mentioned above. Although not a single figure in their success, the steps they took could be regarded as the first steps that became the inspiration for the next steps.

Likewise, in the life of the bureaucratic world in Indonesia, there is always an initial step that will be an inspiration for the next step. Small steps are often unconscious. Year after year, time after time, will roll like a snowball that is getting bigger and bigger. In particular, in the context of International Relations of the Constitutional Court (HI-MK), the Republic of Indonesia did not have a work unit specifically dealing with issues of gait and cooperation at the international level. Since 2017, de jure, MKRI (Constitutional Court of Republic of Indonesia) has had an echelon III unit that takes care of these matters. This unit certainly does not end up standing without a long history and the beginning of the unthinkable where it will end. In every achievement, there is always a first step that becomes a leap for the next phases. Now, let's look back and try to understand the reason why the MKRI finally became very serious in its work in the international world.

The Phase of Introduction

As an institution that was established on August 13, 2003, MKRI (Constitutional Court of the Republic of Indonesia) is the first constitutional judiciary that was established in the 20th century. As 'new kids on the block', MKRI must introduce itself as well as learn a lot from similar institutions that have existed long ago with experience. Based on the successful documents and information collected by the foreign cooperation unit, since the beginning, MKRI has been a visionary in looking at the global world as a place to learn about the characteristics of a constitutional court. It was noted that during 2003 – 2004, there were several meetings with the German Constitutional Court, the Thai Constitutional Court, the Austrian Constitutional Court, and even the Italian Court. However, from these visits, the visit to Ulaanbaatar, Mongolia on 6 – 9 September 2006 was a momentum that should be well noted. Represented by Constitutional Justices Maruarar Siahaan and I Dewa Gede Palguna, the meeting which was packaged under the name The Third Conference of Asian Constitutional Court Judges resulted in an agreement to form an Asian constitutional court forum (which eventually became the basis for the establishment of AACC, 4 years later). This introductory step through overseas working visits is a marketing strategy which of course does not only aim to introduce oneself, that there is a new judicial institution in the far eastern hemisphere but also as a comparative study, regarding the powers of other constitutional courts.

In an international conference held on 29th – 30th November 2006 in Manila, Philippines, under the theme Constitutional Jurisdiction between State, Culture and Religion – Strike the Right Balance,

the presence of the MKRI (Constitutional Court of the Republic of Indonesia) delegation represented by Jimly Asshiddiqie and Maruarar Siahaan seemed to imply that the MKRI wished to study Constitutional Courts in other countries to harmonize judicial decisions with the challenges of cultural pluralism and belief in a country.

Likewise, when MKRI became an observer for the first time at the World Conference on Constitutional Justice (WCCJ)—through the first congress in 2009 in Capetown, South Africa. In the congress with the theme Influential Constitutional Justice – on society and on developing a global jurisprudence on human rights, the presence of Mahfud MD as the Chair of the Constitutional Court at that time was a very useful momentum for the Constitutional Court to find out the development of constitutional law in foreign countries.

It is not enough at the level of constitutional judges, learning and introduction also target the level of employees. In early 2009, the MKRI's cooperation with the Indian Lok Sabha (People's Council) legislature resulted in a form of collaboration in the form of a study visit for the Constitutional Court's employees. The training was initiated not only between Indonesia and India but has involved some developing countries from 4 continents, namely Asia, Africa, Europe, and America.

The Phase of Existence

After 7 years of introducing themselves and learning how other countries hold a conference that can be used as knowledge management in the Constitutional Court's decision, 2010 is the MKRI's (Constitutional Court of Republic of Indonesia) first step to organize an international activity.

The important moment for the MKRI to strengthen its existence in the region began with hosting the implementation of the Jakarta Declaration for the Establishment of the Association of Constitutional Courts (MK) throughout Asia, as well as the holding of the 7th Asian Constitutional Court Justice Conference on 12th – 15th July 2010. The establishment of the Association in question, as well as an agreement on the final draft of the statute, was preceded by a series of intensive discussions in which, in this case, the Constitutional Court was represented by Harjono, who at that time served as a constitutional judge.

The 7th Conference of Asian Constitutional Court Judges is a forum for exchanging experiences and information among constitutional judges related to the handling of constitutional cases and state administration practices in foreign countries. It was attended by judges of the Constitutional Court and similar institutions from countries in the Asian region, representatives of the Constitutional Court from countries in Western Europe, Eastern Europe, Africa, the Middle East, Latin America, and several international institutions that are actively promoting democracy and the rule of law. This international event was a milestone as a form of recognition and trust from the international community in the institutions and performance that has been carried out.

This phase of MKRI's existence continued by holding an International Symposium, on 11th – 13th July 2011 at the Shangri-La Hotel, with the theme of a Constitutional Democratic State. The theme chosen

was motivated by the desire to comprehensively know the development of practices in various countries in implementing and strengthening the application of democratic and nomocratic values in each country. Until now, MKRI has continuously held International Symposiums.

It should be noted that one of the peaks of the existence of the MKRI at the international level was marked by the visit of German Chancellor Angela Merkel to the Constitutional Court building on July 10, 2012, to confirm news about the MKRI's progress and achievements that were heard in Germany.

The Phase of Leading

After the existence phase, both in organizing and participating in several global-scale forums, the Constitutional Court has entered the leadership phase since 2014, to be precise since being trusted as the President of the Association of Asian Constitutional Courts and Equivalent Institutions. The MKRI's (Constitutional Court of the Republic of Indonesia) leadership achievements at AACC are certainly in a row. For example, the success of establishing three (3) AACC permanent secretariats which are the backbone of the organization, significantly increased the number of members, accommodating requests from members from countries that came from the Soviet Union to include Russia as one of the working languages of the AACC, until finally trusted to continue the leadership period longer than regulated by the statute, which is more than 2 years.

More powerfully, even though he is no longer the President of the Association, MKRI continues to exert influence in the organization. The MKRI has played a major role in every succession of AACC leadership. It should be noted that at the end of the MKRI leadership term in 2017, with a discussion led by the MKRI Chair Arief Hidayat, was an agreed consensus, on which countries will become the next Association President (in a row: Malaysia, Kazakhstan, Mongolia, Thailand and then Uzbekistan). Of course, this is to ensure that the continuity of the organization's wheels will spin steadily.

As one of the permanent secretariats of the AACC, MKRI also continuously supports planning and coordination with the elected President and conducts a series of training for liaison officers, so that the benefits of this organization can be felt not only at the level of judges but also at the level of employees of the constitutional court.

Not satisfied with Asian regional associations, MKRI also expanded their 'wings' in other associations, namely the association of the Organization of Islamic Cooperation. In 2021, to be precise, through the Bandung Declaration, MKRI initiated the establishment of a Constitutional Court Conference for OIC member countries which were named The Conference of Constitutional Jurisdictions of OIC Member/Observer States (CCJ – OIC). Currently, the CCJ-OIC discussion has entered the draft period for the formation of a statute before it will be inaugurated in December 2022.

What is the next first step?

The regional approach has been adopted. The sociological approach is also being worked on. MKRI (Constitutional Court of the Republic of Indonesia) is currently opening its wings wide to bring the Garuda Indonesia to become a leader at a much larger level, namely the World Conference on Constitutional Justice (WCCJ) with a total of the member of 118 countries. The number of members of an organization can only be defeated by the number of members of the United Nations alone.

In the context of WCCJ, 2022 is a proving ground for MKRI as the host of the 5th congress on 4th – 7th October 2022. It must not be successful in implementation, but also need to be ensured for success in terms of achievement.

If the introduction phase begins with a series of working visits abroad, the existing phase begins with the implementation of international activities in 2010, the leadership phase begins with the MKRI Presidency at AACC. Furthermore, it is worth paying special attention to MKRI's achievements at the WCCJ level. The holding of the 2022 WCCJ congress will certainly be a first step that will take the MKRI to go further and become a mecca for other constitutional courts. The end is yet to be seen, but in this phase of opening me wide, we should look forward to its work, which of course will be quite challenging, especially for an International Cooperation work unit which is still only an echelon III work unit. However, the name is the first step, who knows?

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