

JOB CREATION LAW MUST BE CORRECTED



A historical scene depicting a constitutional assembly. A man in a white military-style uniform stands at the head of a long table, pointing towards the seated members. The members, dressed in dark uniforms, are seated around the table, some looking towards the speaker. The room has large windows in the background, and the overall atmosphere is formal and historical.

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Editor's Foreword

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News regarding the partial approval of the application for judicial review of Law No. 11 of 2020 concerning Job Creation is almost the majority of the headlines in the national media. This is the first time the Constitutional Court (MK) has granted a formal review of quo Law submitted by Migrant CARE, the West Sumatra Nagari Customary Density Coordinating Board, the Minangkabau Customary Court, and Muchtar Said.

The Constitutional Court of Justice affirms that Law Number 11 of 2020 is formally flawed. The Court declared that the Job Creation Law was conditionally unconstitutional. It is the Constitutional Court's Decision Number 91/PUU-XVIII/2020 which was read out in the hearing of the verdict, Thursday, November 25, 2021.

The Court stated that the creation of the Job Creation Law was contrary to the 1945 Constitution and had no legally binding force as long as it was not interpreted as 'no improvement has been made within 2 (two) years since this decision was pronounced'. To declare that the Employment Creation Law remains in effect until the formation is corrected following the grace period as determined in this decision.

Inevitably, we have made the news that has brought the public's attention the Main Report of the December Edition of Constitutional Magazine as the closing of 2021. Apart from the news on the decision on the Job Creation Law, there is still a lot of other interesting information in the special rubrics of Constitutional Magazine. Such as Editorial rubric, Courtroom, Action, Opinion, Window, Vox Pop, Case Brief, Action Flash, Traces of the Constitution, and others.

This is the introduction from the editor. Happy reading!



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HEADLINE NEWS

CONDITIONALLY UNCONSTITUTIONAL, THE JOB CREATION LAW MUST BE CORRECTED WITHIN TWO YEARS

Law Number 11 of 2020 concerning Job Creation (*UU Cipta Kerja*) was declared conditionally unconstitutional by the Constitutional Court (MK) on November 25, 2021. Formally, the Court declared the Job Creation Law legally flawed. The Court has given 2 years to the Government and the House of Representatives as legislators to amend the Job Creation Law.

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MK DALAM RUANG SILATURAHMI KONSTITUSI

CONSTITUTIONAL COURT'S MANDATE IS CORRECTING THE JOB CREATION LAW

The verdict on the review of the Job Creation Law (CK) confirms the opinion of the Polish constitutional law expert, Wojciech Sadurski (1999). It stated that evaluating the law is considered the most significant and the most controversial function of the constitutional court. Moreover, in Decision Number 91/PUU-XVIII/2020 dated November 25, 2021, the Constitutional Court (MK) ordered the legislators to make improvements within a maximum period of 2 (two) years after this decision was pronounced and if within the grace period If there is no improvement, then Law Number 11 of 2020 concerning Job Creation.

The most prominent thing from the phrase in the decree is "ordering the legislators". The Constitutional Court orders the legislators, House of Representatives, and the President. Then, some ask, "where does the basic authority of the Constitutional Court order the DPR and the President as the legislators"? Richards Dobb Spaight called the judicial review a scourge of 'deprivation of authority for the legislature. The order is considered as an intervention, even usurping the authority of the legislators in the name of interpreting the constitution. It seems that the classical discourse has resurfaced regarding the relationship between the courts (in casu the constitutional court/MK) and the legislators; who's legislating whom? On the one hand, the rule of constitutional supremacy of a country requires that the responsibility for protecting the rights of citizens is in the hands of the Constitutional Court. Judicial review is a democratic power to control legislation. On the other hand, courts (including the Constitutional Court) must comply with and implement laws made by the legislature (Kaye: 1998:32).

Where is the source of the Constitutional Court's authority to order the legislators? Decisions containing orders to legislators are commonly practiced in some Constitutional Courts in other countries. This does not mean to say, because it has been practiced in other countries for a long time, then the Constitutional Court followed suit. Of course not. The most principled thing is that this practice is based on solid constitutional arguments, namely the need to realize constitutional justice through decisions.

In several decisions, the Hungarian Constitutional Court occasionally helps determine the content of norms that should be adopted by lawmakers as well as sets a time limit for the legislature to enact laws in order to implement

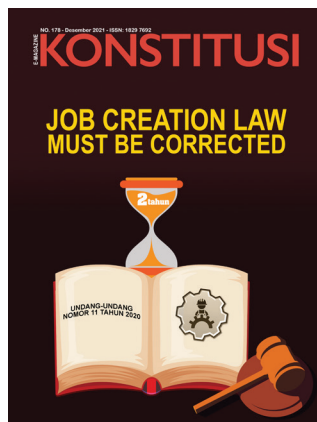
decisions. In Argentina, the Argentinean Supreme Tribunal issued rulings containing guidelines for Congress for future legislation, outlining the constitutional path that Congress should take on certain matters. The German Federal Constitutional Court through its decisions often contains directives or warnings to legislators (appellate decisions).

The Constitutional Court of Poland once made decisions with the character of 'signalizations', which directed the attention of lawmakers to take legislative action after the decision. In Austria, the Constitutional Court has the power to issue decisions as a kind of guide for legislators. The statement in the decision in the form of an order to the legislators is what Paczolay (2008:3) calls 'mandamus', a constitutional mandate to legislate. Carias (2010:145) calls this binding orders and directives to the legislator. Georg Vanberg (1999:209) calls these instructions on the drafting of laws.

In Indonesia, such a thing was also practiced long before now by modifying the type of verdict. From what was originally only three types according to the Constitutional Court Law, namely Rejected, Granted, or Unacceptable, has developed. If observed, this development includes an interpretive decision or a conditional decision; a statement that is contrary to the Constitution, but is not 'canceled', an order to the legislators to revise the law with a time limit, tolerating the enactment of rules that are contrary to the constitution for a certain time limit; and 'cancel' the Act in its entirety.

At this point, the basic authority of the Constitutional Court contains a constitutional mandate in its decision not only because it has been practiced in other countries. The main reason that it is true is that within the framework of democracy, legislators can determine anything through legislation. However, within the framework of the rule of law, the legislators are limited by the constitution. The 1945 Constitution gives the Constitutional Court the authority to maintain constitutional values to ensure that the legal system is following the values of the 1945 Constitution.

Within the corridor of authority, the Constitutional Court has the authority to determine the relevant steps needed through decisions to ensure what kind of legislation is desired by the 1945 Constitution. The main goal is that the process and results of post-decision legislation no longer contain constitutionality problems. Therefore, the choice of such a decision is not without origin, nor is it intervention, let alone deprivation of authority. Long live the Constitution!



CONSTITUTIONAL COURT EXECUTES ITS FUNCTIONS AND AUTHORITIES

The Constitutional Court as the highest state institution holds absolute power in the state justice system. As a judicial institution that has been regulated in the constitution, the Constitutional Court has one of the powers granted by the constitution, namely the judicial review of the 1945 Constitution. It is expected that in the future, the Court will be able to work effectively and efficiently in resolving all forms of these cases. So far, the Court has assessed that its performance has reached an optimal stage and it is in following its authority. Whereas, in carrying out its functions and authorities the Constitutional Court, as a state institution guarding the constitution, it is required to be able to maintain public trust. Thus, the decision that has been issued by the Constitutional Court can be assessed for its objectivity and does not harm certain parties.

Ade Pramana - Jakarta

CONSTITUTIONAL COURT PROTECTS PEOPLE'S RIGHTS

The existence of the Constitutional Court in the Indonesian constitutional system is very important in protecting the rights of the people. The decisions and all the problems that occur in society against the laws are considered by citizens to be contrary to the constitution. As a high state institution, the Constitutional Court should uphold justice and laws that are in line with social justice for all Indonesian people. The main fulcrum of the Constitutional Court is to uphold law and justice but must still be based on facts or truth. That hope is the strength for the Constitutional Court to become a superior institution with strong integrity and independence.

Mita Amelia - Bandung

CONSTITUTIONAL COURT IS NOT ALLOWED TO BE INTERVENTION

The Constitutional Court as an exclusive state institution with its duties and authorities has made the Constitutional Court receive a lot of intervention from various parties who have direct or indirect interests in the incoming case. At this time, the Court is the only last door of hope for the people of Indonesia. I believe that the Constitutional Court is not only a state legal justice institution that only works when the public submits a judicial review of the law. However, the Constitutional Court must be an institution that pays attention to the future fate of the Indonesian nation and state. Besides, the fate of the people and the country in the future will depend on the decision of the Constitutional Court. We all also hope that the Constitutional Court can resolve this dispute well and can satisfy all justice seekers.

Anggi Afifi - Jakarta

MAINTAINING THE INDEPENDENCE OF CONSTITUTIONAL COURT

The Constitutional Court needs new steps to conduct legal development, maintain the principle of constitutionalism, and guard the independence of the Constitutional Court to maintain a democratic law. The Constitutional Court should also be more serious in being present in building future law enforcement. The issue of justice is fundamental to the sustainability of a country's existence, not only in Indonesia but throughout the world. Facts have proven that when the constitution is trampled on, the existence of a country will be destroyed. We all need to be better, especially when it comes to the law. I hope our legal culture will improve.

Indah Maharani - Jakarta



THE UNTOUCHABLES

I D.G.Palguna

“Corruption is worse than prostitution. The latter might endanger morals of an individual, the former invariably endangers the morals of the entire country”

Karl Kraus, Austrian journalist, writer, and poet.



On December 9, 2021, I was surfing the website of the United Nations Office on Drugs and Crime. I didn't realize that it was World Anti-Corruption Day. On the website of the United Nations Office headquartered in Vienna (Austria), it focuses on combating illicit trafficking and drug abuse, crime prevention, criminal justice, international terrorism, and political corruption. I met some facts. They are according to the World Bank,

more than 1 trillion US Dollars were paid in bribes worldwide; corruption undermines the government's ability to provide basic resources and services to its citizens; investment in relatively corrupt countries is 20% higher than investment in non-corrupt countries; nations that are serious about fighting corruption and improving law enforcement are able to increase their national income by up to 400%. There is also evidence that indicates the spread of corruption in the judiciary in various parts of the world. Corruption in the judiciary, apart from undermining the rule of law, undermines the legitimacy of the government and cripples the power and ability of the public to stem corruption. Another fact, corrupt behavior facilitates the traffic of drug trafficking and organized crime. Corruption is also related to money laundering and illicit money transfers that can be used to support terrorist activities. It means that corruption affects the growth and operation of organized

crime and international terrorism.

For some reason, after reading the facts presented by the World Bank, my daydream drifted to the pre-Dutch colonialization period in Indonesia. I remember the VOC. It seems that every "school child" knows that the VOC stands for *Verenigde Oost-Indische Compagnie* a.k.a the East India Trade Association. But maybe, only a few people know that the VOC is also being misused as an extension of the *verba onder corruptie*, a.k.a perishing due to corruption. The sarcastic satire was not fabricated. History records that corruption and incompetence of VOC officials were indeed one of the main reasons for the bankruptcy of the company which was considered the first transnational company and at the same time the first multinational company. The organization was founded in 1602 by Johan van Oldenbarnevelt—with the support of the Staten-General, the Dutch bicameral legislature at that time—the VOC which is also considered a

prototype of this conglomerate is so powerful because apart from being supported by the government (the Netherlands). It also had an army (military-commercial enterprise). In fact, some authors say that the VOC was one of the most influential transnational corporations as well as a corporation based on the best expertly researched company of its time.

It turned out that such a strong company was not able to survive when corruption attacked and proliferated in it. Therefore, it is not wrong if Kofi Annan while serving as Secretary-General of the United Nations—in his speech welcoming the “arrival” of the United Nations Convention Against Corruption (United Nations Convention Against Corruption) on December 9, 2003—said “Corruption is an insidious plague that has a wide range of corrosive effects on societies.”

At this point, I suddenly remember *The Untouchables* movie. For anti-corruption activists, it would be strange not to know *The Untouchables*—a memoir written by the actor himself (Elliot Ness) who was given a journalistic touch through the involvement of sportswriter Oscar Fraley as a co-writer. The famous director Brian De Palma then brought this memoir to the big screen with the same title—and it was a huge success. Besides harvesting sky-high praise from critics, the film was nominated for

Oscars in four categories—although in the end it won only one category, named best supporting actor, which went to Sean Connery. It’s not (only) its “stars” (Kevin Costner, Robert De Niro, Andy Garcia, Sean Connery, and others) that make many people fall in love with this film, but mainly because of its tale of depravity and the horrors of corruption.

This film almost perfectly captures the ropes of corrupt behavior of politicians and law enforcers with the world of organized crime which puts the presence of the state under the control of bandits. It is conceivable that—directly or indirectly—this story contributed to the reference to the speech by the UN Secretary-General Kofi Annan above. So, it would be useful if on this occasion a summary of the story is cited. At least, through the “replay” of the story of this film. Everyone is reminded how terrible it is when corruption has proliferated and entrenched in society so that the longing for the presence of figures like Elliot Ness and his friends is a real need—not just a fictional romance.

This film tells the story of the firmness and courage of the United States federal law enforcement agency called the Bureau of Prohibition (Bureau) which is commanded by Eliot Ness. The setting is the United States in the early first half of the twentieth century—at the time of the enactment of a law popularly known

as the Volstead Act or the National Prohibition Act of 1919. The Volstead Act prohibits the production, storage, transportation, sale, possession, and consumption of alcoholic beverages—which is a further elaboration of the 18th Amendment to the United States Constitution. The Bureau’s job is to enforce these laws. This task forced Ness to deal with Al Capone—the kingpin of organized crime gangs in Chicago at the time—especially Capone’s liquor business.

Many times, attempts to ambush Capone’s men failed because the ambush plan was leaked by some corrupt police officers who had been bribed and controlled by Capone. On his way, Ness then met Jimmy Malone, a retired police officer who opposes the rampant corrupt practices of the Chicago Police. He offered help to Ness. Malone also suggested to Ness to find just one person from the police academy graduate who had not been under Capone’s influence and still had the ideals of enforcing the law. They also met with the police who met the criteria. His name was George Stone, an American of Italian descent whose real name is Geuseppe Petri. The trio of Ness, Malone, Stone then becomes a quartet with the joining of Oscar Wallace, an accountant specially sent by the Center (Washington) to help Ness.

This quartet has a legendary name with the nickname “The

Untouchables" (The Untouchables). The nickname began to be pinned by the media on them, especially since they were brave and managed to thwart the delivery of barrels of liquor by a group of gangsters under Al Capone. However, they still found it difficult to catch and imprison the gangster boss, Al Capone until the accountant Wallace found an unthinkable loophole, namely a tax crime. Wallace had enough evidence that Capone had dishonestly paid his income taxes over the years to be charged with tax evasion—a crime that, if proven, was enough to land Capone behind bars for a dozen years. Capone's henchman and confidant, Frank Nitti, tries to bribe Ness. However, due to failure, Frank Nitti then tried to threaten Ness's children and wife so that they had to be evacuated to a safe place. Ness was really angry about it. Instead of slowing down, Ness and his group increased their "attack" against Capone. The result? "The Untouchable" managed to ambush Capone's liquor shipment attempt. In the ambush, some Capone's men were killed after engaging in a fierce shootout with Ness and his men. At the same time, Ness's men managed to catch Capone's bookkeeper/financier named George—who was then persuaded to work together to uncover Capone's crimes.

Unfortunately, Frank Nitti manages to shoot George and Wallace dead on their way to a safe house (a

safe house where important witnesses of a crime are "hidden" under tight security). This occurred because of the betrayal of the police chief named Mike Dorsett. Jimmy Malone, who knew of Dorsett's betrayal, managed to force Dorsett to divulge the residence of Capone's bookkeeper named Walter Payne. One of Capone's men managed to sneak into Malone's apartment. However, Malone, who is very experienced as a retired police officer, becomes aware of the intruder and goes after him. Unfortunately, in the pursuit, Malone fell victim to Frank Nitti who suddenly came in ambush with his Tommy gun. Ness and Stone arrived late. Before he died, Malone still had time to tell them about the train that Payne was traveling in to escape out of town. Long story short, Ness and Stone managed to catch Payne.

When Payne testified against Capone in hearing, Ness saw Capone so calm and laughed. Ness also glimpsed Frank Nitti carrying a gun in the courtroom. Security officers then searched Nitti and found a letter from the Mayor of Chicago, William Hale Thompson, authorizing Nitti to carry a gun. It was during a search of Frank Nitti's body that Ness found out that Nitti was Malone's killer after seeing the scribbled address of Malone's apartment on the skin of Nitti's match. In panic, Frank Nitti shot court security officers before fleeing onto the court's

roof. However, Ness managed to catch him. That's when Nitti blabbered against the late Malone and mocked Ness saying that he would never be convicted of murder. This infuriated Ness, then pushed Nitti off the roof and fell and died. Shortly thereafter, Stone came to give Ness a list he got from Nitti's jacket showing that the jury in Capone's hearing had been bribed. Thus, Ness tried to convince and persuade the judge who tried Capone to swap the jury members who tried Capone with the jury in the divorce hearing that had nothing to do with Capone's case. At first, the judge was reluctant to grant Ness's request. However, after Ness whispered that the judge's name was also on the bribe list, Ness's request was granted. The unexpected jury swap forced Capone's defense team to plead guilty, although it made Capone so angry that he was eventually sentenced to 11 years in prison for tax evasion. At the end of the film, when Capone begins his day in prison, Ness closed his office and at that time there was talk of repealing the law that prohibits the circulation of liquor. When a reporter asked for Ness' comment on the matter, Ness replied, "I think I'll have a drink."

Rino Irlandi
An alumnus of Law Faculty
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INSTALLATION URGENCY OF OMNIBUS METHOD

The Constitutional Court (MK) has just decided on the formal and material review of Law Number 11 of 2020 concerning Job Creation. In Decision No. 91/PUU-XVIII/2021, the Constitutional Court partially granted the petitioners' request. As a result, the Job Creation Law was declared conditionally unconstitutional.

The conditional unconstitutionality is stated explicitly in a quo decision. In the verdict decision, the Constitutional Court stated: the establishment of Law Number 11 of 2020 concerning Job Creation is contrary to the 1945 Constitution and does not have legally binding conditional terms as long as it is not interpreted as "no corrections have been made within 2 (two) years since this decision was pronounced."

In its legal considerations, the Constitutional Court considered that the legislators in making the Job Creation Law had deviated from the method of formation as stipulated in Article 5 paragraph (1), Article 20, Article 22D paragraph (1) and (2) of the 1945 Constitution in conjunction with Law Number 12 of 2011 in conjunction with Law Number 15 of 2019 concerning the Establishment of Legislation.

According to the author's view, the Constitutional Court's legal considerations are very well-founded according to law. This is because the omnibus method used by legislators when drafting the Job Creation Act has not been regulated in-laws and regulations which contain provisions regarding the method of establishing laws and regulations.

Thus, the Government, House of Representatives, and Regional Representative Council as the makers of the Job Creation Law should install the omnibus method into the Indonesian legal system before they use the omnibus method in the formation of the Job Creation Act and other laws.

The Concept of Omnibus

At the beginning of its appearance, the omnibus law sparked many questions. Not only from the public, legal experts and state administrators also ask what exactly is meant by omnibus law. Some interpret it as a type of statutory regulation, and some interpret it as a universal sweeping law.

However, over time, its meaning has become clearer. Omnibus turns out to be just a method, the technique used in compiling and forming a statutory regulation. Therefore, Ahmad Redi (2021) in a book said that it is not appropriate to embed the word "law" after the word "omnibus". According to him, in terms of the rules of legal language, "law" is defined as "law", so that if "omnibus" and "law" are combined, the meaning is no longer the omnibus method but the omnibus law.

The omnibus"method "as generated as a legal breakthrough to break the deadlock of the old method. In the statutory system, the lack of laws that are often delayed from development and legal needs in the community, are usually overcome by forming new laws, revoking old laws, or updating existing laws.

With the old method, the problem is that legislators do not often imagine

what will happen in the future, especially concerning the existence of other laws which in their implementation in the field are often related to this law. As a result, in practice in the field, normative conflicts are often found between one law and another.

In the old method, the conflicting laws are usually amended or repealed one by one, no matter how many. In this way, changes or repeals of laws in this old system require a relatively long time and large resources. Therefore, in its development, the idea emerged to form a single law that simultaneously changed or revoked several laws at one time. This idea is called the omnibus method.

The advantages of the omnibus method over the old method have led several countries to adopt the omnibus method into their legal systems. These countries are the United States, Canada, Ireland, United Kingdom, Australia, Germany, Turkey, Philippines, Cambodia, Vietnam, Malaysia, and Singapore.

Installation Urgency

In various countries that have applied the omnibus method in the formation of their laws, they usually have one common reason: to reformulate, unify, and or revoke part or all of the provisions in various laws and regulations using only one piece of legislation.

The omnibus method is considered the fastest way to fix problems in the legal system that hinder the national development of a country. Among the problems of the legal system are regulatory obesity, poor quality regulations, regulatory disharmony, to the problem of conflicting interpretations of norms.

Various problems related to the legislation are also an acute problem of the legal system in Indonesia. Based on the records of Ibnu Sina Chandranegara (2019), in the period 2000-2017, there were at least 35,901 laws and regulations. If this research only limits its calculations to 2017, it is conceivable that if every year there is always

a production of regulations to fulfill legal needs in society, then regulatory obesity is inevitable.

The large number of regulations produced is also not in line with the quality of the regulations, which can be seen from the many requests for testing the norms of laws and regulations in the judiciary. In the records of Ibnu Sina Chandranegara (2019), it was recorded that until March 2017 there were 802 decisions of the Constitutional Court (MK) and 203 decisions of the Supreme Court (MA) related to the testing of statutory norms. Requests for testing the norms of laws and regulations also continue to grow every year. Until now, the Constitutional Court's decision regarding the testing of norms has reached 1469 decisions.

In practice, many regulations also trigger disharmony between the norms of one law and another. The inception of the Job Creation Law which uses the omnibus method in its formation reflects the disharmony of regulations in the business sector. It is suspected that the disharmony of regulations in the business sector is hampering the investment climate, business and economic activities of Indonesia. Thus, the Job Creation Law which uses the omnibus method is intended to correct the problem of disharmony in this regulation.

Unfortunately, because the legislators did not first install the omnibus method into the legal system in Indonesia, the Constitutional Court declared the Job Creation Law to be formally flawed because its formation was not following the flow of law formation as regulated in Law Number 12 of 2011 in conjunction with Law Number 15 of 2019 concerning the Establishment of Legislation.

Considering the various acute problems of the legal system that Indonesia is experiencing, as I described above, the installation of the omnibus method in the Indonesian legal system is important. Conceptually, the omnibus method will be able to solve all these problems in a relatively shorter time and with fewer resources. ■

CONDITIONALLY UNCONSTITUTIONAL, THE JOB CREATION LAW MUST BE CORRECTED WITHIN TWO YEARS



Labor demonstration in Jatiuwung area, Tangerang City, Banten, Tuesday (6/10). Photo: ANTARA FOTO/Fauzan/foc.

Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja) was declared conditionally unconstitutional by the Constitutional Court on November 25, 2021. Formally, the Court declared the Job Creation Law legally flawed. The Court has given 2 years to the Government and the House of Representatives as legislators to amend the Job Creation Law.



The Job Creation Law that adheres to the first omnibus law system in Indonesia, has generated a polemic in the community. The refusal shown by the community through demonstrations finally ended elegantly by taking legal action; through judicial review. Since being ratified on October 5, 2020, the Constitutional Court has recorded 17 applications to test the Job Creation Act, both formally and materially.

One of them is Case Number 91/PUU-XVIII/2020 which was submitted by Migrant CARE, the West Sumatra Nagari Customary Density Coordinating Board, the Minangkabau Customary Court, and Muchtar Said. This case has become a monumental decision for 18 years since the Constitutional Court was established. For the first time, the Constitutional Court partially granted a formal examination of a case. In its legal considerations, the Court called the Job Creation Law conditionally unconstitutional.

In their petition, the Petitioners stated that the Job Creation Law applies the concept of the Omnibus Law which consists of 11 clusters and is an amalgamation of 78 (seventy-eight) laws, but its formation does not meet the provisions for



Arteria Dahlan represented the DPR in providing information regarding the formal and material test of the Job Creation Law on Thursday (17/6). Photo: Public Relations.

the formation of laws based on the 1945 Constitution (formal defects/procedural defects). This is because the Job Creation Law has violations that are carried out clearly and are known by the public.

Viktor Santoso Tandiasa as the attorney for the Case Petitioner Number 91/PUU-XVIII/2020, said that the change in the draft of the Job Creation Bill with a total of 905 pages to 1,035 pages was real and clear, not technically related to writing. However, he continued, these changes have entered the substance of the charge material.

“This of course violates the provisions of Article 72 paragraph (2) of the Law on the Establishment of Legislation and its explanations. It changes in the substance of a draft law that has been jointly approved by the House of Representatives and the president violates the stages of forming laws and regulations because if there is a change in the substance of a bill, it must be discussed with the House of

Representative and the president,” said Viktor in a session held will be held on November 12, 2020.

Been Appropriate

Concerning the application, the House of Representative, represented by Member of Commission III, Arteria Dahlan, said that the systematics in the Job Creation Law followed the systematics contained in the Attachment to the Law on the Establishment of Legislations because it contained the title, preamble, body, and explanation. In addition, he continued, the material for the guidelines for the formation of laws and regulations or the material for the guidelines for the formation of laws which are annexes to the law for the formation of laws and regulations are guiding.

“It should not be understood rigidly because the guidelines are based on current practice. Thus, the format and design process follows the customs that existed at that

time,” said Arteria in a hearing the statements of the Government and the House of Representatives on June 17, 2021 ago.

Therefore, continued Arteria, a legal breakthrough is needed so that new constitutional conventions and habits are formed as a legal basis that is equivalent to the law and subsequent practices.

“The Law on the Formation of Legislation and its amendments does not prohibit the formation of laws using the Omnibus Law method which functions to accommodate several content materials at once and has become a mutual agreement between the legislators, namely the House of Representative and the president,” said Arteria.

Eight Months

Regarding the Petitioner’s argument about the haste in the discussion of the Job Creation Bill, Arteria revealed that in terms of time, the discussion of the Job Creation Bill was following Article 97 paragraph (1) of House of Representative Regulation Number 2 of 2020. The discussion of the Job Creation Bill was carried out for 8 (eight) months from February to October 2020. It has fulfilled three hearing periods.

“That the discussion period of 8 months is not a short period of discussing complex laws such as a quo law because, during that discussion period, various public hearings have been held. Therefore, the discussion of a quo law is not rushed as the Petitioners think,” said Arteria.

Guaranteeing People’s Rights

On the same occasion, the coordinating minister for the

Economy, Airlangga Hartanto stated the Government in response to the Petitioner's request. The government conveys that the issuance of the Job Creation Law is intended to provide protection, legal certainty, and fulfillment of the rights of citizens to obtain work and decent life, associate and assemble as guaranteed in the provisions of Article 27 paragraph (2), Article 28, Article 28C. paragraph (2), Article 28D paragraph (1), and paragraph (2) of the 1945 Constitution.

Airlangga added that the Petitioners were not at all hindered in carrying out their activities or activities caused by the enactment of the Job Creation Law. He said that the Job Creation Law would absorb a lot of Indonesian workers during increasingly competitive competition and the demands of economic globalization. In addition, the Job Creation Law was also formed to increase the protection and welfare of workers.

"So that the constitutional rights of the Petitioners are not at all reduced, eliminated, restricted, complicated, or harmed due to the enactment of the Job Creation Law," he said accompanied by seven other ministers, namely Coordinating Minister for Politics, Law and Human Rights Moh. Mahfud MD, Minister of Law and Human Rights Yasonna H. Laoly, Minister of Manpower Ida Fauziyah, Minister of Finance Sri Mulyani Indrawati, Minister of Energy and Mineral Resources Arifin Tasrif, Minister of Public Works and Public Housing Mochamad Basuki Hadimuljono, Minister of Agrarian and Spatial Planning Head National Land Agency Sofyan Djalil, Minister of Environment and Forestry Siti Nurbaya, and

Minister of Transportation Budi Karya Sumadi.

In addition, Airlangga said that Indonesia needs to get out of the middle-income trap because it will have weak competitiveness. From the experience of successful countries, the contribution of labor competitiveness and productivity is the mainstay to get out of the middle-income trap. Efforts to overcome these challenges and obstacles require a strong regulatory base in the form of laws which at the same time require changes and improvements to various existing laws related to job creation. He added that changes to the law cannot be carried out through conventional means by changing laws one by one.

Airlangga continued regarding this matter, a legal breakthrough is needed that can solve various problems in various laws in one comprehensive law. Therefore, he

continued, President Joko Widodo in his state address on October 20, 2019, conveyed, among other things, simplifying all forms of regulatory obstacles and inviting the House of Representatives to issue the Job Creation Law which will become an omnibus law to revise several laws that hinder job creation. With the development of SMEs.

"The use of the omnibus law method in preparing the drafting of the Job Creation Bill is to pay attention to the content and substance of the laws that must be amended to reach 78 laws that must be carried out in one unified regulatory substance to achieve the goal of optimal work creation. As for the preparation and process of establishing the Job Creation Act, it follows and fully complies with the provisions stipulated in Law Number 12 of 2011," added Airlangga.



Coordinating Minister for the Economy, Airlangga Hartanto represented the Government in providing information regarding the formal and material test of the Job Creation Law on Thursday (17/6). Photo: Public Relations.

Meanwhile, the Panel of Constitutional Justices finally decided that the Job Creation Act was conditionally unconstitutional. In the decision that was read out on November 25, 2021, the Court partially granted the Petitioner's request. The Constitutional Court of Justice in legal considerations also emphasized that Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja) is formally flawed.

“Declaring that the establishment of the Job Creation Law is contrary to the 1945 Constitution and does not have legally binding conditional terms as long as it does not mean ‘no repairs have been made within 2 (two) years since this

decision was pronounced. Stating that the Job Creation Law remains in effect until the formation is corrected following the grace period as determined in this decision,” said Anwar, who was accompanied by eight other constitutional judges on that occasion.

In the 448-page decision, the Court also ordered the legislators to make improvements within a maximum period of 2 (two) years after the decision was pronounced. If within that time limit no corrections are made, then the Job Creation Act is declared permanently unconstitutional.

Suspend The Policy

In addition, the Constitutional Court also ordered the Government to suspend all strategic and broad-impact actions or policies and it is also not permissible to issue new implementing regulations related to Law Number 11 of 2020 concerning Job Creation.

Anwar also conveyed that the Court stated that if within 2 (two) years the legislators were unable to complete the revision of the Job Creation Law, then the law or articles or material content of the law that had been revoked or amended by the Job Creation Act was declared apply again.



Legal Defect

In the legal considerations read out by Constitutional Justice Suhartoyo, the procedure for the formation of the Job Creation Law is not based on definite, standard, and standard methods and methods, as well as the systematic formation of laws. Furthermore, in the formation of the Job Creation Law, there is a change in the writing of several substances after the joint approval of the DPR and the President.

“(The formation of the Job Creation Law) is contrary to the principles of the formation of laws and regulations, the Court believes that the process of forming Law 11/2020 does not meet the provisions based on the 1945 Constitution, so it must be declared formally flawed,” said Suhartoyo.

Avoid The Legal Uncertainty

The Court also explained why the Job Creation Law was declared conditionally unconstitutional. This is because the Court wants to avoid legal uncertainty and its bigger impact. Next, the Court considers that there must be a balance between the requirements for the formation of law that must be fulfilled as a formal requirement to obtain a law that meets the elements of legal certainty, expediency, and justice. In addition, Suhartoyo continued, they must also consider the strategic objectives of the establishment of the Job Creation Law.

“Therefore, in enacting Law 11/2020 which has been declared conditionally unconstitutional, it has juridical consequences for the enactment of Law 11/2020 a quo. Hence, the Court provides the opportunity for legislators to revise Law 11/2020 based on the procedure



Viktor Santoso Tandiasa as an attorney for Case Number 91/PUU-XVIII/2020 in a hearing held on Thursday (11/12/2020). Photo: Public Relations

for establishing the law. Laws that meet definite, standardized, and standardized methods and methods in forming omnibus law laws which must also comply with the fulfillment of the requirements for the established principles of law formation,” said Suhartoyo.

No New Nomenclature Needed

Furthermore, Constitutional Justice Enny Nurbaningsih stated that the Court found the fact that the naming of the Job Creation Law was using a new name, namely the Law on Job Creation. Therefore, the Court can understand the problem of the Petitioners who say that the Job Creation Law is a new law or an amendment law. Moreover, in the provisions of Article 1 point 1 of the Employment Creation Law,

the nomenclature of Job Creation is also formulated as an effort to create work through convenience efforts, protection, and empowerment of cooperatives and micro, small and medium enterprises, improvement of the investment ecosystem and ease of doing business, and Central Government investment and acceleration of national strategic projects.

“With the new naming of law, namely the Law on Job Creation which is then in the General Provisions Chapter followed by the formulation of the basic norms, objectives, and scope which are further elaborated in chapters and articles related to that scope, then Law 11/2020 it is not in line with the standard formulation or standard in the formation of laws and regulations

because this shows the established norms as if they were new laws. However, the biggest substance in Law 11/2020 has turned out to be a change to some laws,” explained Enny.

Enny added that if what is being done is to amend a law, there is no need to make general provisions containing a new nomenclature, which is then followed by the formulation of the principles, objectives, and scope unless the matters to be amended from a law include these materials. This is because, he continued, from some laws that have been amended by the Job Creation Law, the original/

original laws are still valid – although it is not confirmed about the validity of the old laws in the Job Creation Law. Meanwhile, the old laws have also determined the principles and objectives of each law which are then described in the norms of the articles regulated in each of these laws.

People Can't Access

Next, concerning the principle of openness, Suhartoyo explained in the hearing it was revealed that the legislators did not provide maximum space for public participation. Even though various meetings have been held with various community groups,

these meetings have not discussed academic texts and material for changes to the Job Creation Law.

“So, people involved in the meeting do not know for sure what material changes to the law will be incorporated into Law 11/2020. Moreover, academic manuscripts and draft work Job Creation laws can't be easily accessed by the public. In fact, based on Article 96 paragraph (4) of Law 12/2011 access to the law is required to facilitate the public in providing input orally and/or in writing,” said Suhartoyo.

The Different Opinion

In the decision, four constitutional judges expressed different opinions, namely Anwar Usman, Arief Hidayat, Daniel Yusmic P. Foekh, and Manahan M.P. node. The four stated that although the Ciptaker Law had many weaknesses in terms of legal drafting, this law was urgently needed at this time. “So in our opinion, the application for a formal review of the Job Creation Law should be declared rejected,” said Arief while reading a different opinion.

In addition, the four reasoned that the stages of the establishment of the Ciptaker Law were very good and careful from the philosophical, sociological, and juridical aspects to realize the mandate of the opening of the 1945 Constitution which is a fundamental direction regarding the national vision, mission, and goals that must be realized in the life of the nation and state.

At the same hearing, the Court also decided on eleven other cases related to the review of the Job Creation Law, namely Cases Numbers 87, 101, 103, 105, 107, 108/PUU-XVIII/2020, and Cases



One of the workers showed a request for a test of the Job Creation Law when he wanted to register the application on (2/11/2020) to the Constitutional Court Building. Photo: Public Relations

Numbers 3,4,5,6,55/PUU-XIX/2021. All of these cases were declared inadmissible. This is because the Job Creation Law has been declared conditionally unconstitutional as stated in Decision Number 91/PUU-XVIII/2020. Thus, the judicial review of the Law is no longer relevant for further investigation because of the loss of the object of the application.

To note, the Court had previously held hearings for the other twelve cases. Case Number 87/PUU-XVIII/2020 submitted by the Central Leadership (DPP) of the Federation of Singapore Trade Unions (FSPS) represented by Deni Sunarya (General Chair) and Muhammad Hafidz (General Secretary). The Petitioners disputed the constitutionality of the rules for interim work agreements as regulated in Article 81 number 15, number 19, number 25, number 29, and number 44 of the Job Creation Law.

This application, which is registered under Number 101/PUU-XVIII/2020, was filed by the Confederation of Indonesian Trade Unions (KSPI) represented by Said Iqbal, et al. The applicants for the case submitted a judicial review of Article 81, Article 82, and Article 83

Job Creation Law. The Petitioners stated that the Job Creation Law creates legal uncertainty and eliminates and/or hinders the constitutional rights of the Petitioners. The Petitioners argue that the Job Creation Law contradicts Article 18 Paragraph (1), Paragraph (2), Paragraph (5), Paragraph (6), and Paragraph (7); Article 27 Paragraph (2); Article 28D Paragraph (1) and Paragraph (2); Article 28E Paragraph (3), and Article 28I of the 1945 Constitution. Then,

the application for Case Number 103/PUU-XVIII/2020 was submitted by Elly Rosita Silaban (Applicant I) and Dedi Hardianto (Applicant II) from the Confederation of All Indonesian Trade Unions (KSBSI). The Petitioners formally examine Chapter IV of Law no. 11/2020 and material review of Law Chapter IV of the Second Part of the Job Creation Law, namely Article 42 paragraph (3) letter c, Article 57 paragraph (1), and paragraph (2).

Meanwhile, the Petitioners for Case Number 105/PUU-XVIII/2020 are the Central Leadership of the Federation of Clothing and Leather Textile Workers Union – All-Indonesian Workers Union and 12 other Petitioners. They conducted formal and material tests of the Job Creation Law, including Chapter IV Part Two: 1) Article 81 point 1 (Article 13 paragraph (1) letter c of Law No. 13/2003) regarding job training organized by the company's job training institutions. In addition, Article 81 point 2 (Article 14 paragraph (1) of Law 13/2003) stipulates that private job-training institutions as referred to in Article 13 paragraph (1) letter b are required to fulfill the Business Licensing issued by the district/city government.

Furthermore, the application which is registered under Number 108/PUU-XVIII/2020 was submitted by Ignatius Supriyadi, Sidik, and Janteri who work as advocates. The three of them tested Article 6, Article 17 point 16, Article 24 point 44, Article 25 number 10, Article 27 point 14, Article 34 point 2, Article 41 number 25, Article 50 number 9, Article 52 number 27, Article 82 number 2, Article 114 number 5, Article 124 number 2, Article 150

number 31, Article 151 and Article 175 number 6 of the Job Creation Law.

Next, application Number 4/PUU-XIX/2021 was submitted by R. Abdullah as General Chairperson of the Federation of Chemical, Energy, and Mining Workers' Unions throughout Indonesia and 662 other Petitioners. This petition broke the record as the petition with the most petitioners in the history of the judicial review of the Law in the Constitutional Court. The Petitioners filed a formal and material review of the Job Creation Law.

In addition, the Petitioners for Case Number 3/PUU-XIX/2021 were submitted by Sudarto and Yayan Supyan as the General Chair and General Secretary at the Central Executive of the Federation of Tobacco-Tobacco Workers Unions-All-Indonesian Workers' Union (FSP RTMM-SPSI). 59, Article 61 paragraph (1) letter c, Article 61A, Article 164A, Article 156 Part Two Chapter IV of the Job Creation Law. In their petition, the Petitioners argue that Chapter IV of the Job Creation Law which is known by the government and becomes public knowledge is called the employment cluster, considered to be very detrimental to the constitutional rights of workers/laborers and trade unions/ labor unions as regulated in the 1945 Constitution.

Meanwhile, R. Abdullah as the General Chair of the Federation of Chemical, Energy, and Mining Trade Unions throughout Indonesia, and 662 other Petitioners are listed as Petitioners for Case Number 4/PUU-XIX/2021. The Petitioners through their legal team submitted a formal and material review of the Job Creation Act. While Case Number

5/PUU-XIX/2021 was filed by Putu Bagus Dian Rendragraha (Petitioner I) and Simon Petrus Simbolon (Petitioner II) who are two persons with disabilities. In this case, the Petitioners conducted a formal and material review of Article 24 point 4, Article 24 number 13, Article 24 number 24, Article 24 number 28, Article 61 number 7, Article 81 number 15, and the Elucidation of Article 55 point 3 of the Job Creation Law on the 1945 Constitution.

The Petitioners for Case Number 6/PUU-XIX/2021 Riden Hatam Aziz et al conducted a formal review of the Job Creation Law. According to the

Petitioners, the establishment of the Job Creation Law does not have legal certainty. In general, the formation of a quo Law is formally flawed or procedurally flawed. Therefore, in their *petitum*, the Petitioners requested that the Court declare the Job Creation Act contradictory to the 1945 Constitution and annul the validity of the Act.

Finally, the application which is registered with Case Number 55/PUU-XIX/2021 was filed by the Aceh Forest, Nature and Environment Foundation (Yayasan HakA) represented by Farwiza, et al. According to the Petitioner,

the abolition of the Petitioner's involvement in providing input to the Amdal document, as stipulated in Article 26 paragraph (3) of Law 32/2009 but which has been amended by Article 22 number 5 of Law 11/2020, is clearly a loss or potential for the Petitioner's constitutional loss to prevent and protect damages. Environment as a result of construction projects or large-scale projects for which Amdal (Environmental Impact Analysis) is required. ■

LULU ANJARSARI



KSPI led by Said Iqbal after registering the application for the Job Creation Law Judicial Review on Thursday (2/11/2020) directly to the Constitutional Court Building. Photo: Public Relations

QUOTATION OF DECISION NUMBER 91/PUU-XVIII/2020

Judicial Review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia

Petitioner:

Hakiimi Irawan Bangkid Pamungkas, Ali Sujito, Muhtar Said, Migrant CARE, West Sumatra Nagari Customary Density Coordination Board, Minangkabau Natural Customary Court

Date of Judgment:

November 25, 2021

Verdict:

In Provision:

1. Declaring that the Provisional Application for Petitioner I and Petitioner II can't be accepted;
2. Rejecting the Provisional Application for Petitioner III, Petitioner IV, Petitioner V, and Petitioner VI.

In the Principal of the Application:

1. Declaring the applications of Petitioner I and Petitioner II cannot be accepted;
2. Granting the application of Petitioner III, Petitioner IV, Petitioner V, and Petitioner VI partially;
3. Declaring the establishment of Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as does not mean "no repairs have been made within 2 (two) years since this decision was pronounced";
4. Declaring that Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) is still in effect until corrections are made to the establishment following the grace period as determined in this decision;
5. Ordering the legislators to make improvements within a maximum period of 2 (two) years since this decision is pronounced and if within that time limit no corrections are made then Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement 417 to the State Gazette of the Republic of Indonesia Number 6573) becomes permanently unconstitutional;
6. Stating that if within 2 (two) years the legislators cannot complete the revision of Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) then the law or articles or material contained in the law that has been revoked or amended by Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) are declared to be re-applicable;
7. Declaring to suspend all strategic and broad-impact actions/policies, and it is also not permissible to issue new implementing regulations relating to Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573);
8. Ordering the loading of this decision in the State Gazette of the Republic of Indonesia as appropriate;
9. Rejecting the petition of the Petitioners for other than the request.

Opinion

The Court held 14 hearings to review the application for case Number 91/PUU-XVIII/2020 in the legal Examination of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution. The 15th session was the pronouncement of the decision.

The judicial review session of the Job Creation Law was colored by various opinions from experts. The three experts who were presented by the parties in the hearing provided information from various perspectives. The Petitioner presented expert Zainal Arifin Mochtar. The House of Representatives presented expert I Gde Pantja Astawa. Meanwhile, the government presented expert Satya Arinanto.

Zainal Arifin Mochtar

Violation of the Process of Drafting the Job Creation Law

In the legal case of the Job Creation Law, many substantive questions can be submitted. The first is a term of the rules of the game in drafting the Job Creation Act. As we understand the Job Creation Law was drafted using the omnibus method. The idea of using this law existed long before the formation of the job creation law. Even the idea of the Job Creation Law itself has been in various discussions so that at least in October 2019, this idea already exists. Surprisingly, while amending Law 12/2011 concerning the Formation of Legislations in October 2019, there was no discussion at all regarding the use of the omnibus method in making laws and regulations. Thus, in the revision of Law 12/2011, becoming Law 15/2019, there is no mention of the omnibus method. This is certainly a matter that is not small because the absence of clear rules of the game has made this law treated haphazardly and without adequate rules. It is important to be a question for lawmakers, why does it not regulate the omnibus method of the law even though the idea already exists.

The second is concerning the omnibus method itself. The method of choice using the Omnibus is indeed interesting. This "one for all method" does have several advantages in being able to quickly tidy up and harmonize overlapping and irregular laws. This bill has 174 articles, but substantially contains changes and cancellations of 79 multisectoral laws. This compilation technique is not simple because it tends to be confusing. The confusion was evident from the choice when he finally named this bill Job Creation. Because the cluster area is too wide, this choice also violates the provisions in the attachment of Law no. 12 of 2011 which is something that cannot be separated from the provisions of the Act as a whole.

The third is a direct violation of the process. Violations in the process also occur in at least three other things. Discussions are carried out in a hurry, not transparent, and without participation. Article 18 of Law no. 12 of 2011 requires the preparation of laws to take into account the aspirations and legal needs of the community.

"Law Number 11 of 2020 was drafted in a pandemic. In a state of a pandemic, most of those meetings are replaced into the online process. Public participation is also made online. It makes public participation seems distant. We all know that Zoom, only those who are allowed to enter are allowed to enter. Not everyone can express opinions easily, conveying in a demonstration is also not easy because then there are rules and so on," said Zainal Arifin Mochtar when delivering his statement as an expert on the Petitioners in the hearing held at the Constitutional Court, Thursday (05/08/2021) online.

Fourth, the 1945 Constitution provides five stages of law, submission, discussion, approval, ratification, and promulgation. At the time of submission, there was no public participation, which continued at the approval and ratification stage. And this is conducted together with the President. These five stages are very closely related to state-legal politics in making a law.

Fifth is an editorial coup. This violation is very fatal. The occurrence of changes to the law even though the approval stage has been passed. If the simple question is whether it is permissible to make changes after the approval stage, then in essence it becomes unlawful to do so. All matters concerning the substance and format of the law should be completed when the plenary agreement is held. The law has been made in a "clean" context when it is about to be tapped.

I Gde Pantja Astawa

Omnibus Law Method to Overcome Hyper Regulated

Conceptually, omnibus law as a method is not something new in the formation/formulation of regulations. Historically, omnibus law was born and developed and practiced in countries that adhere to the Anglo-Saxon legal system (Common Law System), such as the United States, Canada, England, Australia, Singapore, and so on. In the United States, for example, one of the largest omnibus laws ever passed was the Transportation Equity Act for the 21st Century (TEA 21). Another example of omnibus law in the United States is The Omnibus Public Land Management Law of 2009.

In Canada, the practice of omnibus law has been commonly used by Parliament since 1888 to streamline the legislative process by merging several laws and regulations into one specific regulation. Some examples of the Omnibus Law in Canada are The Energy Security Act of 1982 and the Jobs, Growth, and Long-term Prosperity Act of 2012.

In Australia, there is the Civil Law and Justice (Omnibus Amendments) Law of 2015 whose material combines several provisions relating to law and civil justice from several other statutory provisions.

In the Philippines, the omnibus law has also been used to organize regulations in the investment sector by issuing the Omnibus Investment Code Act of 1987. One of the provisions in the omnibus law is that investors will be given incentives and basic rights to ensure the business continuity of investors in the Philippines. This method is carried out by the Philippine government to attract large investments in the country.

By pointing to the example of several countries that apply the Omnibus Law method in the formation/ compilation of their regulations, it appears that the omnibus law method is used as a policy instrument to overcome the problems of too much regulation (hyper regulated) and overlapping (overlapping). This concept is often seen as a "fast way" in unraveling and fixing problematic regulations because the essence of the Omnibus Law is a law aimed at targeting major themes or material in a country, where the substance is to revise and/or repeal several laws and regulations at once. Therefore, this method is considered to be more effective and efficient than the settlement using ordinary legislative mechanisms or law by law, which not only takes up a lot of time, thought, and energy, but also consumes a lot of budget.

"Therefore, this method is seen as more effective and efficient than the settlement using the usual legislative mechanism or law by law. It does not only take time, thought, and energy, it also takes up a lot of budget. Moreover, the discussion of law, for example, often experiences a deadlock due to the dynamics in the parliament which is full of various interests," said I Gde Pantja Astawa while acting as an expert on the House of Representatives in an online hearing held at the Constitutional Court on Wednesday (13/10,2021).

Satya Arinanto

The Omnibus Law Method Has Been Implemented in Indonesia Since 1949

The application of the omnibus law method in the formation of legislation is not a new thing in Indonesia. In the perspective of legal history, it has been implemented in the previous government periods since 1949.

So far, in various lectures at the law faculty, we often complain about the existence of various laws and regulations whose contents overlap and conflict with one another. With the use of the omnibus law method, several laws and regulations with overlapping substances can be directly changed or replaced with 1 (one) new legislation in a much more effective and efficient time than if we had to change or replace the laws and regulations. -the invitations one by one.

Therefore, the application of the omnibus law method will be an appropriate and ideal legal choice in the formation of legislation in the future. It is expected that efforts to uphold justice and realize the welfare that we aspire to in the Republic of Indonesia will be achieved more quickly.

"Thus, I think the method used now in the process of forming Law Number 11 of 2020 concerning Job Creation is the right effort, I think, Your Honor, for the development of our law in the future and also to answer the challenges at this time. We hope that this regulation can also lead us to progress and prosperity," said Satya Arinanto while acting as a government expert in an online hearing held at the Constitutional Court on Thursday (02/09/2021).

CONSTITUTIONAL COURT'S VERDICT IN DECEMBER 2021

NO	CASE NUMBER	SUBJECT MATTER OF THE CASE	APPELLANT	VERDICT
1	59/PUU-XIX/2021	Material Testing of Law Number 3 of 2011 concerning Fund Transfers	Indah Harini	Withdrawn
2	21/PUU-XIX/2021	Material Testing of the Criminal Code (KUHP) against the 1945 Constitution	Leonardo Siahaan and Fransiscus Arian Sinaga	<ol style="list-style-type: none"> 1. Granted the petition of the Petitioners in part; 2. Stated the norm provisions of Article 293 paragraph (2) of the Criminal Code are contrary to the 1945 Constitution of the Republic of Indonesia and have no binding legal force, as long as it is not interpreted as "complaints can be made not only by victims but can also be made by parents, guardians or their proxies"; 3. Ordered the loading of this Decision in the State Gazette of the Republic of Indonesia as appropriate; 4. Rejected the petition of the Petitioners.
3	23/PUU-XIX/2021	Material Testing of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligation for Payment of Debt against the 1945 Constitution	PT. Sarana Yeoman Sembada represented by Sanglong Alias Samad	<ol style="list-style-type: none"> 1. Granted the Petitioner's application in part; 2. Stated that Article 235 paragraph (1) and Article 293 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (State Gazette of the Republic of Indonesia of 2004 Number 131 Supplement to the State Gazette of the Republic of Indonesia Number 4443) are contrary to the 1945 Constitution of the Republic of Indonesia and do not have binding legal force, as long as it is not interpreted as "permitting an appeal against the decision to postpone the payment of debt obligations submitted by the creditor and the rejection of the offer of reconciliation from the debtor"; 3. Ordered the loading of this decision in the State Gazette of the Republic of Indonesia as appropriate; 4. Rejected the Petitioner's application for other than and the rest.

4	24/PUU-XIX/2021	Material Testing of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligation for Payment of Debt against the 1945 Constitution	Calvin Bambang Hartono	Rejected the application in its entirety
5	46/PUU-XIX/2021	Application for Testing of Law Number 11 of 2019 concerning the National System of Science and Technology as amended by Law Number 11 of 2020 concerning Job Creation	Heru Susetyo	Unacceptable
6	53/PUU-XIX/2021	Material Testing of Law Number 8 of 1981 concerning Criminal Procedure Code	Anita Natalia Manafe	Rejected the application in its entirety
7	54/PUU-XIX/2021	Material review of Law Number 46 of 1999 concerning the Establishment of North Maluku Province, Buru Regency, and West Southeast Maluku Regency as amended by Law Number 6 of 2000 concerning Amendments to Law Number 46 of 1999 concerning the Establishment of North Maluku Province, Buru Regency, and West Southeast Maluku Regency	Gunawan A. Tauda and Abdul Kadir Bubu	Unacceptable

8	56/PUU-XIX/2021	Material Testing of Law Number 36 of 2014 concerning Health Workers	Association of Indonesian Private Health Universities (hereinafter referred to as HPTKES INDONESIA)	Rejected the application in its entirety
9	57/PUU-XIX/2021	Material Testing of Law Number 42 of 1999 concerning Fiduciary Guarantees	1. Muhammad Armand Prasetyanto, as Petitioner I; 2. Mohamad Fikri Nur Yahya, as Petitioner II; 3. Bagas Febriansyah, as Petitioner III; 4. Geraldus Manahan, as Petitioner IV; 5. Khairul Syekhan Febriansah, as Petitioner V; and 6. Kharis Pranatal Sihotang, as Petitioner VI.	Unacceptable
10	58/PUU-XIX/2021	Material Examination of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking	Armansyah	Unacceptable

NO	CASE NUMBER	SUBJECT MATTER OF THE CASE	APPELLANT	VERDICT
1	2/SKLN-XIX/2021	Application for Disputes on the Authority of a State Institution whose authority is granted by the 1945 Constitution of the Republic of Indonesia	Khairil Anwar	Unacceptable
2	3/SKLN-XIX/2021	Application for Disputes on the Authority of a State Institution whose authority is granted by the 1945 Constitution of the Republic of Indonesia	Hendrajoni	Withdrawn


 Y.M. Hakim Konstitusi
Prof. Dr. Arief Hidayat, S.H., M.S.

KULIAH UMUM

“Peran dan Tantangan Mahkamah Konstitusi dalam Mewujudkan Hukum dan Politik Demokratis”

Kerja Sama
Mahkamah Konstitusi dan Fakultas Hukum Universitas Sebelas Maret

Surakarta, Jumat 3 Desember 2021


 Y.M. Hakim Konstitusi
Prof. Dr. Enny Nurbaningsih, S.H., M.Hum.


Hakim Konstitusi Arief Hidayat dan Enny Nurbaningsih menjadi pemateri dalam kuliah umum yang digelar Mahkamah Konstitusi bekerja sama dengan Universitas Sebelas Maret (UNS) pada Jumat (3/12/2021)

THE CONSTITUTIONAL COURT IN THE SPACE OF GOOD CONSTITUTIONAL FRIENDSHIP

At the end of 2021, the Constitutional Justices shared knowledge with students and practitioners as well as academics in the constitutional relationship. In this discussion room, the Constitutional Justices conveyed the progress and challenges that the Constitutional Court has passed as a constitutional judicial institution in Indonesia. During these visits, the Constitutional Justices also shared their views and real work carried out by the Constitutional Court throughout 2021 in guarding the constitutional rights of citizens.

The Role and Challenge of Constitutional Court

Constitutional Court judges, Arief Hidayat and Enny Nurbaningsih were speakers in a public lecture held by the Constitutional Court in collaboration with Sebelas Maret University (UNS) on Friday (12/3/2021). The activity with the theme “Role and Challenges of the Constitutional Court in Realizing Democratic Law and Politics” was attended by 70 undergraduate, postgraduate, and doctoral students in the Hall of Building III, Faculty of Law UNS, Solo.

On this occasion, Enny said that Indonesia is a unique country with a very diverse population, islands, multiethnic,

regional language, religious diversity recognized by the Government. She said that it had an impact on the legal and political democratic challenges that must be faced. One of them is a very massive and inevitable technological development that is increasingly reaching people from various social strata. Therefore, everything related to this, the community must be smart in its use.

“We are a very plural country, so the challenge to become a big country requires a formula to create strong legal instruments. Therefore, it is necessary to increase public literacy in the legal field. It is because the spread of information without boundaries leads to disinformation, while public awareness

and legal culture is still low,” said Enny.

Furthermore, Constitutional Justice Arief Hidayat explained the concept of state administration. Regarding this matter, Arief said that there are several systems of state administration, some of which are based on God’s sovereignty (theocracy theory), people’s sovereignty (democracy), rule of law (nomocracy), and environmental sovereignty in order to create sustainable development (*ecocracy*).

“It’s good that Indonesia from authoritarian government to reformation can be categorized into a large independent, sovereign country. Furthermore, until now, the collisions experienced are not as big as other countries that have experienced the

same thing. Even though the people are diverse with a very wide area, the process of consolidating democracy is going quite well," said Arief.

Correlation between Constitutional Court and Reform

Deputy Chief Justice of the Constitutional Court (MK) Aswanto and Constitutional Justice Saldi Isra were speakers in a Public Lecture with the theme "Role and Challenges of the Constitutional Court in Realizing Democratic Law and Politics", on Friday (3/12/2021) morning. The event was organized by the Constitutional Court in collaboration with Sebelas Maret University (UNS) Solo.

In this activity, Aswanto said that the Constitutional Court is the biological child of the reformation that was born after the amendments to the 1945 Constitution. One of the considerations for the establishment of the Constitutional Court was that often the formulation of laws (UU) was not in sync with the norms of the Constitution, but the resolution was left to the legislators.

"So, it needs to be an institution that is given the authority to test whether the laws that were formed are in sync or not in sync with the norms in the Constitution. Also, the rationale for thinking is how the president or vice president is considered to have committed a violation which was later impeached by the DPR," said Aswanto.

Meanwhile, Constitutional Justice Saldi Isra stated that the Constitutional Court with the authority it had could cancel the law. The Constitutional Court can cancel certain parts of the law, either in the form of canceling certain articles, paragraphs, or even explanations or chapters. Saldi explained that the Constitutional Court will only work if there is an application. If there is no application, then the Court cannot do anything. However, Saldi continued that not all of the petitioner's logic that contradicted the constitution was granted by the Constitutional Court. (Utami Argawati/Nur R)

Government Regulation in Lieu of Law and Covid-19

Constitutional Justice Daniel Yusmic P. Foekh was a speaker in a Public Lecture held in the context of the 4th Anniversary of the University of HKBP Nommensen Pematang Siantar, North Sumatra on Saturday (4/12/2021). In a lecture that was held offline with the implementation of this health protocol, Daniel talked about "Government Regulation in Lieu of Law and Covid".

Regarding this topic, Daniel said that the Government Regulation in Lieu of Law which later became an emergency law was a norm that was made unilaterally by the president. Article 22 paragraph (1) of the 1945 Constitution concerning matters of urgency that compel the issuance of a Government Regulation in Lieu of Law. Such authority is given to the president to stipulate a Government Regulation in Lieu of Law (Perpu), the process is not like making a law. The most important thing in this determination, he continued that it is urgent and coercive as well as decisive.

"So, the Perpu is not made, but enacted. There are four cumulative non-alternative conditions that a state of emergency is in the highest interest of the state; the rules are absolute; The



Hakim Konstitusi Daniel Yusmic P. Foekh menjadi pemateri dalam Kuliah Umum yang diselenggarakan dalam rangka Dies Natalis ke-4 Universitas HKBP Nommensen Pematang Siantar, Sumatera Utara pada Sabtu (4/12/2021).



Ketua MK Anwar Usman menandatangani peluncuran dan bedah buku karya literasi civitas akademika Fakultas Hukum Universitas Andalas (FH Unand) diselenggarakan pada Kamis (9/12/2021)

regulation is temporary so it can't be applied indefinitely. Thus, the emergency law is temporary as well as the Perpu, in practice if the Perpu is approved by the House of Representatives, it can become law. The last condition is that when the emergency regulation is made, the House of Representative can't hold a session because of an emergency or recess," explained Daniel in opening the public lecture material.

In connection with this Government Regulation in Lieu of Law (Perpu) in Indonesia, it has also been reviewed at the Constitutional Court some time ago. In its Decision No. 37/PUU-XVIII/2020, the Constitutional Court stated that it had partially granted the request for a material review. The Constitutional Court stated that the phrase "not a loss to the state" in Article 27 paragraph (1) Attachment to Law Number 2 of 2020 is contrary to the 1945 Constitution and does not have conditionally binding legal force as long as it is not interpreted as "not a loss to the state as long as it is carried out in good faith and in accordance with with statutory regulations". The Constitutional Court also stated that the phrase "is not an object of a lawsuit that can be submitted to the state administrative court" in Article

27 paragraph (3) Attachment to Law Number 2 of 2020 which is contrary to the 1945 Constitution and does not have conditionally binding legal force. In addition, the Court also stated that Article 29 of the Attachment of Law Number 2 of 2020 was contrary to the 1945 Constitution and did not have conditionally binding legal force.

The Importance of Legal Literacy

The launch and book review of the Literacy of the Academic Community of the Faculty of Law, Andalas University (FH Unand) was held on Thursday (9/12/2021) at the Unand Convention Hall. This activity was a series of events in the context of 70 Years of FH Unand. Anwar emphasized that the process of education and literacy for students and the community should not stop because it is the key to success in building a nation and state. Education and literacy in the field of law will facilitate our path as a nation to create a just society in prosperity and prosperous in justice.

"Our efforts together with students and legal activists, both academics and practitioners, are actually a joint effort to build a better human

civilization. History has recorded and taught us a valuable lesson that the awareness to treat humans fairly through the law is an absolute must. The history of law can be said to be as old as the history of human civilization," said Anwar.

Save Legal Literacy in Indonesia

The Constitutional Court in collaboration with Ekasakti University (Unes) Padang held a "Book Review of the Constitutional Court" on Friday (12/17/2021). In this activity, Constitutional Justice Saldi Isra as the keynote speaker invited 50 participants in a limited discussion room on the 1st Floor of the Rectorate Meeting Building and 160 participants from the zoom meeting room to write in order to save the world of legal literacy in Indonesia.

"Writing correctly is hard to do, so what about legal literacy in the future? Therefore, all must be forced to write. No need to think about criticism, just write. The market response is another matter," said Saldi in the event which was also attended by the leadership of Ekasakti University Padang, including Otong Rosadi as Unes Chancellor, Agus Salim as Unes Vice-Chancellor I, Prima Novia as Unes Vice-Chancellor II, Mahmud as Vice-Chancellor III Unes, and Darmini Roza as the Dean of the Faculty of Law, Ekasakti University.

According to Saldi, good writing does not only inspire the writer himself but also must be able to give and channel enthusiasm to others. Therefore, the Constitutional Court tries to produce books from various parties within the Constitutional Court every year, starting from constitutional judges, researchers, and substitute clerks. Saldi continued it was carried out by the Court to make a real contribution to enriching legal literacy in Indonesia. Then Saldi

hopes that what the Constitutional Court does can also encourage many study institutions, research institutions, universities, and legal institutions to continue writing and channeling ideas and experiences in various fields.

Enrich Indonesian Legal Literacy

Constitutional Justice Saldi Isra was the keynote speaker in the “Book Review of the Constitutional Court” organized by the Constitutional Court (MK) in collaboration with the Muhammadiyah University of West Sumatra on Saturday (18/12/2021). The Rector of the Muhammadiyah University of West Sumatra Riki Saputra was present as book review speakers, including Wendra Yunaldi, Edi Askar, and MK Researcher Anna Triningsih as well as the deans, teaching lecturers, and students at the Yunahar Ilyas Conventions Hall Campus III, Muhammadiyah University of West Sumatra.

In his speech, Saldi said that in the duties and functions of the institution, the Constitutional Court must produce a Court Decision which is read out in an open session. Therefore, reading and writing become habits that the institution has built. Hence, on this auspicious occasion, he wants to transmit the spirit of the Constitutional Court to the campus environment.

“At least for the legal community, the more legal literacy that arises from legal experts, the better it will be for the growth and development of legal literacy in this country. Because, if we look at the existing literacy with such a vast Indonesian state, there are still too few things that are produced by legal experts. Therefore, we at the Constitutional Court take the initiative to write, read, and write because that is what can be produced,” explained Saldi.



Constitutional Justice Saldi Isra was the keynote speaker in the “Book Review of the Constitutional Court” organized by the Constitutional Court (MK) in collaboration with the Muhammadiyah University of West Sumatra on Saturday (18/12/2021).



Hakim Konstitusi Saldi Isra menjadi pembicara kunci dalam “Bedah Buku Mahkamah Konstitusi” yang diselenggarakan Mahkamah Konstitusi (MK) bekerja sama dengan Universitas Muhammadiyah Sumatera Barat pada Sabtu (18/12/2021).

Through this book review activity, Saldi hopes to be an encouragement and encouragement for many parties to produce books that can be read by people who are concerned about the field of law. At the end of his lecture, he hopes that in the future there will be books written by students and lecturers from the Muhammadiyah University of West Sumatra will appear. In addition, he also asked the university not to hesitate to allocate a certain amount of budget for the publication of books

from teachers who have completed their education. He is of the view that this can be a long-term investment. Because writing is actually to defend civilization. If it is not done, then the knowledge will die by itself.

First State Institution

The Constitutional Court (MK) became the first state institution visited by the Commander of the Indonesian National Armed Forces (TNI) Andika



Chief Justice of the Constitutional Court Anwar Usman when welcoming the arrival of the Commander of the Indonesian National Armed Forces (TNI) Andika Perkasa at the Constitutional Court Building, Tuesday (23/11). Photo: Constitutional Court Public Relation/Teguh

TNI Commander,” said Anwar in the Delegation Room of the Constitutional Court.

Solo Village Head Constitutional Speech Competition

Deputy Chief Justice of the Constitutional Court Aswanto said that the constitutional mandate states that the Indonesian state is a legal state as stated in Article 1 paragraph (3) of the 1945 Constitution. As a constitutional state based on the constitution, it has also been emphasized that sovereignty is in the hands of the people and is implemented based on the constitution.

This was conveyed by Deputy Chairperson of the Constitutional Court Aswanto in the opening ceremony of the Constitutional Speech Contest between Lurah and Village Heads throughout Greater Solo, on Thursday (2/12/2021). This activity is a collaboration between

Perkasa, Tuesday (11/23/2021). The TNI Commander and his entourage during his working visit to the Constitutional Court were greeted directly by the Chief Justice of the Constitutional Court Anwar Usman accompanied by MK Registrar Muhiddin, Young Clerk I MK Triyono Edy Budhiarto, Young Registrar III MK Ida Ria Tambunan, Plt. The Head of the Information and Communication Technology Center of the Constitutional Court Sigit Purnomo, and the Head of the Public Relations and Domestic Cooperation Section of the Constitutional Court Fajar Laksono.

At the beginning of the visit, the TNI (National Armed Forces) Commander and his entourage were invited to know more about the Constitutional Court. Starting from the Panel Meeting Room, Plenary Session Room, History and Constitution Center, to Constitutional Cinema. In the Plenary Session Room and the Constitutional Court Panel, the TNI Commander witnessed firsthand the court facilities in the MK Building. Then at the Center for the History and Constitution of the Constitutional Court, the group was invited to explore the history of the Indonesian constitution through a diorama guided by the Associate Librarian of the Constitutional Court Hanindyo.

Besides, the entourage held an audience in the Delegation Room of the Constitutional Court. During this visit, the Chief Justice of the Constitutional Court expressed an honor for the Constitutional Court as the first state institution visited by the TNI Commander after being officially inaugurated by President Joko Widodo on Wednesday (11/17/2021).

“We from the Constitutional Court have the honor of being the first institution visited in this task of the



Wakil Ketua MK Aswanto dalam acara pembukaan Lomba Pidato Konstitusi antar-Lurah dan Kepala Desa se-Solo Raya, pada Kamis (2/12/2021).



Wakil Ketua Mahkamah Konstitusi Aswanto menerima audiensi delegasi Lembaga Layanan Pendidikan Tinggi Wilayah IX (LLDikti Wilayah IX) pada Selasa (7/12/2021) di Gedung Mahkamah Konstitusi (MK).

the Constitutional Court (MK) and the Faculty of Law, Sebelas Maret University (FH UNS).

"Therefore, we should be able to understand the constitution well, especially for the village head who are the spearheads in providing services to the entire community," said Aswanto.

"When the village head serves the community, it must provide good service. Because all people have guaranteed their constitutional rights in the constitution, they must be treated well and humanely. This is important, because in theory, if these principles are not implemented, we are actually ignoring what the constitution has ordered," Aswanto said.

Keeping the Dignity of Judges

Deputy Chief Justice of the Constitutional Court Aswanto received an audience from the Regional IX Higher Education Service Institution (LLDikti Region IX) delegation on Tuesday (12/7/2021) at the Constitutional Court (MK) Building. Present among

the delegates were H.A. Muin Fahmal. At the beginning of the meeting, Aswanto explained, in 2017 the Court established the Honorary Court of the Constitutional Court (MKMK). The background to the formation of the MKMK is due to allegations of serious violations of the Code of Ethics and the Code of Conduct for Constitutional Judges. MKMK consists of Constitutional Justices, Judicial Commission, DPR, Government, Supreme Court. MKMK has the authority to dismiss one of the Constitutional Justices if he commits a serious violation.

Aswanto further said that Law no. 24 of 2003 and Law no. 8 of 2011 concerning the Constitutional Court mentions the existence of MKMK. The MKMK's working mechanism is to form a Constitutional Court Ethics Council whose daily life is in the Constitutional Court.

"The Ethics Council consists of former Constitutional Justices, community leaders, academics, one person each. I happened to be on the selection team for the first MK Ethics Council," added Aswanto.

Meanwhile, the Head of Public Relations and Domestic Cooperation of the Constitutional Court, Fajar Laksono Soeroso, who was present at the hearing, said that the Constitutional Court Law designed the MKMK. When there is a violation, a new MKMK is formed. Since then, the Constitutional Court has considered the need for an institution that is tasked with maintaining the honor of Constitutional Justices day per day, in this case, the Constitutional Court's Ethics Council.

"The Ethics Council is not a supervisor. The mindset is not to supervise Constitutional Justices, but to maintain the honor of Constitutional Justices, to maintain the nobility and dignity of Constitutional Justices. Because guarding and supervising are two different things. Constitutional judges do not need to be supervised, but instead guarded so they don't approach forbidden directions," said Fajar. ■

NUR R/LULU ANJARSARI P/SRI PUJIANTI/NANO
TRESNA ARFANA/UTAMI ARGAWATI/ILHAM WIRYADI/
BAMBANG PANJI ERAWAN



Mahkamah Konstitusi (MK) menggelar Anugerah Konstitusi X Tahun 2021 pada Senin (15/11/2021).

2021 CONSTITUTIONAL AWARDS AND DEBATES

10th Constitutional Award

The Constitutional Court (MK) held the 2021 Constitution Award on Monday (11/15/2021). Secretary-General of the Constitutional Court M. Guntur Hamzah opened this online event from the Constitutional Court Building, Jakarta. On that occasion, Guntur said that currently social changes were taking place and affecting many aspects of life. No exception, our understanding and the next generation of the nation's ideology of Pancasila. He continued, in the past, in the New Order era, with a variety of different social issues as well as the technological capacity that prevailed at that time, the cultivation of the noble values of Pancasila was carried out through Ekaprasetia Pancakarsa, better known as the Guidelines for the

Appreciation and Practice of Pancasila (P4). Provisions regarding P4 are contained in the Decree of the People's Consultative Assembly of the Republic of Indonesia Number II/MPR/1978 concerning Guidelines for the Live and Practice of Pancasila (Ekaprasetia Pancakarsa).

"The guidelines contained in the TAP MPR No. II/MPR/1978 have been declared invalid. In addition, the historical development of society has also undergone various fundamental changes that require novelty in the practice of Pancasila in state life," said Guntur.

Guntur stated it can't be denied that one of the spearheads for inculcating Pancasila values is the Pancasila and Citizenship Education (Civic) teachers in schools. The fate of the relevance and actualization of Pancasila in the future is determined by

how the future generations understand, internalize and love Pancasila. Civic teachers have a big responsibility in providing teaching Pancasila values that are interesting, fresh, and following the progress of the times.

Guntur emphasized that moments such as the Constitutional Award should be a great moment for the inception of ideas, thoughts, and innovations that refresh the deepening of Pancasila values. "Here, the Constitutional Court as a state institution that protects ideology and democracy, the guardian of ideology and democracy, supports all intellectual and organizational activities that lead to the re-actualization of Pancasila values. This has become a mandate for the Constitutional Court as a state institution authorized to uphold the values of Pancasila and constitutionalism in Indonesia," he explained.

Selection Interview

The selection for the interview stage of the 10th Constitution Award for Achievement Pancasila and Citizenship Education (Civic) teachers in 2021, entered the second day, Tuesday (16/11/2021). This online activity was held in collaboration with the Constitutional Court (MK) with the Ministry of Education, Culture, Research, and Technology (Kemendikbud-Ristek), and the Ministry of Religion (Kemenag). The participants of the X Constitution Award are the outstanding Civics Teachers in 2021 at the Elementary School/Madrasah Ibtidaiyah (SD/MI), Junior High School/Madrasah Tsanawiyah (SMP/MTs), and High School/Vocational High School/Madrasah Aliyah (SMA/Madrasah Aliyah) levels. SMK/MA), and Special Education Schools (SLB).

In today's interview stage, participants were divided into 3 classes. Each class contains 8 people, from SD/MI, SMP/MTs, and SMA/SMK/MA levels. While the selection of the interview stage for SLB participants was held the day before, Monday (11/15/2021). The participants presented the perspectives that had been prepared according to the theme determined by the committee. The theme of the activity is "Independent Learning based on Character Development in the context of Strengthening Pancasila and Constitutional Values during the Covid-19 Pandemic Period".

For the information, the Constitutional Award for Civics Teachers is a vehicle for competition between Civics Teachers in learning constitutional awareness. Constitutional awareness

education is a conscious and planned effort to create a learning atmosphere and learning process so that students and/or the community actively develop their potential. Thus, they have the abilities needed to become good citizens according to the rules of the state constitution, both as individuals, members of the community, as well as citizens. This activity is routinely carried out by the Court annually.

XIV Constitutional Debate

Secretary-General of the Constitutional Court (MK) M. Guntur Hamzah opened the XIV 2021 Inter-University Student Constitutional Debate Competition in Indonesia in 2021, on Wednesday (11/17/2021) at the Pancasila and Constitutional Education Center Building (Pusdik MK) Bogor, West Java. Guntur in his speech said that students are one of the stakeholders who receive special attention from the Constitutional Court. Youth and students are the continuations of the future relay that will determine the direction of this Republic. The role of youth and students is an inseparable part of the history of change in this country. Starting from the pre-independence era, preparation for independence and the reformation period, marked by the movements and thoughts of the youth affected every important historical event.

According to Guntur, the awareness of the importance of the role of the younger generation in determining the direction of the country in the future has made the Constitutional Court participate in efforts to increase students' understanding of Pancasila,

the Constitution, and the development of constitutional issues.

"After all, the enforcement of constitutional values can't be realized by relying solely on state institutions, but must also be supported by the spirit of citizens, in this case, students of the younger generation, in understanding and carrying out their rights and obligations," said Guntur offline at Constitutional Court Education Center.

The Debate Culture at Campus

Guntur hopes that college students can take lessons from activities such as this constitutional debate competition as a preparation to meet the dynamics of state administration in the future. In the future, when they become a new generation that takes part in various fields, both judicial, legislative, and executive, students will not stutter with criticism and debate. In addition, being able to distinguish constructive criticism from hate speech or personal attacks.

Guntur also hopes that this constitutional debate competition should not be seen as a routine competition. At least, after completing this competition, the students are getting used to dialectics, building logical arguments, looking at data and facts holistically, and in the end participating in coloring the quality of public discourse with quality constitutional narratives. Where everyone has the right to have an opinion and voice their criticism as long as they are rational with data and facts that can be accounted for. This culture is what the Constitutional Court is trying to encourage.

Elimination Stage

The XIV 2021 Inter-University Student Constitution Debate Competition in Indonesia enters the Preliminary Stage, Thursday (18/11/2021). The 24 teams were divided into “pro” teams and “con” teams. Each team, both pro, and con consisted of three people and was divided into four elimination sessions and judged by three judges. This series of preliminary student Constitutional Debate competitions will take place from today, Thursday, November 18, 2021 to Friday, November 19, 2021. The qualifying sessions to the semifinals would be held on a hybrid basis, where the debate participants take part virtually while the jury is present. directly at the Education Center of Pancasila and the Constitution, Cisarua, Bogor.

The 24 teams that passed the elimination stage were Airlangga University, Andalas University, Brawijaya University, Diponegoro University, Esa Unggul University, Gadjah Mada University, Hasanuddin University, Islamic University of Indonesia, UIN Sunan Kalijaga Yogyakarta, UIN Syarif Hidayatullah, Jember University, Khairun University, Muhammadiyah University of Malang, Padjajaran University, Pelita Harapan University, Raden Intan University Lampung, Riau University, Sebelas Maret University, North Sumatra University, Syiah Kuala University, Tanjungpura University, Tarumanagara University, Trunojoyo University and Udayana University.

As a form of appreciation for the best participants, the “Chairman of the

Constitutional Court” Rotating Trophy would be awarded to the Winner or 1st Winner of this constitutional debate competition. In addition, the Prizes for the National Stage Winners also consist of the Constitutional Court trophy for the I, II, III, and Best Speaker winners, medals for the I, II, III, IV, and Best Speaker winners, a total coaching fee of hundreds of millions of rupiah for all teams and certificates. tribute to the whole team.

Meanwhile, the Juries of this Constitutional Debate Competition are legal experts, academics, and practitioners from various leading universities in Indonesia. The jury will determine the debate competition with an objective assessment.

Final Round

Two teams qualified for the final round of the XIV Indonesian Inter-University Student Constitutional Debate Competition in 2021. After going through various stages, the University of North Sumatra (USU) and the University of Sebelas Maret (UNS) managed to outperform 22 other teams. Thus, they were entitled to advance to the final round. The notification about the two teams that are entitled to advance to the final round was delivered by the Chairman of the Constitutional Debate Jury, Bayu Dwi Anggono. Bayu who is also the Director of the Center for the Study of Pancasila and the Constitution, Faculty of Law, University of Jember, said that four teams (teams) had gone through the semifinal stage and the participants had given their best.

The Award

Chief Justice of the Constitutional Court (MK) Anwar Usman closed the 2021 X Constitution Award and XIV 2021 Indonesian Inter-University Student Constitutional Debate Competition, Thursday (25/11/2021) night in a hybrid manner in Jakarta. In this activity, Anwar said, the Constitutional Debate Competition for Inter-University Students in Indonesia is a routine event organized by the Constitutional Court. This activity is a place as well as a candradimuka crater for students who are interested in law and constitution to train critical skills and test their insight and knowledge about law and the constitution.

In addition to the Constitutional Debate Competition, the Constitutional Court also held a Constitutional Award for Achievement Civics Teachers in 2021. Anwar said that the awarding of the Constitutional Award for Civics Teachers was a form of appreciation and respect for the civic teachers for their dedication and real work in order to educate the nation’s children about the constitution. These awards and activities are important to carry out, considering that the constitution is the basic law that becomes the rules of the game in the state. Thus, as the basic law of the state, every citizen is obliged to know, understand, and implement it in their daily lives. Civic teachers have a role to lay the foundation of knowledge about the constitution to every child of the nation in their respective schools. ■

UTAMI ARGAWATI/NUR R



Mahkamah Konstitusi (MK) menggelar Rapat Kerja Pegawai dalam Rangka Peningkatan Kualitas Dukungan dan Penanganan Perkara dan Pengembangan Teknologi Peradilan Mahkamah Konstitusi, pada Kamis (25/11/2021) di Bogor.

CONSTITUTIONAL COURT WORKING MEETING 2021

Closing 2021, the Constitutional Court, both employees and constitutional judges, held a working meeting to evaluate work and reflect on performance for a better future.

Employee Work Meeting 2021

The Constitutional Court held an Employee Work Meeting in the Context of Improving the Quality of Support and Case Handling and Development of Judicial Technology of the Constitutional Court, on Thursday (11/25/2021) in Bogor. The working meeting was attended by 330 employees of the Constitutional Court. The first day of the first plenary meeting was filled with presentations by three resource persons from various agencies, namely Irfan Tanjung from Bappenas, Muhlis Irfan as Assistant KASN for Supervision of the Application of Region I Merit System, and Mila Hanifa from the Legal and Cooperation Bureau of the National Innovation Research Agency (BRIN).

The Livelihood of the Indonesian People

The powers of the Constitutional Court determined by the constitution are all related to the lives of the Indonesian people and nation. Therefore, the Constitutional Court is obliged to provide an opinion in its decision with a good understanding to all Indonesian people. This was conveyed by the Chief Justice of the Constitutional Court, Anwar Usman, when he officially opened the Work Meeting of the Registrar and the General Secretariat of the Constitutional Court 2021 on Friday (26/11/2021) in Bogor.

Anwar hopes that through the Working Meeting 2021, all elements of the Clerk's Office and the Secretariat

General of the Court will be able to work together and collaborate to make the Constitutional Court's institution more respected, admired, and trusted in its work in the future.

"Therefore, through the 2021 Working Meeting, we can discuss the improvement of facilities and infrastructure so that the Constitutional Court becomes an institution that physically supports its performance in the future. In addition, this Working Meeting can also be used as a means of evaluating the performance of the previous year and making strategies in preparing better work steps for the following year," said Anwar in the activity which was also attended by Secretary General of the Constitutional Court M. Guntur Hamzah and his colleagues, structural and functional officials of the Constitutional Court.

Information Technology Audit

Secretary-General of the Constitutional Court M. Guntur Hamzah in the activity report said, the Working Meeting (Raker) of the Registrar and the General Secretariat of the Constitutional



Ketua Mahkamah Konstitusi (MK) Anwar Usman menutup kegiatan Rapat Kerja Mahkamah Kontitusi 2021 yang berlangsung di Padang, Sumatera Barat, Jumat, (10/12/2021).

Court in 2021 was held in Bogor from Thursday, November 25, 2021, until Saturday, November 27, 2021. The working meeting was attended by 332 people consisting of Structural and Functional Officials as well as Employees in the Registrar's Office and the Secretariat General of the Constitutional Court. This year's Working Meeting took the theme, "Improving the Quality of Support for Case Handling and Development of Judicial Technology for the Constitutional Court". The choice of this theme is based on the implementation of the Constitutional Court's Mission and Vision.

Furthermore, Guntur briefly explained the background of the choice of the theme. The development of the Court's judicial technology is an effort to realize the Constitutional Court's vision, namely "Enforcing the Constitution through a modern and reliable Court". The modern term refers to two things. First, building a judiciary that uses Information, Communication, and Technology (ICT) with a high level of standardization in the settlement of cases. Second, developing the mindset of all Constitutional Court employees to always think ahead, be creative, and be innovative by presenting various solutions to always keep abreast of

developments and community needs, especially in the era of technology 5.0 as it is today. "To implement this, it is necessary to audit the information technology of the constitutional court and prepare a grand design of judicial technology at the Constitutional Court," added Guntur.

Employee Work Meeting Formulation Results

For three days, the employees of the Constitutional Court (MK) attended the Working Meeting (Raker) of the Registrar and the General Secretariat of the Constitutional Court in 2021. Several important things were formulated in the working meeting. Responding to this, Guntur stated the results of the formulation of the working meeting were a form of aspirations, ideas, thoughts, inputs, and positive work dynamics for the progress of the Constitutional Court in the future. The results of this working meeting, continued Guntur, would be reported to the Judges of the Constitutional Court to be used as material for the Judges' Working Meeting. "Hopefully this result will be noticed, a document will be made as material for the judges. Alhamdulillah,

with this, we officially close this work meeting," said Guntur, tapping the hammer three times to signify that the working meeting was closed.

Case Handling Evaluation Working Meeting

The need for the fulfillment of a sense of justice in society is always changing and developing. Under these conditions, the Constitutional Court institutionally must be dynamic and follow existing developments. This was conveyed by the Chairman of the Constitutional Court (MK) Anwar Usman at the opening of the 2021 Constitutional Judges' Working Meeting which took place in Padang, West Sumatra on Thursday (12/9/2021). This activity was attended by constitutional judges as well as structural and functional officials in the Registrar's Office and the Secretariat General of the Constitutional Court.

In the opening of the working meeting with the theme "Evaluating and improving the quality of handling cases of judicial review, SKLN, and other cases", Anwar said that in social science theory, there is no stagnant society.

According to him, society always moves dynamically following existing changes and developments. On the other hand, the law is often unable to reach these changes and developments because of its static nature.

Evaluation

Chairman of the Constitutional Court (MK) Anwar Usman closed the 2021 Constitutional Court Working Meeting which took place in Padang, West Sumatra, Friday, (12/10/2021). This activity was attended by structural and functional officials as well as employees in the Registrar's Office and the Secretariat General of the Constitutional Court. On that occasion, Anwar expressed his gratitude for the implementation of the 2021 Constitutional Court Working Meeting. This activity is a means to conduct self-evaluation. Hence, it can complete the constitutional responsibilities that have been mandated by the constitution. Anwar assessed that the completion of

such a huge responsibility can be realized due to good cooperation between all elements in the Constitutional Court.

Meanwhile, the Secretary-General of the Constitutional Court M. Guntur Hamzah, in his report stated that this meeting had succeeded in discussing strategic matters between the performance of the Registrar and the Secretariat General of the Constitutional Court, evaluating the handling of constitutional cases in 2021, Constitutional Court Regulation (PMK) on the authority of the Constitutional Court Honorary Council, and PMK on Disputes on the Authority of State Institutions, and other issues.

Guntur further said that the development of IT and the design of modern justice has brought positive and negative impacts. The positive impact of IT development is that it can improve the quality of remote trials, while the negative impact that arises is the rise of hate speech.

The Dynamic of Working Meeting

In this meeting, the big draft of what the Constitutional Court should conduct in terms of developing information and communication technology was also discussed. In addition, Guntur said, it is also necessary to synchronize between substitute clerks and researchers in order to strengthen services for constitutional judges. The second day of the Work Meeting 2021 was held with the agenda of hearing the views of the Constitutional Justices to discuss some important issues related to the duties and authorities of the Constitutional Court.

In the meeting, the constitutional judges needed a Constitutional Court Regulation that could support online hearings. In session 3, the meeting participants discussed some Constitutional Court Regulations governing the Honorary Council of the Constitutional Court and Disputes on the Authority of State Institutions. ■

SRI PUJIANTI/ILHAM WIRYADI/LULU ANJARSARI

P/NUR R





EFFORTS TO INCREASE PEOPLE'S CONSTITUTIONAL AWARENESS

As a guardian of the people's constitutional right, the Constitutional Court in its duties and functions continues to actively conduct socialization and discussions on various occasions, both online and offline with various parties. This activity is held in order to realize constitutional awareness. It is increasingly well understood for every social stratum of society in Indonesia. At the end of 2021, the constitutional judges will share knowledge about law, justice, constitution, and human rights through webinar classes that are attended by students, academics, and legal practitioners from various regions in Indonesia.

Law Drafting Character is Volunteer

The character of the judicial review is voluntary. It means that in the judicial review, there is Petitioner, but no Respondent. Meanwhile, the government and the House of Representatives act as information providers whose direct interests are only for constitutional judges. This

was conveyed by Constitutional Justice Suhartoyo in the Special Advocate Professional Education (PKPA) which was held virtually on Saturday (11/27/2021). This activity is a collaboration between the Constitutional Court and Peradi and the Military Law College (STHM).

Furthermore, Suhartoyo said, those who can file as Petitioners at the Constitutional Court trial are individual citizens, customary law community units, public or private

Constitutional Justice Suhartoyo in the Advocate Profession Special Education (PKPA) which was held in collaboration with the Constitutional Court) with Peradi and the Military Law College (STHM) virtually on Saturday (11/27/2021). Public Relations/Hendy.

legal entities, and state institutions. Suhartoyo also explained about the granting of power of attorney for the trial in the Constitutional Court. The Petitioner and/or Respondent may be accompanied or represented by a legal representative, while public or private legal entity may be accompanied by a proxy or appoint a proxy.

"The attorney in the Constitutional Court's hearing does not have to be an advocate. The essence is to provide convenience to access to justice for people who can't afford to pay an advocate, as long as the person concerned is well versed in the Constitutional Court's Procedural Law. In addition, in the Constitutional Court, it is known that there are assistants who understand the Procedural Law of the Constitutional Court, as long as they can

help the principal's interests by making a statement to the Constitutional Court," explained Suhartoyo, who also described the systematics of the petition consisting of the identity of the Petitioner, the Court's authority, legal position, *posita, petitum*. Applications for litigation to the Constitutional Court can be made offline or online.

Furthermore, Suhartoyo explained in detail the entire authority of the Constitutional Court. In judicial review of the law against the Constitution, there are two models or two objects of testing. First, formal law testing is related to the process of forming laws and other matters that do not include material examinations. Second, material testing is a judicial review of laws relating to the substance of laws that are considered contrary to the 1945 Constitution. (Nano Tresna Arfana/Lulu Anjarsari)

The Authority of Constitutional Court

Constitutional Justice Suhartoyo was a speaker in the Special Advocates

Professional Education (PKPA) Batch IV 2021 organized by DPN Peradi in collaboration with the Faculty of Law, Bangka Belitung University on Saturday (11/27/2021). In his presentation, Suhartoyo said that when the Constitutional Court conducted a judicial review of the law (PUU), its sphere of interest was more nuanced in the public interest. Thus, there are no private interests such as in deciding disputes between state institutions and political parties, as well as disputes over the results of general elections and regional heads.

"This has an inter-private nuance because the application can only be made by parties who feel that their interests have been harmed, such as with the General Election Commissions' decision in disputes over the results of general elections or regional head elections," explained Suhartoyo who explained the material from the Constitutional Court Building, Jakarta.

Besides, Suhartoyo discussed matters relating to the parties who could submit an application, namely individual citizens, customary community units,

public or private legal entities, and state institutions. In the judicial review submission, there are two contents that can be reviewed, such as formal and material tests. The formal testing relates to the process of forming a law, while in the material test relates to paragraphs, articles, and/or parts of a law. (Utami Argawati/Lulu Anjarsari P)

The Mechanism of Constitutional Court's Procedural Law

Constitutional Justice Daniel Yusmic P. Foekh was a speaker in the Special Education for the Advocate Profession (PKPA) organized by the DPC PERADI West Jakarta and Bhayangkara University, Jakarta on Saturday (11/27/2021). On this occasion, Daniel presented a material entitled "Procedural Law of the Constitutional Court" in front of the participants who listened to the material online.

Daniel explained the Constitutional Court's authority, especially in testing the law (PUU) during the pandemic in



Constitutional Justice Suhartoyo was a resource speaker in the Special Advocates Professional Education (PKPA) Batch IV 2021 organized by DPN Peradi in collaboration with the Faculty of Law, Bangka Belitung University on Saturday (27/11/2021). Public Relations/Hendy.

the 2020-2021 timeframe. Referring to the Constitutional Court's website, Daniel describes the case statistics and decisions that have been implemented by the Constitutional Court. On the Court's website, 171 cases have been registered and 160 Judicial Review cases have been decided. Meanwhile, concerning the Dispute on the Authority of State Institutions (SKLN), there are 3 registered cases with 1 case having been decided. As for the dispute over the results of the Regional Head Election, the Constitutional Court has completed the task of handling some 151 cases.

"Thus, in 2020 and 2021, the Constitutional Court has completed 312 cases, the recapitulation data was recorded as of November 22, 2021," said Daniel.

Furthermore, Daniel described the additional powers of the Constitutional Court, namely to examine Government Regulations in Lieu of Law (Perpu) and adjudicate disputes over regional head elections until the establishment of a special judicial body. In this one-hour

online lecture, Daniel also invited the participants to understand one by one the general aspects of the Constitutional Court's procedural law (Sri Pujianti/Nur R).

Constitutional Justice Wahiduddin Adams was the keynote speaker for the Webinar "Quo Vadis Amendment V of the 1945 Constitution: Pros and Cons of Discourse on PPHN Revitalization in the Indonesian State Administration System" on Tuesday (11/30/2021) online afternoon from the Constitutional Court (MK) Building. This activity was organized by the Center for Legal Studies and Consultation (PSKH) Faculty of Sharia and Law UIN Sunan Kalijaga Yogyakarta.

At the beginning of the webinar, Wahiduddin explained the constitution in several countries. For example, in the Irish constitution and the constitutions of many African countries, there are terms directive principles, fundamental principles, or simply called principles, which are usually followed by the words 'state policy' or 'social policy'.

"In general, the constitutions in

these countries regulate the principles in the policies that will be taken by the state. Directive principles can be translated as principles that contain directions or directions. Meanwhile, if directive principles are combined with the word state policy, the free translation can be interpreted as the direction of the state," explained Wahiduddin.

Yet, are the directive principles the same as the Outlines of State Policy (GBHN) that have been applied in Indonesia? The answer, Wahiduddin said, if we look at the mechanism for the arrangement, is not the same as that. This is because directive principles have been contained and elaborated in constitutional norms. While the GBHN is a legal product issued by the People's Consultative Assembly.

"Article 3 of the 1945 Constitution before the amendment stated that the People's Consultative Assembly had established the Constitution and the GBHN, but now there are none. The political and state administration system based on the 1945 Constitution



Constitutional Justice Wahiduddin Adams was the keynote speaker at the webinar event organized by the Center for Legal Studies and Consultations, Faculty of Sharia and Law, UIN Sunan Kalijaga Yogyakarta, Tuesday (11/30) at the Constitutional Court Building. Photo: Public Relations/Ifa.

before the amendment allowed the People's Consultative Assembly to grant authority in the form of GBHN to state institutions. Because the 1945 Constitution before the amendment, constructed the People's Consultative Assembly as the highest state institution and the President as the mandate of the People's Consultative Assembly," added Wahiduddin. (Nano Tresna Arfana/ Nur R)

Differences in the Constitutional Court's Procedural Law

Constitutional Justice Suhartoyo was a speaker at the Special Advocate Professional Education (PKPA) activity. This activity was organized by the Indonesian Advocates Association (Peradi) in collaboration with Pamulang University. In this activity, Suhartoyo presented material entitled "Procedural Law of the Constitutional Court" in front of PKPA participants online.

Suhartoyo said that the Constitutional Court's authority began with the mandate of Article 24C Paragraph (1) and Paragraph (2) of the 1945 Constitution which was delegated to Law 24/2003 Article 10 and Law 48/2009 Article 29 paragraph (1) and paragraph (2). Through this norm, the authority of the constitutional court is contained, namely to test laws against the Constitution, to decide on disputes over the constitutional authority of state institutions, to decide on the dissolution of political parties, and to decide on disputes over election results. In addition, the Constitutional Court is obliged to give a decision on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution.

Furthermore, Suhartoyo explained the judicial review (PUU) of the 1945 Constitution. Indonesian citizens who feel that their constitutional rights have been harmed by the enactment of a law and then submit a PUU application

to the Constitutional Court should first master the Constitutional Court's procedural law in PUU cases. "Within the authority of this PUU, the nature of the trial of the case is more nuanced in the absence of direct interest. Because there is a Petitioner in it but no Respondent," explained Suhartoyo.

Meanwhile, related to the authority of the Constitutional Court in deciding disputes over the constitutional authority of state institutions, deciding the dissolution of political parties, and deciding disputes over election results, Suhartoyo continued, there are parties with an interest in the case. In this hearing, a lot of debates were put forward by the parties to the dispute. (Utami Argawati/Lulu Anjarsari)

The Mechanism of Holding Procedural Law in Constitutional Court

One of the considerations for the establishment of the Constitutional



Hakim Konstitusi Suhartoyo menjadi narasumber pada kegiatan Pendidikan Khusus Profesi Advokat (PKPA).



Wakil Ketua MK Aswanto saat menyampaikan materi “Beracara di Mahkamah Konstitusi” dalam Pendidikan Khusus Profesi Advokat (PKPA) bagi Fakultas Hukum Universitas Sawerigading Makassar pada Minggu (5/12/2021)

Court is to correct legal products made by the government and the House of Representatives in formatting laws (UU). This was conveyed by Deputy Chairperson of the Constitutional Court Aswanto when delivering the material “Proceeding at the Constitutional Court” in the Special Advocate Profession Education (PKPA) for the Faculty of Law, Sawerigading University Makassar on Sunday (12/5/2021) virtually.

“Another consideration is who has the authority to dissolve a political party. That is the function of the Constitutional Court. Furthermore, if we look at the most strategic function of the Constitutional Court, it is the function to protect the constitutional rights of citizens in the constitution,” explained Aswanto.

Aswanto further said that the Constitutional Court is often referred to as The Guardian of the Constitution. Even the Constitutional Court also has a function as The Protection of Human Rights, the protector of human rights. It is also included as The Protection of Democracy. In addition, the Constitutional Court functions as the Final Interpreter of the Constitution. Aswanto also explained, Article 24

paragraph (1) of the 1945 Constitution before the amendment stated, “Judicial power is exercised by a Supreme Court and other judicial bodies according to law”. While paragraph (2), “The composition and powers of the judicial bodies are regulated by law”.

“This is the legal basis for establishing the Constitutional Court. Thus, in our legal politics, initially, judicial power was exercised by only one institution, namely the Supreme Court and the judiciary below it. However, after the amendment to the 1945 Constitution, an institution that was given the authority to enforce the law emerged again,” explained Aswanto.

The Authority of Constitutional Court

Constitutional Justice Daniel Yusmic P. Foekh was a speaker for the Education and Training of Prosecutors Formation (PPPJ) Batch LXXVIII 2021. This activity was organized by the Indonesian Attorney’s Training and Education Agency, on Tuesday (7/12/2021) online. In his presentation, Daniel said that the Constitutional Court (MK) was generated

in the reform era after the amendment to the 1945 Constitution. The existence of the Constitutional Court is explained in Article 24 paragraph (2) of the 1945 Constitution which states, “Judicial power is exercised by a Supreme Court and judicial bodies within the general court environment, the religious court environment, the military court environment, the state administrative court environment, and by a Constitutional Court.”

In addition, Daniel continued, in Article 2 of the Constitutional Court Law, it is explained that the Constitutional Court is one of the state institutions that exercise independent judicial power to administer justice to uphold law and justice.

Furthermore, Daniel mentioned the four powers of the Constitutional Court in Article 24C Paragraph (1) of the 1945 Constitution and one obligation of the Constitutional Court in Article 24C Paragraph (2) of the 1945 Constitution. Daniel also mentioned the authority of the Constitutional Court in the case of disputes over the determination of the final stage of the election results to be examined and tried by the Constitutional Court until the establishment of a special judicial body.



Hakim Konstitusi Daniel Yusmic P. Foekh menjadi narasumber Pendidikan dan Pelatihan Pembentukan Jaksa (PPPJ) Angkatan LXXVIII Tahun 2021. Kegiatan ini diselenggarakan oleh Badan Diklat Kejaksaan RI, pada Selasa (7/12/2021)

The Improvement of Constitutional Court's Procedural Law

Chairman of the Constitutional Court Anwar Usman was a speaker in a Public Lecture at the Faculty of Law, Kadiri Islamic University (Uniska) Kediri, East Java on Thursday (12/9/2021). In this virtual lecture, Anwar explained the material "Procedural Law of the Constitutional Court". Anwar said that in general the Constitutional Court's procedural law is regulated in the Constitutional Court Law (UU MK) and the arrangements are detailed in the Constitutional Court Regulation (PMK). Over time, the Constitutional Court's procedural law continues to adapt based on trial practices and decisions issued by the Constitutional Court. This development, Anwar said, is primarily to protect constitutional rights to citizens.

As an illustration, Anwar explained, when the Constitutional Court was first established and its existence was regulated in Law Number 24 of 2003 concerning the Constitutional Court, there was one norm of articles which stated that the laws that could be

applied for review to the Constitutional Court were laws that were enacted after the amendment to the 1945 Constitution in 1999. –2002. The provisions of this norm depart from a legal principle that the law must be prospective and not retroactive.

Furthermore, as a manifestation of the development of the Constitutional Court's procedural law, Anwar revealed the legal position of the Petitioners. Although Article 51 of the Constitutional Court Law has been regulated by a party with legal standing as the Petitioner in the case for judicial review of the Law, the development of the Petitioners' constitutional requirements is described in Article 51 of the Constitutional Court Law. Next, related to the format of the Constitutional Court's decision, especially the form of the Constitutional Court's decision, it consists of unacceptable, rejected, and granted.

Building Legal Argument

Constitutional Justices Saldi Isra and Enny Nurbaningsih were the discussants in the launch of the book "*Dasar-Dasar Hukum*" (legal basics) by Zainal Arifin Mochtar and Eddy O.S. Hiariej which was held in the Auditorium

of Building B, Faculty of Law, Gadjah Mada University. The two constitutional judges attended this activity online on Saturday (12/17/2021) from their respective residences.

In his response, Constitutional Justice Saldi Isra said the book written by these two legal experts became an important work as an inevitable necessity, especially for all parties concerned with legal science. Therefore, he believes that the books of these two authors are important for law students. Because, from Saldi's observation, the current student interest is decreasing to learn the basics of law. In addition, at this time, he also sees a tendency that the masters and doctoral students who are accepted at the law faculty on campus are not students who have the basic knowledge of undergraduate law in law.

"It can be imagined the interest in the basics of law is decreasing and later you can imagine how they build legal arguments, but they don't have the foundation to build their arguments. This book is a way for the new generation in the field of law to write down the basics of legal science with the choice of words and language



Ketua Mahkamah Konstitusi Anwar Usman menjadi pemateri dalam Kuliah Umum di Fakultas Hukum Universitas Islam Kediri (Uniska) Kediri, Jawa Timur pada Kamis (9/12/2021).

that adapts to the millennial needs of legal matters. Therefore, I welcome this book because not many legal people are willing to donate their time to write the basics of the law," said Saldi in the activity moderated by UGM Lecturer Sri Wiyanti Eddyono.

Meanwhile, Constitutional Justice Enny responded to the contents of the book which contains 120 principles in legal science considered to be manic and important in the basic theory of legal science. According to her, the two writers who are experts in criminal

and state law are considered quite good at writing. The reason is that the principles of criminal law written in this book will be useful for practitioners and legislators in formulating criminal cases.

With this book, Enny hopes that the legal field, starting from public and private law, will include specific divisions. Thus, she also supports other writers to be able to continue the work of these writers to be able to write down the principles used in the field of law, not only general but also specific and in-depth. Hence, the basics of legal

science related to the legal principles used in resolving various legal cases are increasingly enriched concretely by parties who truly understand the use of these various legal principles in a broad legal field. ■

SRI PUJIANI/LULU ANJARSARI P/NANO TRESNA
ARFANA/NUR R/UTAMI ARGAWATI





FOREIGN COOPERATION AGREEMENT

MKRI chairman Anwar Usman and Spanish Constitutional Court President Pedro Jose Gonzales – Trevijano Sanchez signed a memorandum of understanding on Wednesday (12/1/2021). Photo: Public Relations/NL.

Since August 2016, the Constitutional Court of the Republic of Indonesia has become the Permanent Secretariat of Planning and Coordination through amendments to the statutes of The Association of Asian Constitutional Courts and Equivalent Institution (AACC). The Constitutional Court in its duties and functions as an institution that oversees human rights continues to follow world developments in the struggle for the constitutional rights of citizens. At the end of 2021, the Constitutional Court made international visits to several countries to strengthen cooperation between world justice institutions.

Indonesia-Spain

Tolerance is one of the strengths of the Indonesian nation. This was conveyed by the Chief Justice of the Constitutional Court Anwar Usman when he visited the Embassy of the Republic of Indonesia for the Kingdom of Spain on Tuesday (30/11/2021) in Madrid, Spain. On that occasion, Anwar was welcomed directly by Ambassador Muhammad Najib, who had just been

inaugurated by President Joko Widodo at the end of last October. "For me, tolerance is one of the strengths of the Indonesian nation so that it can survive in the current challenging era," said Anwar.

In the discussion session held in the meeting room of the Indonesian Embassy, Anwar explained that in matters relating to the integrity, unity, and integrity of the nation, it is certainly

the duty of every citizen. In front of some audience, most of whom are Indonesian Embassy employees and members of the House of Representatives (DPR) delegation who are attending an interparliamentary conference in Madrid, Anwar added that with tolerance, Indonesia is closer to realizing social justice for all Indonesian people, as explicitly stated in the Constitution of the Republic of Indonesia (UUD 1945).

During this international visit, the Constitutional Court of the Republic of Indonesia (MKR) signed a memorandum of understanding with the Spanish Constitutional Court on Wednesday (12/1/2021). The signing of the memorandum of understanding was carried out in the Plenary Meeting Room of the Spanish Constitutional Court, *Sala de la Vista*. The cooperation agreement was signed by the Chairperson of the Indonesian Constitutional Court

Anwar Usman, the President of the Spanish Constitutional Court Pedro Jose Gonzales – Trevijano Sanchez, and the Secretary-General of the Spanish Constitutional Court Andres Guterrez Gil.

In the memorandum of understanding, both parties agreed to cooperate in several aspects. These aspects include the exchange of information in the field of constitutional law, exchange of decisions, institutional capacity building, professional courses, joint research, and holding conferences at the global level. The cooperation is valid for five years from the date of signing and can be extended for another five years.

In the signing ceremony of the memorandum of understanding, Trevijano Sanchez said that the cooperation with the Indonesian Constitutional Court was an honor for the Spanish Constitutional Court. Constitutional Court of Republic of Indonesia (MKRI) has a good reputation, not only at the Asian level but also at the global level. He stated that the MKRI's work at the World Conference

on Constitutional Justice (WCCJ) would be an important momentum for the development of constitutional law enforcement and world peace. "I will make sure that I and the Spanish Constitutional Court delegation will be present in Bali to support Indonesia in holding the congress," he added. (NL/ Lulu Anjarsari P)

Indonesia-Jordan

Judge Wahiduddin Adams together and Judge Suhartoyo led a delegation of the Constitutional Court of the Republic of Indonesia (MKRI) to hold a working visit to Amman, Jordan. Both are scheduled to meet with the Jordanian Constitutional Court President and several constitutional judges to discuss a memorandum of understanding for bilateral cooperation between the two institutions.

At the same time before the meeting with the Jordanian Constitutional Court, the Indonesian Embassy in Amman held an award ceremony for Jordanian businessmen who contributed to strengthening trade

relations between Indonesia and Jordan. Wahiduddin was asked to deliver a speech at the event.

In his speech, Wahiduddin emphasized the importance of close relations between the two countries that must be maintained properly. Jordan has a special place in the hearts of the Indonesian people. Jordan is a friend in ups and downs, especially concerning jointly fighting for the interests of the Palestinian people. Various cooperation concerning providing aid to the Palestinian people can enter through Jordan's door. Likewise in terms of trade relations, Indonesian products are also in great demand by the people of Jordan.

Furthermore, on this auspicious occasion, the presence of Constitutional Justices Wahiduddin Adams and Suhartoyo at the Jordanian Court follows up on the cooperation between the two institutions. This cooperation will be confirmed by signing a memorandum of understanding. Previously, the two institutions discussed the form of cooperation that would be included in the memorandum of understanding on



Constitutional Justices Wahiduddin Adams and Suhartoyo discussed the form of cooperation that would be included in a memorandum of understanding on Sunday (12/5/2021). Photo: Public Relations.



Sunday (12/5/2021). Present on the occasion, the Jordanian Constitutional Court was represented by 3 (three) constitutional judges, such as Tagreed Hikmat, Muhammad Al Dweib, and Fayez Hamarneh.

Starting the discussion, Wahiduddin congratulated the Jordanian Constitutional Court as a new member of the Association of Constitutional Courts and Asian equivalent judicial institutions (AACC). The entry of the Constitutional Court of Jordan into the AACC membership is the first Arab country to join the AACC. Arab countries, in particular, have previously formed a similar alliance with the AACC under the name of the United Arab Constitutional Court and Council (UACCC). However, membership in both UACCC and AACC which is open provides an opportunity for each member to join various fellowships of the same kind. The involvement of the Jordanian Constitutional Court in UACCC and AACC signifies his desire to participate in the association of the judicial community in the international arena.

Tagreed Hikmat as the host's representative, responded that the presence of the Indonesian Constitutional Court delegation was an honor in itself. In the context of the

age of the institution, the Jordanian Constitutional Court was inaugurated in 2012, younger than the Indonesian Constitutional Court.

"So, exchanging information and gaining experience are crucial for the Jordanian Constitutional Court to strengthen institutions in terms of implementing the authority of the judiciary as well as in terms of organizational administration management," added Hikmat. Wahiduddin Adams and Suhartoyo's arrival at the Jordanian Court was a golden opportunity to exchange ideas (BRD/Lulu Anjarsari P).

Indonesia – Portugal

In order to build cooperation as a modern judiciary, the Constitutional Court of the Republic of Indonesia (MKRI) cooperates with the Constitutional Court of Portugal (Tribunal Constitucional). The Clerk of the Constitutional Court Muhidin visited the Constitutional Court of Portugal to conduct a working visit on Friday (12/3/2021) to the Constitutional Court of Portugal which is located in Lisbon, Portugal.

On that occasion, Muhidin was accompanied by the Substitute Registrar

The Registrar of the Constitutional Court Muhidin visited the Constitutional Court of Portugal for a working visit on Friday (12/3/2021) to the Portuguese Constitutional Court located in Lisbon, Portugal. Photo: Public Relations/HA.

of the Constitutional Court Hani Adhani, Ajeng Widianty representing the Indonesian Embassy in Lisbon, and Aries Asriadi a representative from the Indonesian Ministry of Foreign Affairs. The working visit aimed to discuss cooperation in building a modern judiciary as well as sharing knowledge and experience on case management (sharing knowledge and experience) and the role of each institution in the international world.

In his presentation, Muhidin broadly conveyed the authority possessed by the Constitutional Court and the case management procedures at the Constitutional Court which currently use ICT optimally to accommodate all public complaints related to the unconstitutionality of norms in law testing. In addition, he also conveyed several decisions of the Constitutional Court which became landmarks related to the fundamental rights of citizens who were restored by the Constitutional Court. According to him, the MKRI is not only "the guardian of the constitution",

but also “the guardian of fundamental rights” as it has been done by the Constitutional Court of Portugal.

Meanwhile, the Registrar of Laws/Advisors for the Office of Judge Vasco Becker-Weinberg from the Constitutional Court of Portugal delivered a presentation related to the authority possessed by the Constitutional Court of Portugal. He explained, the authority of the Portuguese Constitutional Court is technically implemented in various authorities. These powers include a preliminary review of legislation, conducting an abstract review to cancel a law (abstract review of legislation) which has an *erga omnes* effect, and incidentally controls norms (incidental control of norms), especially in cases that have been decided by ordinary courts or appeals courts that are directly related to the unconstitutionality of norms.

According to Vasco Becker, the authority to examine norms against ordinary court decisions or appeal court decisions can be exercised by the public who can be represented by lawyers and can also be exercised by prosecutors. However, he continued, the submission is only related to the unconstitutionality of the norms contained in the decision which has the potential to violate the fundamental rights of citizens as regulated in the constitution. The authority of the Portuguese Constitutional Court is quite heavy due to a large number of incoming cases, especially those submitted by the public. Every year more than 1000 cases go to the Constitutional Court of Portugal which questions the unconstitutionality of norms in the decisions of various courts that have been decided by other courts in Portugal.

Another matter that was discussed was related to their respective roles in international relations between court institutions and associations or world courts and judges’ organizations. According to Muhidin, the

Constitutional Court has a significant role in managing the organization of the Asian Constitutional Court after the Constitutional Court became the Chair of the Asian Constitutional Court Association by holding various symposiums and international conferences by inviting the chairman and judges of the Constitutional Court throughout Asia and also holding short courses for students. Court staff throughout Asia to share knowledge and experience about the authority of each institution. In addition, according to Muhidin, Constitutional Court has also been appointed to be the representative bureau from Asia at the worldwide Constitutional Court meeting in Vilnius, Lithuania. Besides, MKRI will also hold the 5th WCCJ Congress with the topic “Constitutional Justice and Peace” which will be held on 4-8 October 2022 in Bali.

Meanwhile, according to the Chief of Staff to the President of the Portuguese Court of Justice, Barbara Churro, the Constitutional Court of Portugal also plays an active role in various international organizations such as the Venice Commission in international relations. Furthermore, the Constitutional Court of Portugal has always been an active participant in various international conference events such as the Conference of European Constitutional Courts, Quadrilateral Conference of the Constitutional Courts of Portugal, Spain, France, and Italy, World Conference on Constitutional Justice Conference of Constitutional Jurisdictions of the Portuguese-Speaking Countries and Ibero-American Conference on Constitutional Justice.

On the occasion of the meeting, Muhidin also conveyed a message and an official invitation from the Chief Justice of the Republic of Indonesia, Anwar Usman, to the Constitutional Court of Portugal, João Pedro Barrosa Caupers, to attend the WCCJ event which will be held in Bali in October 2022.

In addition, one of the state

institutions in Portugal that has extraordinary powers regulated in the Portuguese constitution is the Portuguese Constitutional Court (MK Portugal). The Constitutional Court of Portugal was inaugurated in 1982 and regulated in the Portuguese Constitution of 1976 which is a constitution that was generated during the Portuguese reform era. The main authority of the Portuguese Constitutional Court is to be the guardian of the fundamental rights of citizens as regulated in the Portuguese Constitution. (HA/Lulu Anjarsari P)

Indonesia-Turkey

The Constitution has distributed authority to several state institutions in a proportional and balanced manner to carry out their respective functions, including the Constitutional Court (MK) which carries out its judicial functions together with the Supreme Court (MA). This was conveyed by Constitutional Justice Arief Hidayat during a working visit to the Embassy of the Republic of Indonesia in Ankara, Turkey, on Friday (12/17/2021).

Arief added that each state organ is indeed different in carrying out its functions technically in the state. He conveyed that it must be remembered that all these institutions have a vision, mission, and goals as set out in the constitution, namely to create prosperity for all Indonesian people.

“In an ideal constitutional design, for example, the President wants to go north, but the House of Representatives wants to go south, and the Constitutional Court also has its desire to go west. This disharmony will actually be counterproductive to efforts to achieve a common goal,” said Arief in front of all the Indonesian Embassy staff present.

In the discussion session moderated by Minister-Counselor Dionnisius E. Swasono, Arief continued his explanation in the framework



Constitutional Justice Arief Hidayat and Chief Justice of the Turkish Constitutional Court Zuhtu Arslan discussed the CCJ-OIC draft statute in Ankara, Turkey, Friday (12/17) afternoon. Photo: Public Relations.

of that national goal, so that in law enforcement he also always looks at the objectives to be achieved through the law.

Discussing the Draft CCJ-OIC Statute

As part of the working committee of The Conference of Constitutional Jurisdiction of OIC Member/Observer States (CCJ-OIC), the Constitutional Court of the Republic of Indonesia (MKRI) conducted a working visit to the Turkish Constitutional Court (MK Turki). In this meeting, the MKRI delegation led by Constitutional Justice Arief Hidayat directly met the Chairman of the Turkish Constitutional Court Zuhtu Arslan on Friday (12/17/2021) in Turkey. In opening the meeting, Arief stated the purpose of his visit to discuss technical and substantive matters related to the implementation of the working committee as a follow-up to the Bandung declaration. In the meeting, the two agreed to propose a postponement of the implementation of the CCJ-OIC working committee activities which were original to be held in Islamabad, Pakistan, from December 22, 2021, to February 2022. Thus,

the implementation of the working committee can be attended directly by all members. Both the Constitutional Court and the Turkish Constitutional Court hope that with the postponement of the schedule, countries that were initially unable to attend such as Indonesia, Gambia and Algeria can participate in the meeting.

The discussion then continued with the agenda for discussing the draft CCJ-OIC statute. The Constitutional Court of Turkey stated that it had studied the draft statute submitted by the Constitutional Court and was very interested in the clause stating that the issue that must be faced together was related to Islamophobia. The Turkish Constitutional Court stated that the organization to be formed should be able to provide a positive perspective to the world to eliminate negative views about Islam. Therefore, the Turkish Constitutional Court strongly supports the idea presented by the Constitutional Court of the Republic of Indonesia.

Furthermore, the two sides also exchanged views on the plan to establish a permanent secretariat. Arief Hidayat said that as with the successful experience at AACC, the existence of the secretariat is still very

crucial because of the driving force of the organization. This was responded by the Turkish Constitutional Court. They stated that related to this permanent secretariat, it was necessary to agree on an official forum by all members. According to Zuhtu Arslan, there may be several alternative models that can be taken, between a permanent secretariat or a rotating secretariat alternately. This needs to be discussed in the working committee meeting in order to obtain satisfactory results for all members. Zuhtu emphasized that the Constitutional Court of the Republic of Indonesia and the Turkish Constitutional Court must work hand in hand in raising this organization. "I think the collaboration between the Indonesian Constitutional Court and the Turkish Constitutional Court is very significant in various international organizations such as the AACC, it can continue at the CCJ-OIC," he said. (RHP/NL/ Lulu Anjarsari P)

Indonesia – Uzbeistan

Based on Article 24C of the 1945 Constitution, the Constitutional Court of the Republic of Indonesia (MKRI) has the authority to adjudicate at the first and final levels whose decisions are final to examine laws (UU) against the 1945 Constitution (UUD 1945). This was conveyed by Deputy Chief Justice of the Constitutional Court Aswanto who was accompanied by Constitutional Justice Daniel Yusmic, in a meeting with the Indonesian Embassy for the Republic of Uzbekistan on Saturday (12/18/2021), in Tashkent, Uzbekistan.

Aswanto continued that the Constitutional Court also has the authority to decide disputes over the authority of state institutions whose authority is granted by the 1945 Constitution. Another authority, he continued, is the authority to decide on the dissolution of political parties. "Until now, this authority has never been exercised by the Constitutional Court. This is because there has never been an application for the dissolution of a political party that has been submitted to the Constitutional Court," explained Aswanto.

Besides the authority to dissolve political parties, the Constitutional Court also has the authority to decide disputes regarding the results of the general election, both for the election of members of the legislature (House of Representative, Regional Representative Council, Provincial Regional People's Representative Assembly, and Regency/Municipal Regional People's Representative Assembly), as well as the presidential election. Aswanto explained that several times in the presidential election, candidates who were declared defeated by the General Election Commissions submitted applications to the Constitutional Court. "As in the first period President Joko Widodo also passed the Constitutional Court, as well as in the second period," he said.

In addition, the Constitutional Court also has one obligation. It is to give a decision on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the 1945 Constitution. Until now, this obligation has never been carried out by the Constitutional Court.

On that occasion, Aswanto also explained that the Constitutional

Court had one additional task, namely resolving disputes over the results of regional head elections (pilkada). This additional task, according to him, makes constitutional judges have to be extra careful when visiting the regions because almost all regional elections are disputed to the Constitutional Court.

Closing his short lecture, Aswanto conveyed a warm greeting from the Chief Justice of the Constitutional Court, Anwar Usman, to all those present on the occasion. "With prayers that we all always be given health," he concluded.

Aswanto and Daniel Yusmic conducted a working visit to attend the invitation to a bilateral meeting and judicial dialogue held by The Constitutional Court of the Republic of Uzbekistan. During the meeting, Rofita (Minister Counselor for Political Affairs) representing the Indonesian Ambassador to Uzbekistan accompanied by some Indonesian Embassy staff expressed enthusiasm and a warm welcome for Aswanto and Daniel Yusmic's working visit to Uzbekistan. Rofita hopes that this working visit will also strengthen relations between the two countries. ■

ABDUL GHOFFAR/LULU ANJARSARI P



Wakil Ketua MK Aswanto dan Hakim Konstitusi Daniel Yusmic didampingi oleh Minister Counselor Kedubes RI untuk Uzbekistan, Rofita, dalam pertemuan ramah tamah dengan Wakil Ketua MK Uzbekistan Askar Gafurov, di Tashkent, Uzbekistan pada Sabtu (18/12) siang. Foto: Humas.



CONSTITUTIONAL COURT INSPECTORATE REACHING SIKD AWARD TWICE IN A ROW

INSPECTORATE The Constitutional Court (MK) twice in a row occupied the first position as the work unit with the fastest performance response in October and November 2021. For this achievement, the Inspectorate again won the SIKD Award while being able to maintain this rotating trophy

without moving to another work unit. The giving of the SIKD Award took place on Wednesday (12/1/2021) at the Constitutional Court Building which was witnessed by the Secretary-General of the Constitutional Court M. Guntur Hamzah, Inspector of the Constitutional Court Budi Achmad Djohari and a number of other officials. Secretary General of the Constitutional Court M. Guntur Hamzah congratulated the Inspectorate of the Constitutional Court for successfully occupying the first position. At the end of December 2021, a permanent trophy holder (SIKD Award) will be determined.

For information, SIKD was generated starting with the idea of an archive fast and easy management to find if needed by the leadership of an institution and the general public. The existence of SIKD aims to minimize the existence of archives that are still managed manually. Thus, it becomes difficult to find when needed and even archives are lost. This is considered a constraint that burdens the work of an organization.

The main purpose of using the SIKD application is to provide archiving services that are easy, fast, effective, and efficient. The Registrar and the Secretariat General of the Constitutional Court felt a significant change after using the SIKD application in archive management. For example, the use of paper and printer ink has been drastically reduced (less paper) and the impact is reducing the storage space for paper archives so that they are more efficient, the speed of service delivery is more effective, and in terms of data security is safer. (Nano Tresna Arfana/Nur R.)

CONSTITUTIONAL COURT HELD COMPETENCE AND POTENTIAL ASSESSMENT ACTIVITIES FOR EMPLOYEES

"TO OBTAIN the right State Civil Apparatus and according to its competence, it is necessary to carry out a competency assessment, namely seeing a person's ability from a position with the competencies possessed are measured through the talent assessment method," said Head of the Human Resources Development Subdivision of the Constitutional Court Andi Hakim.

Assessment of potential and competence is also one of the strategic

steps for the Constitutional Court to develop State Civil Apparatus profiles by providing data and State Civil Apparatus profiles through an objective and transparent assessment mechanism while still prioritizing integrity.

Furthermore, Andi explained the elements of potential assessment

consisting of potential and competencies which include leadership, integrity, cooperation, communication, results in orientation, public services, self-development of others, development, managing change, decision making, national adhesive, quality commitment. (Nano Tresna Arfana/Lulu Anjarsari P)





AS THE RESPONSIBILITY, CONSTITUTIONAL COURT'S RESEARCHERS SUBMIT RESEARCH RESULTS 2021

ALTHOUGH there were many challenges faced by researchers, the responsibility to complete the research and its results must continue to be pursued according to the schedule that has been determined so as not to be legally flawed. Thus, it contains optimal accountability and

credibility of the Constitutional Court as an institution with good weight in its performance. This was conveyed by the Secretary-General of the Constitutional Court M. Guntur Hamzah when opening the activity which was attended by Constitutional Court's researchers in the "Seminar on Constitutional Research Results Law" on Tuesday (7/12/2021).

"It is expected that the Constitutional Court can continue to partner with various groups to build an academic atmosphere and digital culture so that everything takes place in a transparent and accountable manner to see the Constitutional Court. In

addition to the public's acceptance of the decision, the Constitutional Court is also expected to be trusted by the work of its research and other Constitutional Court products that can benefit the community," explained Guntur in the event which was also attended by online participants from their respective workspaces.

The seminar on research results was the final stage of research carried out by the Constitutional Court researchers throughout 2021. Related to this, on Tuesday – Wednesday (7-8/12/2021), the eleven research groups presented their research results in front of the speakers, including Secretary-General of the Constitutional Court M. Guntur Hamzah, Lecturer of the Faculty of Law of Gadjah Mada University Heribertus Jaka Triyana, and Lecturer of the Faculty of Law of Brawijaya University Dhiana Puspitawati. A number of senior MK researchers were also present, namely Pan Mohamad Faiz, Helmi Kasim, Mohammad Mahrus Ali, and Irfan Nur Rachman. (Sri Pujianti/Lulu Anjarsari P)

CONSTITUTIONAL COURT ACCEPT LABOR REPRESENTATIVE AUDIENCE REGARDING THE JURISDICTION OF JOB CREATION LAW

THE CONSTITUTIONAL Court received an audience of workers' representatives who wanted to submit a letter related to the Constitutional Court's Decision Number 91/PUU-XVIII/2020 regarding the formal review of the Job Creation

Law. In the meeting which took place on Wednesday (12/8/2021), the Constitutional Court was represented by the Head of the Public Relations and Protocol Bureau Heru Setiawan accompanied by the Head of Public Relations and Domestic Cooperation Fajar Laksono.

During the hearing that took place in Building 2 of the Constitutional Court, Heru received the letter that the workers wanted to convey. He said that the Constitutional Court only facilitated the hearing of the workers and would deliver a letter from the workers to the leadership of the Constitutional Court.

"We guarantee that we facilitate as expected to the Constitutional Court. Yet, in this forum, we are given the mandate to only provide the best service for you concerning your presence in the Constitutional Court," said Heru in front of the President of the Confederation of Indonesian Trade Unions (KSPI) Said Iqbal, the President of the Confederation of All Indonesian Trade Unions (KSPSI) Andi Gani, along with some representatives of labor groups.

Meanwhile, Andi Gani represented the workers conveyed the many interpretations given by experts regarding Decision Number 91/PUU-XVIII/2020 stating that the Job Creation Law was no longer valid. He hopes that the Constitutional Court can explain the decision on the Job Creation Law so that this interpretation does not backfire in the community. "We just want to ask for an explanation regarding the Constitutional Court's decision so that it doesn't have multiple interpretations," said Andi Gani explaining the purpose of the letter. (Utami Argawati/Lulu Anjarsari P)





THE CONSTITUTIONAL COURT'S INFORMATION AND COMMUNICATION TECHNOLOGY CENTER ACHIEVED THE

CORRUPTION-FREE AREA PREDICATE IN 2021

THE INFORMATION and Communication Technology Center of the Constitutional Court (PUSTIK MK) won the Predicate of corruption-free Region (WBK) which was announced at the Appreciation and Awarding event for the Integrity Zone

Towards WBK/WBBM 2021 organized by the Ministry of Administrative Reform and Bureaucratic Reform (PANRB) in hybrid on Monday (12/20/2021).

In addition to the Constitutional Court, around 500 more work units from state institutions, ministries, local governments received the Predicate of a Corruption-Free Region (WBK) and a Clean and Serving Bureaucratic Area (WBBM) in 2021. Appreciation and Awarding of the Integrity Zone towards WBK/WBBM in 2021 were handed over by PANRB Minister Tjahjo Kumolo. This activity is part of a series of commemorations of World Anti-Corruption Day. The activity of handing over the WBK/WBBM predicate is also the final part of a series of evaluation processes for the development of the integrity zone towards WBK/WBBM. (Nano Tresna Arfana/Lulu Anjarsari P)

THE IMPORTANCE OF THE DECISION OF THE CONSTITUTIONAL COURT IN THE ESTABLISHMENT OF THE LAW

SECRETARY GENERAL OF THE CONSTITUTIONAL COURT M. Guntur Hamzah expressed his appreciation for the efforts and efforts of the House of Representatives in preparing for the discussion and establishment of the Wiretapping Law. This was conveyed by Guntur when he was a resource person for the FGD "The Urgency of the Wiretapping Bill in the Due Process of Law Principle-Based Law Enforcement System" which was held by Commission III of the House of Representatives on Wednesday afternoon (12/15/2021) at the Ritz Carlton Hotel, Jakarta. "We give our highest appreciation for the efforts and efforts of the DPR in preparing for the discussion and the establishment of the Wiretapping Law," said Guntur.



According to Guntur, the House of Representative's efforts to enact a Wiretapping Law are highly in line with the Constitutional Court's decision which mandates that legislators immediately form a comprehensive Wiretapping Law in one law. In the FGD, Guntur explained the material "Authorities and Regulations of Wiretapping following the Constitution and Human Rights".

In his presentation, Guntur mentioned some decisions on cases of judicial review at the Constitutional Court regarding provisions regarding wiretapping. Guntur conveyed that so far, there have been 5 (five)

Constitutional Court decisions related to wiretapping provisions. Of the five decisions, Guntur continued, only the decisions in the case for testing the ITE Law were granted, namely in Decision Number 5/PUUVIII/2010 and Case Number 20/PUUXIV/2016. In his presentation, Guntur also said that wiretapping was a violation of privacy rights which contradicted the constitution. Furthermore, Guntur detailed the signs for limiting human rights which were linked to the discussion of the Wiretapping Bill. (FLS/Lulu Anjarsari P)



THE CONSTITUTIONAL COURT LEARNED THE IMPORTANCE OF ARTIFICIAL INTELLIGENCE IN JUDICIAL INSTITUTIONS

THE USE of artificial intelligence (AI) can help the performance of employees as a form of technological progress. This was conveyed by the Secretary-General of the Constitutional Court M. Guntur

Hamzah when opening the workshop on Artificial Intelligence, Internet of Things, and Cyber Security at the Judiciary which was held on Friday (12/17/2021) afternoon in Bekasi.

In his speech, Guntur said that ICT is not only an abbreviation of information communication and technology (ICT) or information technology and communication, but also integrity, cleanliness, and trustworthiness. AI and the internet of things to attack, while cybersecurity is important to put the brakes on.

“So, we can anticipate that cyber-attacks will not occur. But we don’t need to feel haunted by cybersecurity because where there is an advanced technology, there is always a dangerous aspect to it. But if we don’t think about the risk, we don’t move forward. The main thing is that we go first. If there is a risk,” explained Guntur.

Furthermore, Guntur said that when talking about ICT, employees must eliminate the thought of working with paper. With the advancement of technology, it is expected that work no longer needs paper (paperless). This can be realized through the transformation of digital culture. One of them is the application of ETERNAL. ETERNAL itself is divided into two, namely the Judiciary Administration System (JAS) and the General Administration System (GAS). “Both must be built with digital culture. Both must run simultaneously, so JAS and GAS will be easy to do,” said Guntur. (LA/Lulu Anjarsari P)

THE IMPORTANCE OF ESTABLISHING CSIRT FOR CYBER INCIDENTS ANTICIPATION

THE ESTABLISHMENT of a Computer Security Incident Response Team (CSIRT) is needed because cyber incidents in government institutions are getting higher. This was conveyed by the First Sandiman at the Directorate of Cyber Security and Passwords of the Central Government of the National Cyber and Crypto Agency (BSSN) Desi Wulandari who was a resource person on the second day of the Artificial Intelligence, Internet of Things, and Cybersecurity workshop at the Judiciary which was held on Saturday (12/18/2021) afternoon in Bekasi.

Desi continued that CSIRT is an organization or team that is responsible for receiving, reviewing, and responding



to reports and activities of cybersecurity incidents. This team is formed to conduct comprehensive investigations and protect systems or data for cybersecurity incidents that occurred in the organization.

In her presentation, Desi added that CSIRT started its history in Indonesia starting with the formation of ID CERT in 1998 which was tasked with technical coordination for the community and the public. In 2007, Id-SIRTII/CC was inaugurated by

the Ministry of Communication and Informatics. Gov-CSIRT was officially launched by the National Cyber and Crypto Agency (BSSN) in 2019. CSIRT works by carrying out reactive functions as well as a combination of reactive and proactive which aims to help protect and secure critical assets of Organizations and Constituents. “Thus, it is expected that the Constitutional Court can form a CSIRT in 2022,” he said. (LA/Lulu Anjarsari P).

STANDAR PELAYANAN PENGAJUAN PERMOHONAN SECARA LURING (OFFLINE)

1 PERSYARATAN LAYANAN

A. Pengajuan Permohonan

Pemohon mengajukan sebanyak 1 (satu) eksemplar:

1. Permohonan;
2. Fotokopi Identitas Pemohon;
3. Daftar Alat Bukti;
4. Alat Bukti;
5. Softcopy Permohonan (doc. dan pdf.), Daftar Alat Bukti (doc. dan pdf.), dan Alat Bukti.
6. Fotokopi Identitas Kuasa Hukum bagi kuasa hukum;
7. Surat kuasa khusus bagi kuasa hukum; dan/atau
8. Anggaran dasar atau anggaran rumah tangga bagi badan hukum publik atau badan hukum privat.

B. Perbaikan Permohonan

Apabila Permohonan dinyatakan belum lengkap, Pemohon dapat memperbaiki dan/atau melengkapi Permohonan paling lama 7 (tujuh) hari kerja sejak diterimanya Akta Pemberitahuan Kekuranglengkapan Berkas Permohonan (APKBP).

2 SISTEM, MEKANISME DAN PROSEDUR

1. Penerimaan berkas permohonan
 - a. Kepaniteraan mencatat Permohonan dalam Buku Pengajuan Permohonan Pemohon Elektronik (e-BP3).
 - b. Panitera menerbitkan Akta Pengajuan Permohonan Pemohon (AP3) terhadap Permohonan yang telah dicatat dalam e-BP3.
2. Apabila Permohonan dinyatakan belum lengkap, Kepaniteraan menerbitkan dan menyampaikan APKBP kepada Pemohon atau kuasa hukum.
3. Pencatatan Permohonan dalam Buku Registrasi Perkara Konstitusi Elektronik (e-BRPK):
 - a. Apabila Permohonan dinyatakan lengkap setelah dilakukan pemeriksaan kelengkapan berkas Permohonan, Kepaniteraan mencatat Permohonan dalam e-BRPK paling lama 2 (dua) hari kerja sejak diterbitkannya AP3.
 - b. Apabila Permohonan dinyatakan belum lengkap setelah dilakukan pemeriksaan kelengkapan berkas Permohonan, Kepaniteraan mencatat Permohonan dalam e-BRPK paling lama 9 (sembilan) hari kerja sejak diterbitkannya AP3.
4. Kepaniteraan menerbitkan Akta Registrasi Perkara Konstitusi (ARPK) setelah Permohonan dicatat dalam e-BRPK.
5. Pemuatan Permohonan dalam Laman Mahkamah Konstitusi
 - a. Kepaniteraan mengunggah Permohonan yang telah dicatat dalam e-BP3 pada Laman Mahkamah;
 - b. Kepaniteraan mengunggah Permohonan yang telah dicatat dalam e-BRPK pada Laman Mahkamah.

3 JANGKA PENYELESAIAN

1. AP3 disampaikan kepada Pemohon atau kuasa hukum paling lama 2 (dua) hari kerja setelah Permohonan dicatat dalam e-BP3.
2. APKBP disampaikan kepada Pemohon atau kuasa hukum paling lama 2 (dua) hari kerja setelah diterbitkannya AP3;
3. ARPK disampaikan kepada Pemohon atau kuasa hukum paling lama 3 (tiga) hari kerja sejak Permohonan dicatat dalam e-BRPK.
4. Permohonan dimuat dalam Laman Mahkamah Konstitusi paling lama 2 (dua) hari kerja sejak Permohonan dicatat dalam e-BP3.
5. Permohonan dimuat dalam Laman Mahkamah Konstitusi paling lama 2 (dua) hari kerja sejak Permohonan dicatat dalam e-BRPK.

4 BIAYA TARIF

Tidak ada biaya.



5 PRODUK LAYANAN

- a. AP3;
- b. APKBP;
- c. ARPK;
- d. Tanda Terima;
- e. Pemuatan Permohonan dalam laman Mahkamah Konstitusi.

6 SARANA DAN PRASARANA/FASILITAS

1. Lemari penyimpanan berkas;
2. Meja Permohonan;
3. Komputer;
4. Printer;
5. Stempel;
6. Scanner;
7. Mesin Fotokopi;
8. Aplikasi Sistem Informasi Manajemen Penanganan Perkara (SIMPP);
9. Aplikasi Sistem Informasi Permohonan Elektronik (SIMPEL);
10. Pojok Digital.



KOMPETENSI PELAKSANA

1. Pelaksana memahami hukum acara penanganan perkara konstitusi.
2. Pelaksana memiliki kemampuan berkomunikasi.
3. Pelaksana dapat menjalankan sistem atau aplikasi yang berhubungan dengan proses penerimaan permohonan.
4. Pelaksana memahami peraturan perundang-undangan yang berlaku.

8 PENGAWASAN INTERNAL

1. Kepala Subbagian Pelayanan Teknis Persidangan
2. Kepala Bagian Fasilitas dan Pelayanan Teknis Persidangan
3. Kepala Biro Hukum dan Administrasi Kepaniteraan
4. Panitera Muda
5. Panitera

PENANGANAN PENGADUAN, SARAN DAN MASUKAN

- a. Melalui kotak saran;
- b. Melalui laman MK.



10 JUMLAH PELAKSANA

4 orang

11 JAMINAN PELAYANAN

Pemuatan dokumen permohonan ke dalam laman Mahkamah Konstitusi.



12 JAMINAN KEAMANAN, KESELAMATAN PELAYANAN

1. Bebas biaya
2. Bebas KKN



EVALUASI KINERJA PELAKSANA

1. Evaluasi tiap 3 bulan sekali
2. Pengisian kuesioner layanan 1 tahun sekali

MASA BERLAKU IZIN

Tidak ada

13

15 WAKTU PELAYANAN

- | Senin-Kamis: 08.00 – 15.00 WIB (istirahat pukul 12.00 – 13.00).
- | Jumat: 08.00 – 15.00 WIB (istirahat pukul 11.30 – 13.00).



THE THOUGH FROM HATTA MENDAYUNG ANTARA DUA KARANG

"I'm willing to go to prison as long as I'm with books because I'm free with them."
-Moh. Hatta

By: **Ardiansyah Salim**

*The Head of Sub Division of Program and Evaluation of
Pancasila and Constitutional Education Center*

While reading the classic book *Mendayung Antara Dua Karang* by Mohammad Hatta, it seems that it brings us back to the former glory days of the Indonesian people for dynamic Indonesian politics, but with a firm stance. The consistency of thoughts conveyed by Mohammad Hatta how Indonesia in the past, present, until a thousand years from now Indonesia will continue to uphold the principle of impartiality and maintain relations with any party, as long as it has a positive impact on the progress and ideals of the nation, which is included in the Preamble to the 1945 Constitution. The success of Indonesia being led by various leaders, from the president to the prime minister, is proof that Indonesia is not taboo in finding the right formulation for its government system. Perhaps, Indonesia's current success, which is lined up as the presidency of the G-20 countries, is the result of the hard work and traces of the nation's founders and previous leaders who were inspired by the thoughts conveyed by Mohammad Hatta in front of the Central Indonesian National Committee (KNIP, the forerunner of the Indonesian Parliament).

In his the introduction of his book *Mendayung Antara Dua Karang*, Dr. Mohammad Hatta said that this book is a collection of speeches by Mohammad Hatta in September 1948 as Vice President concurrently prime minister and ad interim Minister of Defense at the time who provided information to the KNIP Working Body. Hatta's views and concepts ranging from foreign policy, land policy, economic problems, labor, health, and

others are clearly summarized in how a visionary Hatta conveyed concrete steps in overcoming the problems of newly independent Indonesia. In delivering his statement before the KNIP Working Body, Hatta conveyed the problems faced by the government at that time regarding the situation and condition of Indonesia which was facing high inflation, the widespread circulation of counterfeit currency, the failure of three-party negotiations between Indonesia and the Netherlands which was attended by the Third Commission. The State (KTN, related to KTN can be seen in the August 2021 issue of Constitution Magazine) because the Netherlands rejected the proposal of Critchley-Du Bois, namely Thomas Critchley and Court Du Bois, two representatives of the delegation from the US representative who gave compromise proposals regarding the Renville negotiations. In addition, the Indonesian government was also faced with increasingly intense actions from the FDR (People's Democracy Front) led by Muso.

Indonesia faced the problem of the high number of members of the Indonesian Armed Forces (TNI) which at that time numbered 463,000 people who could not be financed by the state which were facing financial difficulties. Hatta also explained the difficulties in transferring members of the armed forces to other professions. Therefore, regarding these problems, Mohammad Hatta conveyed several solutions, as follow:

1. Deducting currency values, for example in the Rp. 500,- into a fraction of Rp. 50,- to prevent high inflation and circulation of counterfeit currency;

2. Reducing state expenditures;



BOOK TITLE

MENDAYUNG ANTARA DUA KARANG

By: Mohammad Hatta

Page: 104

Publisher: Bulan Bintang

Publication Year: 1976

3. Enlarging tax entry;

4. Enlarge production;

To solve the problem of the high number of members of the Armed Forces, Hatta proposed a 'rationalization' of too many members, by spreading these members to other professions. This rationalization means reorganizing the number of members of the army and prioritizing the concept of people's defense. This means that the responsibility to defend and maintain the national defense is the responsibility of all

Indonesian people without exception.

Hatta also proposed distribution of land for members of the army who were affected by this rationalization as well as an even distribution of the population, where according to Hatta there was still a lot of lands available on the island of Sumatra and other islands. It was where the concept of transmigration was introduced by Hatta (page 36). Because for Hatta, the land is one of the most important factors of production. It is necessary to regulate the distribution of land in the community so that there is no control over land by a certain group or a handful of people.

In his speech, Hatta also highlighted the issue of labor. He was very concerned about the welfare of workers, long before the hustle and bustle of the regional minimum wage (UMR) were introduced. For Hatta, social security (*sociale zekerheid*) is not only for the workers but also for the Indonesian people as a whole. Hatta's dream about this social safety net was only realized a few decades later through The Workers Social Security Agency and Health Care and Social Security Agency.

Regarding an impartial foreign policy, this is to respond to pressures from several parties who are disappointed with the results of the Renville negotiations. Hatta firmly said that all steps were taken, either through war or through diplomacy. This is aimed at achieving Indonesian independence as soon as possible (page 51). According to Hatta, Indonesia's position in the international arena would help determine the politics that should be carried out in the interests of the Indonesian nation. For Hatta, the notion of communism represented by Soviet Russia was no better than the concept of American imperialism and capitalism. According to Hatta, what needs to be done, is how Indonesia can take advantage of these two opposites. Thus, Hatta makes an analogy with rowing between two reefs, extra care needs to be taken so that a large boat called the Indonesian nation does not sink into one of these reefs. Hatta also highlighted the implementation of local government following Law No. 22 of 1948, where one member of the KNIP highlighted the extent of the government's concern and concern

for regions in Indonesia, particularly related to problems in Sumatra. Hatta explained that the central government had formed a kind of commissariat whose job was to provide reports on plans to decentralize and democratize government in Sumatra. He also highlighted the development of villages and neighborhood associations (RT) as the smallest unit of the government system developed in Indonesia.

Hatta also explained clearly the concept of security, highlighting that there were many sporadic and separatist rebellions from the Indonesian state. For Hatta, the government will make 'corrections', if necessary, use an 'iron fist' if excessen from democratic freedom which is "*kinderkrankheit des radicalismus*" has crossed the line by conducting intimidation and causing anarchy (page 75), a succinct statement from Hatta who answered some doubts about the government's indecisive attitude towards the massacre in Madiun by the PKI led by Muso. Hatta's sentence was also quoted by the Dutch historian and researcher Harry A. Poeze who wrote the book Madiun 1948: PKI Moves on page 81.

In his accountability before the KNIP Working Body, Hatta also explained the distribution of food ingredients that were highlighted by the KNIP Working Body. According to him, the problem of domestic security disturbances is the cause of disruption of the distribution chain of basic commodities to the regions. In addition, there are problems due to lack of capital and lack of collection of basic materials which are the cause of the lack of distribution to the regions. To overcome this problem, according to Hatta, the government has made efforts to improve, such as expanding the cooperation between the agencies concerned and involving cooperatives or agencies in it. Hatta also highlighted the issues of education and health that were asked by KNIP members. According to Hatta, it is necessary to ratify an education law, including the issue of education for adults which needs to be formed a separate agency, including Hatta's efforts to improve the welfare of teachers, an effort that every government regime continues to make to improve the welfare of teachers.

Specifically related to health issues, The government in Hatta era had made efforts to spread health workers to remote areas, who were being hit by disease outbreaks. Hatta admitted that the deployment of health workers was not easy, especially in terms of transportation and access to areas. As a closing of Hatta's accountability speech before the KNIP (Central Indonesian National Committee) Working Body, Hatta conveyed to the parties that there was no need to doubt the government's attitude to always protect the ideology or understanding that existed at that time, but Hatta emphasized that the government would not hesitate to take firm action against anarchy attempts or plans to overthrow the legitimate government, including the news that Muso through PKI (Indonesian Communist Party) would overthrow the legitimate government. Hatta also asked the KNIP Working Body to immediately ratify the draft Law on Granting Full Power to the President in Danger, this was intended so that the government would gain legitimacy in eradicating Muso's PKI to maintain the safety of the country. The main content of a quo law proposed by Hatta is that the government is given full power (*plein pouvoir*) to carry out actions and make regulations, by deviating from existing laws and regulations, in order to ensure the safety of the state in faced a state of danger that peaked for three months from September 15, 1948.

In closing, while reading this book, it brings us back to a time where Hatta explained clearly and was able to defend his arguments against the policies of his government as prime minister at that time before the KNIP Working Body. Hatta was able to answer various questions posed to him, ranging from politics, foreign policy, economy, social, culture, democracy, agrarian, health, and military. The positions of Hatta are the first Vice President of the Republic of Indonesia, Prime Minister of the Republic of Indonesia, Minister of Defense of the Republic of Indonesia, and an economist, he is Dr. Mohammad Hatta, a figure who is difficult to match in the current era (as).

Prof. Dr. Roeslan Abdulgani, DPA, and Indonesian national army Suffrage

LUTHFI WIDAGDO EDDYONO

Researcher of Constitutional Court

Prof. Dr. Roeslan Abdulgani in the 7th PAH III BP MPR Meeting, Wednesday, October 13, 1999, with the agenda of discussing the formulation of Article 5, Article 20, and Article 21 (submission of drafts and the formation of laws) and public hearings indeed delivered a very interesting description and proved to be influential in subsequent discussions. One of the issues raised was the abolition of the Supreme Advisory Council (DPA). Hence, Prof. Roeslan Abdulgani also asked that the existing state institutions be rethought in terms of their background and long-term goals.

“And that way, there isn’t any advisory power in the DPA. So, I am glad when I thought about what DPA is for? That’s why it’s only advisory power. So, what is BPK (Financial Supervisory Agency)? Because, in our constitutional system, there are five highest state institutions, namely the President, the House of Representative, then the People’s Consultative Assembly, then the Financial Supervisory Agency, and the DPA. Can’t we go back again? Because I see that the thinkers from the old constitution were hinken op tweegedachten, said the Dutch. That is to think how Japan is in our hands. There, the Netherlands will come. Now, we don’t face any more about Japan coming here, or going out of here, but we are facing a problem of the 21st century and

the third millennium. Therefore, if I ask for a pager. You can do, either way, we can estimate or think or are fragmentary, earlier it could be fragmentary, which articles, as long as power-sharing and internal power balance are properly maintained. The executive must not dominate the legislature and do not dominate the judiciary. So, everything has checks and balances that are regulated. We can think about it, in a more principled way, namely the overhaul of everything. We can also find the middle way. But if you have said that the priority of this amendment is to empower the People’s Consultative Assembly and empower the House of Representatives, it means that where there is too much power to the People’s Consultative Assembly, we must limit it, where there is too little power to the House of Representatives, we must add it. Where the power to the President is too much, we must also limit it. So that way we can empower all of them. Brother, in my experience there is one thing that stands out. It’s in experience, what matters is the person. If the person who sits as the President but the person who sits in the House of Representatives, the person who sits as whatever, it does not have a political view that is moral and ethical then there will always be deviations.”

The explanation is given by Prof. Dr. H. Roeslan Abdulgani caused

a lot of attention and questions. At least Aberson Marle Sihalolo (F-PDIP), Andi Mattalatta (F-PG), Asnawi Latief (F-PDU), Valina Singka Subekti (F-UG), Anthonius Rahail (F-KKI) asked questions. Thus, Prof. Dr. H. Roeslan Abdulgani explained and presented a study on the form of the state, the basis of the state, and the electoral system As revealed in the Comprehensive Paper on the Process and Results of Amendments to the 1945 Constitution, Comprehensive Paper on Amendments to the 1945 Constitution of the Republic of Indonesia, Background, Process, and Results in Discussion, 1999-2002, Book I Background, Process, and Results of Amendments to the 1945 Constitution (Jakarta: Secretariat General and Registrar of the Constitutional Court; Revised Edition, July 2010), as follows:

“As for how our country should be, I think it’s still called a unitary state. Yet, there must be broad autonomy for these regions. This will be the law that determines it. It turns out that there is a concentration of power in the center which sometimes exploits the wealth of the regions. When I studied the Aceh incident, the Ambon incident, the East Timor incident, I didn’t think about it before, but the Irian Jaya issue, all of which I complained about because there was centralism that sucked it all in so they didn’t... So, in this way I think, the name should remain a unitary state. But what is in the name? The content is that there must be one, what

is..., the widest possible autonomy so that they are given freedom. Because if not, I know that Papua New Guinea is, for example, Irian Jaya. When I arrived in Papua New Guinea, many of the runners from the people said, "Why are we joining Jakarta? We'd better come here." So that's what I have. The first question that was asked by Brother Aberson was what will happen if, what is it, our question is about people's sovereignty, right? I think in this case, I still think that the general election must be a direct vote. And if the President and Vice President are also held that way, I agree. You just have to find a method, how about in this case? So, a direct election of the President and the Vice President maybe, maybe even better. That way, later on, we just have to decide whether our system will be bicameral or not. Or the President later, what is it, executive or not? Just that. But I agree. Instead of now the election through the getrap, moreover it is no longer only the House of Representatives, who has the right to vote, who generates, but also people who have actually expressed their opinions through elections, but still, they can get another place to participate in determining who the President is. , here are the brothers. This is not such and such criticism, yes, but I think I have also sat in what was that, People's Consultative Assembly. So, sometimes I also

understand that I'm wrong. Now, this, what is integral geestelijke, that's what you said that we must look at the basis of mysticism."

Prof. Dr. H. Roeslan Abdulgani even studied the matter of choosing the Indonesian National Army. This issue is quite sensitive, especially considering the history of the military presence in Indonesian politics. Here's the description.

"Now about the TNI. I think ladies and gentlemen, since long ago, in 1955 the TNI voted and was active in the kiesrechts staat, only passively. It's okay, as long as you join a political party. That is why Pak Nasution held the IPKI first. So, if we see that, it is possible, but later, if we return to that system. Whatever it is, who will be chosen by the TNI as its representative? This is what I want to point out. Brother, once again, it is sensitive, yes. Sometimes, when I speak like this in front of our soldiers, someone in our army stutters. There are also, wow, Mr. Roeslan, this is dangerous! I'm not dangerous, but I just want to speak my mind. Whatever you want, because there used to be a reason. Because there are, what is it, parties that will establish a communist state or a Darul Islam state. So to prevent that, we consider the TNI as the guardian of the Pancasila state. But now, we have accepted Pancasila as a common property... So, if they say they will continue to wear military clothes if they sit inside,

then of course there will be no military party. So, they have to vote are political parties. Thus, only the political parties that sit in the House of Representatives, or inside, what will be called a bicameral system, yes, that will be later."

Prof. Dr. H. Roeslan Abdulgani also commented on Andi Matalatta's view. He described how politics must have ethics and morals. Politics is not just a science or an attempt to gain power. Further details are below:

"Finally, about Andi Matalatta. What is important is the spiritual atmosphere. Because if the spiritual atmosphere is different from what it means, I think it's difficult. And we must return to the person/the human being. And the human being, Prof. Djokosoetono, who brought this up first, always said that politics is not only science, not just science. But politics is also a technique, a technique that is to seize power. But politics is also ethics. So, science, engineering, and ethics. Sorry, right now I see that sometimes our crisis is not only about the technique, but also about morals and ethics. Therefore, I think, if you ask me as a parent, now you see all of that, the important number one is the mans, the mans, the mans. Indonesian people." ■



THE AUTHORITY CONSTITUTIONAL OF THE JUDICIAL COMMISSION REGARDING THE SELECTION OF CANDIDATES OF AD HOC JUDGES IN THE SUPREME COURT

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Strengthening the existence and improving the quality of judges is urgently needed today. Therefore, the selection process for ad hoc judges at the Supreme Court carried out by the Judicial Commission must be conducted in a transparent and accountable manner. Thus, constitutional interests (constitutional importance) are guaranteed. The power of a judge is independent of intervention and conflict of interest and free from interference from any party and in any form so that in carrying out its duties and obligations there is a guarantee of impartiality except in upholding law and justice.

The Judicial Commission as a state institution is independent with the authority to propose the appointment of Supreme Court justices and has other powers to maintain and uphold the honor, dignity, and behavior of judges as regulated in the provisions of Article 24B paragraph (1) of the 1945 Constitution. To be appointed and dismissed as judges, both supreme judges and ad hoc judges are stipulated by law (Article 25 of the 1945 Constitution). One of the powers of the Judicial Commission, as regulated in Article 13 letter a of Law Number 18 of 2011 concerning the Study of Amendments to Law

Number 22 of 2004 concerning the Judicial Commission (UU 18/2011), is to “propose the appointment of supreme judges and ad hoc judges in the Supreme Court to the House of Representatives for approval”. Thus, the urgency of the existence of the Judicial Commission is in terms of the selection of judges which is the main characteristic of judicial councils in various countries, namely to organize the selection of judges (appointment of judges) as an organ that is separate and independent from the judiciary. Furthermore, the authority of the Judicial Commission in selecting candidates for ad hoc judges at the Supreme Court is not only a constitutional choice but also a policy choice, as stated by Zainal Arifin Mochtar.

The presence of the Judicial Commission as an independent/independent state institution is based on reasons, among others (vide the General View of the House of Representatives in the Decision of the Constitutional Court Number 92/PUU-XVIII/2020, dated November 24, 2021, p. 36):

a. The Judicial Commission was formed to carry out intensive monitoring of the judicial power by involving elements of

the community in the widest spectrum and not only internal monitoring;

- b. The Judicial Commission becomes an intermediary (mediator) or liaison between government power (executive power) and judicial power (judicial power). The main purpose is to ensure the independence of judicial power from the influence of any power, especially government power;
- c. With the existence of the Judicial Commission, the level of efficiency and effectiveness of the judicial power will be higher in many ways, both regarding the recruitment and monitoring of Supreme Court justices as well as the financial management of the judicial power; and
- d. With the existence of the Judicial Commission, the independence of judicial power can be maintained, because the politicization of the recruitment of Supreme Court justices can be minimized by the existence of the Judicial Commission, which is not a political institution, so it is assumed that it has no political interests.

The Judicial Commission as an independent state institution can't be separated from an independent judicial power. Thus, one of the obligations of the Judicial Commission in proposing the appointment of Supreme Court justices and ad hoc judges at the Supreme Court is an important and noble task to maintain and uphold honor, dignity, and the behavior of judges as law enforcement and justice as regulated in the applicable laws and regulations. However, regarding the proposed appointment of 'ad hoc judges' at the Supreme Court which is under the authority of the Judicial Commission, it is one of the reasons for submitting a judicial review to the Constitutional Court as stated in the Decision of the Constitutional Court Number 92/PUU-XVIII/2020, dated November 24, 2021.

Constitutional Court Decision Number 92/PUU-XVIII/2020

In the Decision of the Constitutional Court Number 92/PUU-XVIII/2020, dated November 24, 2021, the Petitioner is an individual Indonesian citizen who feels that his constitutional rights guaranteed in Article 28D paragraph (1) of the 1945 Constitution have been harmed by the application of the phrase "and ad hoc judges" in the provisions of Article 13 letter an of Law 18/2011. The Petitioner has participated in the selection of ad hoc judges for Corruption Crimes at the Supreme Court in 2016, but the Petitioners did not question the ad hoc judge selection system, but rather the authority of the Judicial Commission in selecting ad hoc judges at the Supreme Court. The Petitioner feels that the right to guarantees, protection, and fair legal certainty has been violated because the provisions in Article 13 letter an of Law 18/2011 have been interpreted expressis verbis by the legislators by

including the phrase "and ad hoc judges". This means, according to the Petitioners, the Judicial Commission is not an institution authorized to select ad hoc judges as stipulated in Article 24B paragraph (1) of the 1945 Constitution.

According to the Petitioners, the executor of judicial power as referred to in Article 24 paragraph (1) of the 1945 Constitution is the Supreme Court and the Constitutional Court (main organ). Furthermore, in the framework of implementing independent Judicial Powers, a Judicial Commission is established as referred to in the provisions of Article 24B as a supporting organ for judicial power (auxiliary organs). This means that apart from the Supreme Court and the Constitutional Court, there are no other state institutions that have the position and authority as executor of judicial power. The constitutional authority of the Judicial Commission in the provisions of Article 24B paragraph (1) of the 1945 Constitution, if it is examined and studied in-depth about the authority in proposing candidates for Supreme Court justices, then this attributive authority is limitative and clearly cannot be interpreted other than the meaning of "Supreme Judge". In addition, when using the interpretation of the original intent that the formulators in the PAH I People's Consultative Assembly regarding judicial power, it does not place the Judicial Commission in selecting other judges except the Supreme Court justices. Accordingly, according to the Petitioners, the authority of the Judicial Commission in particular "other powers" in Article 24B paragraph (1) of the 1945 Constitution has been decided by the Constitutional Court with Decision Number 005/PUU-IV/2006, dated August 23, 2006, and Decision Number 43/PUU-XIII/ 2015, dated 7

October 2015 which in essence the authority of the Judicial Commission is a limitative authority and is solely related to maintaining and upholding the honor, nobility, dignity, and behavior of judges, and not the authority to select judges other than supreme judges as stipulated in Article 24B of the 1945 Constitution.

In its legal considerations, the Court considers that as one of the legal considerations in the Decision of the Constitutional Court Number 005/PUU-IV/2006 related to a quo petition are:

"Considering that with the description and reasons above, Article 24B paragraph (1) of the 1945 Constitution as long as it concerns "other authorities in the context of maintaining and upholding the honor, dignity, and behavior of judges" on the one hand is not appropriate to be interpreted only as external ethical supervision. , and on the other hand, it is also inappropriate to be interpreted apart from the context of Article 24A paragraph (3) to create Supreme Court justices – and judges in courts under the Supreme Court – who have integrity and personality that are not blameworthy, fair, professional, and experienced in the field of law. In other words, what is meant by "other powers" in Article 24B paragraph (1) of the 1945 Constitution is closely related to the main authority of the Judicial Commission to propose the appointment of Supreme Court justices".

After carefully reading the legal considerations, the Constitutional Court Decision Number 005/PUU-IV/2006 states that Article 24B paragraph (1) of the 1945 Constitution as long as it concerns "other authorities in the context of maintaining and upholding the honor, dignity, and behavior of judges" is only interpreted as supervision.

external ethics that is separate from the context of Article 24A paragraph (3) of the 1945 Constitution to create supreme judges – and judges in courts under the Supreme Court – who have integrity and personality that are beyond reproach, are fair, professional, and have experience in the legal field. In addition to this affirmation, the phrase “other authorities in Article 24B paragraph (1) of the 1945 Constitution is considered by the Constitutional Court to be closely related to the main authority of the Judicial Commission to propose the appointment of Supreme Court justices. This means that the affirmation of the phrase “other authorities” is not contrary to the constitution as long as it is related to the appointment of Supreme Court justices.

It is still under consideration by the Court that after Law 22/2004 was amended by Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission (UU 18/2011). The legislators made changes following the Court’s Decision Constitution Number 005/PUU-IV/2006. In this case, although part of the exercise of the authority of the Judicial Commission as regulated in Article 20 and Article 21 of Law 22/2004 is declared to be contrary to the 1945 Constitution and has no binding (unconstitutional) power, meanwhile, it relates to the authority of the Judicial Commission as regulated in Article 13 of the Law. 22/2004 has never been submitted for review to the Constitutional Court. In subsequent developments, this authority is further detailed by lawmakers in Law 18/2011. In this case, the provisions of Article 13 of Law 18/2011 state that the Judicial Commission has the authority to:

- a. propose the appointment of Supreme Court justices and

- ad hoc judges to the House of Representatives for approval;
- b. maintain and uphold the honor, nobility of dignity, as well as the behavior of judges;
- c. establish a Code of Ethics and/ or Code of Conduct for Judges together with the Supreme Court; and
- d. maintain and enforce the implementation of the Code of Ethics and/or Code of Conduct for Judges.

According to the Court, the Court had once ruled on Application Number 43/PUU-XIII/2015 which was related to the authority of the Judicial Commission. In this case, at least, the linkage can be traced from the legal considerations set out in Paragraph [3.9] and Paragraph [3.10] of the Constitutional Court Decision Number 43/PUU-XIII/2015 which states:

“[3.9] Considering whereas the phrase “other authorities” in Article 24B paragraph (1) of the 1945 Constitution is solely in the context of maintaining and upholding the honor, nobility, dignity, and behavior of judges. it can’t be expanded with other interpretations. The 1945 Constitution does not authorize lawmakers to expand the authority of the Judicial Commission;

[3.10] Considering although Article 24 of the 1945 Constitution does not explicitly state the authority of the Supreme Court in the process of selecting and appointing prospective judges from the general courts, religious courts, and state administrative courts, paragraph (2) of Article 24 has explicitly stated that the three laws proposed by the Petitioners in quo case are within the jurisdiction of the judiciary under the Supreme Court. Moreover, they are related to the “one roof” judicial system. According to the Court, the selection

and appointment of candidates for judges in the first instance court is under the authority of the Supreme Court”

In the Decision of the Constitutional Court Number 43/PUU-XIII/2015, it is stated that the phrase “other powers” in Article 24B paragraph (1) of the 1945 Constitution is solely in the context of maintaining and upholding the honor, nobility, dignity, and behavior of judges, cannot be expanded with other interpretations. However, if placed in the context of the substance of the Constitutional Court Decision Number 43/PUU-XIII/2015, the legal considerations are more about the involvement of the Judicial Commission in the selection process of prospective judges in the judicial environment under the Supreme Court, especially the selection of prospective judges at the first level court. It means that the legal considerations in question only limit the authority of the Judicial Commission in the selection process of prospective judges at the court of the first instance and it is not in the selection of candidates for Supreme Court justices. One of the reasons for changing Law 22/2004 to Law 18/2011 is that the legislators have a legal political design against the Judicial Commission. One of these legal policies can be traced in the preamble “Considering” letter b of Law 18/2011 which states:

The Judicial Commission has an important role in the effort to realize an independent judicial power through proposing the appointment of Supreme Court Justices and other authorities to maintain and uphold the honor, nobility of dignity, and the behavior of judges for the sake of upholding law and justice under the 1945 Constitution of the Republic of Indonesia.

The concrete form of legal politics can be traced, as stated in Article 1 number 5 of Law 18/2011 which states, “judges are judges and ad hoc judges in the Supreme Court and the Judicial Body”. Within the limits of reasonable reasoning, one of the directions of legal politics in the provisions of Article 1 point 5 of Law 18/2011 is intended not to distinguish between judges and ad hoc judges. Because it does not differentiate, specifically for the appointment of Supreme Court justices, Article 13 letter an of Law 18/2011 explicitly stipulates, “The Judicial Commission has the authority to a. Propose the appointment of Supreme Court justices and ad hoc judges to the House of Representatives for approval”.

In the Court’s consideration, with the existence of legal politics, the legislators do not distinguish Supreme Court justices and ad hoc judges in the Supreme Court as long as it is related to the recruitment authority. It can be placed as a legal policy for legislators to meet legal needs in the community to provide protection, guarantee, and fair legal certainty. Therefore, the authority to recruit ad hoc judges at the Supreme Court is closely related to efforts to maintain and uphold the honor, dignity, and behavior of judges for the sake of upholding law and justice. This is because ad hoc judges at the Supreme Court are expected to contribute to improving the quality of decisions at the Supreme Court through the special expertise possessed by ad hoc judges. Moreover, by tracking the duties, functions, and responsibilities of cases, there is no difference between Supreme Court justices and ad hoc Supreme Court justices. Therefore, if placed within the framework of Article 24 paragraph (1) of the 1945 Constitution, namely in realizing an independent judicial

power and to uphold law and justice in society as the essential meaning of Article 24A of the 1945 Constitution, Supreme Court justices as the highest position holding judicial power within the Supreme Court, the need for an independent and impartial process is a necessity, including in this case the ad hoc judge selection process at the Supreme Court. Universally, the importance of the independence and impartiality of judges to realize the independence of judicial power, among others, can be traced in Number 2 and Number 10 of the Basic Principles on the Independence of the Judiciary which was ratified by United Nations Resolution Number 40/32, on November 29, 1985; and United Nations Resolution No. 40/146, of 13 December 1985, which affirmed:

2. The judiciary shall decide matters before them impartially, based on facts and following the law, without any restrictions, improper influences, inducements, pressures, threats, or interferences, direct or indirect, from any quarter or for any reason.

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, color, sex, religion, political or other opinions, national or social origin, property, birth, or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.”

Referring to these considerations, it is clear how basic a shield is needed to uphold the independence and impartiality of judges in order to realize the

independence of judicial power. In that context, the selection of ad hoc judges at the Supreme Court by the Judicial Commission must be carried out professionally and objectively. According to the Court, so far, the selection process under the authority of the Judicial Commission in selecting ad hoc judges at the Supreme Court is still needed and as long as there is a request from the Supreme Court. Thus, constitutionally, the 1945 Constitution has determined that the design for filling in the Supreme Court judges as the highest judge positions in the Supreme Court is carried out by the Judicial Commission. By referring to the legal politics of the formation of Law 18/2011, especially by placing ad hoc judges as judges in the Supreme Court, the selection process for ad hoc judges carried out by the Judicial Commission can still be justified under Article 24 paragraph (1) of the 1945 Constitution. In addition, the selection process is carried out by an independent institution designed by the constitution does not conflict with the right to recognition, guarantee, protection, and fair legal certainty as well as an equal treatment before the law as set forth in Article 28D paragraph (1) of the 1945 Constitution. Therefore, the Petitioners’ arguments regarding Article 13 letter a of Law 18 /2011 is unlawful in its entirety.

“Everyone’s unique. Be
yourself with confidence,
bravery, agility, intelligence,
wisdom, (then) color the
world...”.

“SEE LAW TO ROCK ME”

(read: *silaturahmi*/good relationship)

Immanuel B. Hutasoit
Head of International Cooperation

“Sovereign in politics, independent in the economy, and good personality in culture as a form of revolution for a nation.” (Bung Karno’s Trisakti Message)

You’ve seen dry jokes on social media that try to compare words in Indonesian (the contemporary slang version) with English. Posts that describe that today’s children’s language is unique in meaning and figuratively. For example, if in English there is the term “doing nothing”, then the current millennial generation will understand each other if what is meant is *gabut*. The example is to explain about someone indecisive, confused, and often fantasizes in English. Usually mentioned as “someone indecisive, confused and often fantasizes”. It is abbreviated clearly and concisely in slang; halo. Not to mention other terms such as *baper*, *mager*, *mantul* which are widely understood by the Indonesian people without having to study them formally.

Furthermore, about the official Indonesian language listed in the Big Indonesian Dictionary (KBBI), there is a term that describes the personality or culture of the nation, but its meaning is difficult to explain in a foreign language, especially English? One of them is the word “*Silaturahmi*”.

The term “*silaturahmi*” comes from the root word in Arabic which is a combination of two words, *shilat* and *al-rahmi*, merging (freely) can be interpreted as connecting affection. For the people of Indonesia, *silaturahmi* is a basic thing. Greeting each other with co-workers is a bond of *silaturahmi*. Mutual visits to neighbors around the house are a form of *silaturahmi*. Even sending short messages via Whatsapp to people who are far in the eyes, close to the heart, is also a form of friendship that is well done by the people of Indonesia.

Therefore, *silaturahmi* cannot only be interpreted as friendship. *Silaturahmi* is not enough to be interpreted as a form of say-hi, even a visit to *silaturahmi* can’t only be interpreted as a visit if it is in English.

Understanding the roots of the strong Indonesian culture, at the end of 2021, the Constitutional Court of Republic of Indonesia will conduct a gathering with colleagues, friends, and colleagues from the Constitutional Courts of other countries. This international gathering was carried out after careful calculations by considering health factors, safety factors, and urgency factors for each agenda.

It was recorded that 6 (six) working visits were part of the Constitutional Court of Republic of Indonesia

delegation’s hospitality program in November – December 2021, namely to the Spanish Constitutional Court, Portugal’s Constitutional Court, Jordanian Court, Uzbekistan Court, Turkish Constitutional Court, and Korean Constitutional Court. In general, the gathering has 3 major agendas, namely to establish new collaborations; to maintain the good cooperation so far, and to make the Indonesian legal system as reflected in the decisions of the Constitutional Court as a reference for constitutional courts in other countries (providing a positive influence).

Establishing New Cooperation

The visit of the Chairperson of the Republic of Indonesia, Anwar Usman to Spain in early December 2021, can be interpreted as an important milestone for the Indonesian Republic of Indonesia—even for the state of Indonesia. After more than 21 months of not having good relations/*silaturahmi* with foreign work partners, Anwar Usman finally chose for the Spanish Constitutional Court to be visited for the first time during the pandemic, which was starting to become conducive. The selection of the Spanish Constitutional Court is certainly not without reason.

This visit has the top agenda of signing a memorandum of understanding between the Republic of Indonesia and the Spanish Constitutional Court. Communication and coordination between the two began in April 2020, or more precisely 19 months before the two Anwar Usmans met in person in Madrid, Spain, on December 1, 2021. The two Constitutional Courts agreed to cooperate in several aspects, including exchanging information and experience on the latest decisions, mutual support in organizing the International Court of Justice forum, joint research, and training programs for the staff of the Constitutional Court.

Behind these agreements, it is interesting to understand the reason why the Spanish Constitutional Court is crucial as a cooperation partner of Indonesia. The experience of the Spanish Constitutional Court in deciding cases related to the Province of Catalonia which declared and asked for independence from the Spanish kingdom was phenomenal. The Spanish Constitutional Court’s decision not to grant independence stole the attention of Indonesia to be able to study the background of the thoughts, ideas, and beliefs of

the Spanish constitutional judges which led to the decision stating that the integrity of the Spanish kingdom must be preserved and maintained.

Although there has never been an exact request to the Constitutional Court regarding separatism or a declaration of independence for a province, it is important to study the Spanish Constitutional Court's decision as knowledge management. It is only for the constitutional judges, but also the support staff in the Republic of Indonesia. The meeting of the Chief Justice of the Constitutional Court to establish this cooperation went smoothly. Hopefully this smoothness will not stop on a piece of MoU paper, but also on the execution of cooperation programs in the future.

Maintaining Good Relationship

If with the Spanish Constitutional Court is a new relationship, then it's a different story with the Turkish Constitutional Court, Korean Court or Uzbekistan Court. These three Constitutional Courts are "good friends" of the Republic of

Indonesia since more than 14 years ago. All three are co-workers who raised the Asian Constitutional Courts Association/AACC. In the article in the September 2021 episode of Hi-MK, it has been explained how the good relations and achievements of the Republic of Indonesia with the support and good relations with the three Constitutional Courts have been explained.

Especially in the hospitality program at the end of 2021, a specific agenda was entrusted to the meeting of the Chairperson of the Indonesian Constitutional Court for the 2015 – 2018 period, Arief Hidayat who met his best friend, the Chairman of the Turkish Constitutional Court Zuhtu Arslan. The two friends were the anchors of the progress of the AACC in the 2016 period where several major decisions were made as a joint agreement, including the establishment of a permanent Secretariat for the AACC.

This time the two friends talked about a "new house", namely the Conference on Constitutional Courts for OIC

member countries called The Conference of Constitutional Jurisdiction of OIC member/Observer States (CCJ-OIC). This visit is crucial because it discusses the specifics of the CCJ-OIC statutes to be drawn up. Then, the statutes were passed at the congress planned to be held in December 2022 in Istanbul, Turkey.

What is interesting to observe is the different cultures of CCJ-OIC members, the Constitutional Court and the Turkish Constitutional Court can still become a strong anchor to become the foundation of the new organization. It will be interesting to follow in the future, considering that Indonesia is one of the countries with the largest Muslim population in the world.



The Good Influence

"Making a positive impact" is an interesting idiom. In the book "The Connector of the People", Bung Karno stated that Pancasila was not the same as the ideology of other nations, even though Indonesia was heavily influenced by world leaders and leaders, including capitalism and communism.

Based on this thought, it is important for Indonesia and the Constitutional Court, in particular, to be able to become leaders in the world of constitutional justice and have a positive influence on the Constitutional Courts in other countries. For example, the delegation's visit to the Jordanian Constitutional Court was an effort to provide an understanding of the Constitutional Court's decisions based on the One Godhead. Of course, it contains the breath of Islam which is *rahmatan lil'alam*.

The election of Indonesia as the host of the World Constitutional Court Congress (WCCJ) is an important momentum to have a positive influence on the more than 118 countries that will attend. Therefore, the relationship must be maintained with work partners. Surely the flexibility and richness of Pancasila values will inspire many people. *Kuy*, let's cultivate the meaning of personality in culture, then spread it to all corners of the world! ■



IMPROVEMENT OF THE LEGISLATION PROCESS POST-DECISION OF JUDICIAL REVIEW OF THE JOB CREATION LAW

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During the outbreak of the COVID-19 pandemic, the development of state administration in Indonesia continues to experience ups and downs. Various issues, discourses, and decisions related to state administration often become public debates and discourses, especially in academic spaces. The dynamics of the current state administration show that

Indonesia is still looking for the best form and format in affirming the principles of a constitutional democratic state.

In 2021, there were several issues and developments in state law that received public attention. First, the discourse to amend the 1945 Constitution of the Republic of Indonesia, one of which is to add the authority of the People's Consultative Assembly to determine the Principles of State Policy. Second, the discourse to extend the term of office of the President to 3 (three) terms or to increase the term of office of the President for 2 (two) years as a substitute for the term of office who cannot work actively during the COVID-19 pandemic in 2020-2021.

Third, the establishment and enforcement of a Government Regulation in Lieu of Law (Perppu) related to state finances and the handling of the COVID-19 pandemic, particularly related to the substance of the content and the period for the implementation of the emergency. Fourth, the decision of the Constitutional Court for the first time declared a conditional unconstitutional law due to the non-fulfillment of the law-making procedure in a formal review case.

Due to limited space and writing pages, this short article only focuses on discussing the development of state law in the fourth point above, which is in the form of critical notes on the practice and process of forming a law in 2021.

Completion of Legislation Process

After going through a long examination process involving various parties and experts, the Constitutional Court made a landmark decision that invalidated a law conditionally (conditionally unconstitutional) in a case of formal judicial review. In contrast to the material review of laws that have been repeatedly declared conditionally unconstitutional 2021 will be the first year for the Court to declare a law that does not meet the requirements and procedures for the formation of laws and regulations, it is the Job Creation Law.

This article does not intend to specifically discuss the Constitutional Court's decision regarding the review of the Job Creation Law. However, this paper focuses more on taking important notes that become the legal considerations of the Constitutional Court's Decision. Thus, it can be used as a reference for the formation of other laws in the future. Several important notes are contained in the Decision, as follow;

First, the formation of laws must again be based on the Law on the Establishment of Legislation. If the procedures or methods contained in the Law on the Formation of Legislation have not been regulated — for example, the omnibus law method — then the legislators cannot override the existing rules and provisions. Therefore, the legislators need to revise the legal basis for the formation of a law in advance to accommodate the new method or method that will be chosen in the formation of law.

Second, legislators must re-assure that all laws that will be ratified and promulgated must first comply with the principles of establishing statutory regulations. The legislators cannot override the principles that have been determined in the law for the formation of laws and regulations. If this happens, there will be a decrease in the quality of the law.

Third, legislators must involve broad and meaningful public participation. The principle of meaningful participation must fulfill at least three types of public rights, namely: (1) the right to be heard; (2) the right to have their opinions and aspirations considered (right to

be considered); and (3) the right to obtain an explanation of their opinions and aspirations (right to be explained). This principle is important and absolutely must be fulfilled because the Law on the Formation of Legislation also contains a special chapter on public participation in it, namely Chapter XI on Community Participation. Equally important, this public participation must primarily be intended for community groups who are directly affected by a law that is being formed. So, the participation that is carried out is not just pseudo participation or manipulative participation.

Fourth, if a law has entered the stage of mutual approval by the House of Representatives and the President—especially after the ratification of the legislation—then changes and changes are no longer allowed in the contents of the law, especially changes that are substantive, not technical typing errors. typo). The text of the draft law that has been mutually agreed upon should be affixed with the initials of the two legislators to ensure that there will be no changes to the text or other matters in the future.

Questioning Judicial Review

Another matter that needs to be given a special note after the Constitutional Court's decision which states the Job Creation Law as conditionally unconstitutional, is a discourse to reconsider the granting of formal review authority by the Constitutional Court. According to the proponents of this discourse, the Constitutional Court basically only has the authority to examine a law materially which includes the contents or parts of the law and does not include formal examinations related to the process of forming the law.

This discourse needs to obtain a response from academics that the development of state law in various parts of the world also has best practices in law testing, both material testing known as substantive review and formal testing known as procedural review. To assess the legitimacy of the formation of laws, courts in many countries are given the authority to examine whether the

process of forming a law has met the requirements of transparency and inclusivity (Klaus Meßerschmidt, 2016: 376-377).

In the practice of comparative constitutions, a formal review has become an important part that the South African Constitutional Court considers when examining and deciding cases of judicial review. For example, the cases of *Doctors for Life International v Speaker of the National Assembly and Others* (2006) and *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* (2008).

Opening The New Era

Some of the critical notes above need to be seriously considered by future lawmakers as well as academics and civil society who also contribute to the supervision of state administration. In 2021, the Constitutional Court had opened a new era of a standard formal review of the law. If one or several of the notes in the formation of the law as described above are again violated, in particular the violation of the basic provisions for the formation of laws and regulations. Furthermore, it is possible that the Constitutional Court may annul a law, whether effective immediately with a decision to cancel it entirely or a decision through unconstitutional conditions as happened in the Job Creation Law.

Therefore, it is necessary to strengthen law-making institutions, both in the Government and in the House of Representatives. Thus, the laws produced have strong legitimacy and constitutional validity within the framework of constitutional democracy. ■



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