

KONSTITUSI

Execution Of Fiduciary Guarantees Must Go Through The Court





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Editorial Greetings

The year 2020 brought changes to the Constitutional Court (MK), I Dewa Palguna who has served as a constitutional judge for two periods entering retirement. His successor was Constitutional Judge Daniel Yusmic P. Foekh for the 2020-2025 period. Meanwhile Suhartoyo returned to be a constitutional judge for the second time with a term of office 2020-2025.

The event of the change of constitutional judges became one of the interesting news that was raised in the January 2020 edition of the Konstitusi magazine. Then to get to know Daniel Yusmic P. Foekh as the new judge, the editorial team of the Konstitusi magazine interviewed specifically as outlined in the "talk show" rubric.

Meanwhile the "Main Report" discusses the news of the judicial review of Law Number 42 of 1999 concerning Fiduciary Guarantees filed by Apriliani Dewi and Suri Agung Prabowo. The Constitutional Court stated that the Petitioners' petition was legally based in part. the court stated that the execution of fiduciary guarantees must not be carried out solely by the fiduciary recipient (creditor), but must file a petition to the district court. The procedure for carrying out the execution and the time when the fiduciary provider (debtor) is declared "default".

In addition, as usual we present the typical rubrics of the Konstitusi magazine on the sidelines of the preparation of the Constitutional Court Public Relations and Protocol Team to publish the 2019 Constitutional Court's Annual Report Book. Thus the introduction of the editorial, finally, we wish you a happy reading!



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BYE BYE 2019, THIS IS 2020

2019 has passed. Various challenges and dynamics already passable. People say, 2019 is a political year. But for the Constitutional Court (MK), there is no such thing as a political year. There is, all year round is a year of law enforcement and justice. The Constitutional Court did not participate in politics, in the sense of practical politics. Until whenever, shall not. And that has been done by the Constitutional Court.

The Constitutional Court passed 2019 brilliantly. Nothing gets in the way. There were no thorns to disturb the stability and reputation of the Constitutional Court. Case handling, smooth. As many as 122 cases entered, 92 of which have been decided until the end of December 2019. Only 4 cases were granted. Others are rejected, cannot be accepted, or withdrawn by the petitioner. Practically, the Constitutional Court still has the remaining 30 cases entering the new year 2020. Before then, the Constitutional Court will again accept cases in 2020.

Moreover, in terms of the time period for the settlement of the case, the Constitutional Court recorded positive results. The effort to expedite the settlement of the case is proven, without leaving other important aspects, namely the quality of the verdict. Decided more quickly, but the substance of consideration is never sacrificed. In fact, hopefully is also enhanced. How to measure the quality of a verdict? there will be many answers. There is no single opinion. One of them will be seen from the consideration of the decision. Not a matter of how many paragraphs or sentences contained. Rather, whether legal considerations have weight. That is, legal considerations are based on strong legal arguments and can be justified. Based on science and comprehensive law practice. Also, answering the main questions that arise from the case. Or, the verdict is solutive, not just creating new problems. In addition, verdicts are simple to understand and easy to implement.

In 2019, the Constitutional Court completed the judicial review cases in an average time of 2,83 months for each case. This note is better than in previous years. In 2018, the Constitutional Court completed the judicial review cases within 3,5 months. Meanwhile, in 2017, the completion of cases within a period of 5.2 months. What does it mean? Significantly, the Constitutional Court show the real performance and productivity. This is good and important to be maintained in the 2020's, and so on. In general, regarding the handling of cases, the Constitutional Court deserves an appreciation for its efforts and excellent works.

No less interesting and also deserves appreciation, namely the Constitutional Court is not just a verdict 'production house' or 'factory'. Just deciding the case, finished. No, the Constitutional Court assumed the role and responsibility of providing easy access for the public to access justice. Breakthroughs in the management of modern

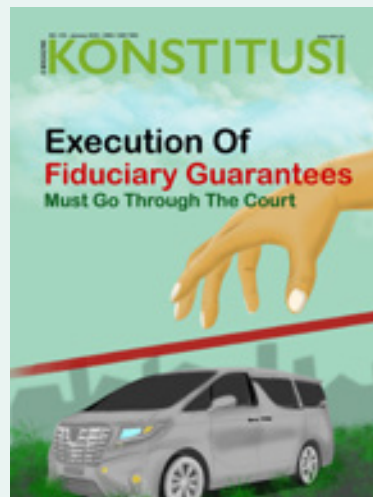
justice institutions continue to be developed. Yes, modern justice. Today, no one will be able to escape from the flow of increasingly sophisticated and modern technology. Everything is digital. Those who are unable to keep up will run over.

Maka, kiranya merupakan suatu keharusan bagi MK sebagai lembaga peradilan untuk merespon dan memanfaatkan secara optimal kemajuan teknologi, informasi, dan komunikasi. Persidangan dan seluruh aktifitas dukungan untuk itu dirintis dengan aplikasi berbasis IT. Kini hampir semua serba digital. Semua diarahkan serba smart, serba cepat, serba pasti dan terukur. Efektif. So, presumably is a necessity for the Constitutional Court as a judicial institution to respond and make optimal use of technological, information and communication advancements. The trial and all support activities for this were initiated by IT-based applications. Now almost everything is digital. All are directed to being smart, being fast, being sure and measurable. Effective. And most importantly, all are useful in supporting the achievement of the Constitutional Court's objectives. What is the purpose of the Constitutional Court? Serve justice seekers, serve the public, and serve the people, in fighting for and obtaining their constitutional rights in a fair and just manner? Certainly the ways and steps of the Constitutional Court to be always responsive to the advancement of technology, information

and communication, are the perfect 'stance' towards a truly modern justice in 2020. And of course, transparent.

The Constitutional Court should be happy and glad with the achievements in 2019. Moreover, there were 12 awards in 2019 awarded to the Constitutional Court for the good work. However, excitement is okay, but not for long. Many are waiting to be prepared and executed in 2020. Last year's achievements became valuable capital. Certainly, challenges are increasingly complex. More real. With quantity and quality that may be more than in previous years.

Therefore, besides having to prepare in facing constitutional cases, whether it is judicial review or Disputes over the Authority of State Institutions (SKLN), which may have more complex issues, this year the Constitutional Court is also preparing for the potential entry of local election dispute cases. This year, 270 local elections were held. Many or few cases, the Constitutional Court must be prepared. There are no other words. So, do not take long euphoria with sweet achievements. The Constitutional Court must rush to prepare the spirit and awareness at the highest level to utilize all its energy optimally. The good energy that underlies the works, both the work of the Constitutional Justice and the work of the Constitutional Court apparatus, is aimed at one goal: Realizing the constitutional messages of the 1945 Constitution, primarily to uphold law and justice. That means the same as upholding Indonesia as a rule of law that is able to make its people happy. Hopefully. Constitutional Greetings! ■





CONFISCATION OF FIDUCIARY GUARANTEES MUST GO THROUGH THE COURT

Fiduciary is a term known in the transfer of ownership rights of an object whose ownership rights are still in the authority of the owner of the object. In the case registered under Number 18/PUU-XVII/2019 and petitioned by Aprilliani Dewi and Suri Agung Prabowo, the Constitutional Court in the Hearing of Verdict Pronouncement on Monday (1/6/2020) stated that the Petitioners' petition has legal

reasons in part against the judicial review of the Law Number 42 of 1999 concerning Fiduciary Guarantees.

In the first hearing, the Petitioners argued that Article 15 paragraph (1), paragraph (2) and paragraph (3) of the Fiduciary Guarantee Law which reads, (1) "In the Fiduciary Guarantee Certificate as referred to in Article 14 paragraph (1) is contained the words "For the sake of justice based on the Almighty God", (2) the Fiduciary

Guarantee Certificate as referred to in paragraph (1) has the same executorial power as a court decision which has obtained permanent legal force, (3) if the debtor in default, the Fiduciary Recipient has the right to sell the object that is the object of the Fiduciary Guarantee on his own authority "impairing his constitutional rights. The Petitioners also considered that a quo article was contrary to Article 1 paragraph (3), Article 27 paragraph (1) and

Article 28D paragraph (1) of the 1945 Constitution.

Before the hearing in the Plenary Court Room of the Constitutional Court on Tuesday (12/03/2019), Suri Agung conveyed that in a concrete case his party has experienced the act of forcibly withdrawing a car Toyota Alphard V Model 2.4 A/T 2004 by PT Astra Sedaya Finance (PT ASF). Previously, the Petitioner had entered into a Multipurpose Financing Agreement for the provision of funds to purchase one unit of the luxury car. In accordance with the agreement agreed upon, the Petitioner is obliged to pay debts to PT ASF in the amount of Rp. 222.696.000 with installments for 35 months from November 18, 2016. During November 18, 2016 - July 18, 2017 the Petitioner has paid installments in an obedient manner. However, on November 10, 2017, PT ASF sent a representative to retrieve the Petitioner's vehicle in the argument of default. Regarding this treatment, the Petitioner submitted a letter of complaint for the actions taken by PT ASF representatives. But it was not responded to until some further unpleasant treatment.

Accepting this treatment, the Petitioner sought to take legal steps by filing the case to the South Jakarta High Court on April 24, 2018 with a lawsuit against the law. The court granted the Petitioner's lawsuit by declaring PT ASF has committed an unlawful act. But on January 11, 2018, PT ASF resuming the forced withdrawal of the Petitioner's vehicle in the presence of the police. For such forced treatment, the Petitioner judged that PT ASF has taken refuge behind the article which was reviewed in a quo case. Even though the South Jakarta District Court's verdict is higher than a quo Law.

Thus, the Petitioners also argued that there was no juridical forced reason whatsoever for PT ASF to carry out forced actions including on the basis of a quo Article.

Authentic Deed

In the third hearing in the Plenary Court Room of the Constitutional Court on Thursday (11/4/2019), Director of Law Litigation of the Ministry of Law and Human Rights of the Republic of Indonesia Ardiansyah as the proxy of the President/Government delivered related to the provisions of Article 14 paragraph (3) of the Fiduciary Guarantee Law on the phrase "fiduciary guarantee", explains the fiduciary agreement by involving guarantees. The existence of fiduciary certificates arises from the necessity of containing fiduciary guarantee registration records.

Therefore, the fiduciary registration office is also obliged to issue. So that the fiduciary guarantee certificate has legal force as an authentic deed. The aim is to protect both parties, the provider and recipient of fiduciary guarantees legally and to bind both parties. "Fiduciary collateral is a material right and not an individual and fiduciary objects are generally movable objects, making it easier for creditors to transfer material when a default occurs", explained Ardiansyah.

Harming The Consumer

In a further hearing on Wednesday (4/24/2019), the Chairperson of the Indonesian Consumers Protection Foundation (YLKI) Tulus Abadi, who was presented by the Petitioner, stated that the "smuggling" of standard clauses by business actors in the sale and purchase agreement was one of

the causes of the increasing problem of leasing consumer complaints in society. Whereas the inclusion of the standard clause has been prohibited under Article 18 of Law Number 8 of 1999 concerning Consumer Protection because it harms the consumer.

In the standard agreement, Tulus revealed that there were business actors who slipped standard clauses starting from stating the transfer of responsibility, or business actors having the right to reject return of goods and so on. The standard clause characters that YLKI often finds in consumers' complaints tend to benefit business actors. Consumers also become the injured party. Anticipating the cheating of these business actors, YLKI has taken an effort to discuss with the OJK and Bank Indonesia to determine a standard sale and purchase agreement that has the same character. In addition, YLKI encourage the changes in regulations regarding the smuggling of this standard clause.

The Importance of Notarial Deed

Aria Suyudi as Expert presented by the Government stated that the state's role in providing fiduciary guarantee protection for both parties can be done by making agreements before a notary public or through a notarial deed. In his statement, Aria also explained that in the Fiduciary Guarantee Law it was not described at all about the default, except in Article 21. However, in practice, in the business world, this implementation was subject to the 1238 Civil Code which defines default is declared negligently, with a warrant, or with a similar deed, or based on the strength of the engagement itself.



Related to the parate execution mechanism which is the withdrawal of the right to take repayment without a court decision experienced by the Petitioner, Aria said that in Indonesia there were no specific regulations on the parate execution. As for Article 30 of the Fiduciary Guarantee Law it is stated that the fiduciary provider is obliged to surrender the object which is the object of fiduciary guarantee in the context of carrying out the execution of fiduciary guarantee. However, he explained, the explanation of the article contained the phrase “may ask for help from the authorities”. So there are no rules that explain further, even though there is a Regulation of the Chief of the Indonesian National Police No. 8 of 2011. However, it is only behind and withdrawal remains the business of each creditor.

Execution Guarantees

Akhmad Budi Cahyono as another Government Expert explained that the fiduciary agreement is not an independent agreement, but its

existence depends on the principal agreement. If the principal agreement as a derivative agreement, the existence of a fiduciary guarantee is firstly agreed in the principal agreement in order to provide confidence and legal certainty for the creditors of the loan repayment that becomes the debtor’s obligation.

While Sutan Remy Sjahdeini presented by the Constitutional Court as an expert in his opinion said that before the enactment of the Fiduciary Guarantee Law in banking circles, this guarantee was only limited to movable objects. But after the enactment of the Fiduciary Guarantee Law, it was extended to immovable, tangible and intangible objects. This, he continued, is an encouraging matter for the banking world. With regard to banks as fiduciary recipients who can execute fiduciary guarantees with their own power, such as executing decisions of judges who have *inkracht*, Remy has an opinion if an object has been voluntarily surrendered by the fiduciary provider, then it can also be carried out with its own

The experts presented by the Constitutional Court Sutan Remy Sjahdeinis and the experts presented by the Government Aria Suyudi and Akhmad Budi Cahyono each expressed their expertise in the case hearing for judicial review of the Fiduciary Guarantee Law on Monday (5/13) in the Plenary Room of the Constitutional Court Building.

power an execution process without having to ask for a judge decision. However, in the event of a dispute the bank cannot take a fiduciary guarantee that has been confirmed by the judge’s decision that has been *inkracht*.

“So if it is related to the article in question, it is contrary to the 1945 Constitution, this is not contradictory. It’s just that in practice banks are acts against the law. That moreover, in this case there was a court verdict before, then in my opinion the bank is acting against the law,” explained the banking and fiduciary experts.

Must file a petition

Constitutional Justice Suhartoyo in the Pronunciation Session of Verdict stated that the execution of fiduciary guarantees should not be carried out solely by the fiduciary recipients (creditors), but must file a petition to the district court. The procedure for carrying out the execution and the time when the fiduciary providers (debtors) is declared “default”. This often leads to coercion and violence from people claiming to be the party authorized to collect debtors’ debt loans. It can even give birth to arbitrary acts committed by fiduciary recipients (creditors). Therefore, this is clearly evidence of the problem of unconstitutionality within the norms set out in Fiduciary Guarantee Law.

Because, continued Suhartoyo, even if the fiduciary certificate had an executorial title which

meant it could be carried out as a court verdict that had permanent legal force, but the procedure for executing the fiduciary certificate must still follow the procedures for carrying out the execution which had to be filed through a district court. Suhartoyo explained that this did not mean to disregard the fiduciary characteristics of giving material rights to creditors, but rather to provide legal certainty and a sense of justice between fiduciary right providers (debtors) and fiduciary recipients (creditors) and to avoid the arising of arbitrariness in the execution.

Meanwhile, against the norm of Article 15 paragraph (3) of the Fiduciary Guarantee Law, especially the phrase “default” may only be said to be constitutional insofar as it is interpreted that “the default is not determined unilaterally by the

creditors but on the basis of an agreement between the creditors and the debtors or on the basis of legal efforts that determine the default”. If the debtors have acknowledged the existence of “default” and voluntarily surrender objects that are objects in their fiduciary agreement, then it becomes the full authority for the creditors to be able to carry out their own executions. But if the debtors do not recognize the existence of “default” and objections to voluntarily surrendering the object which is the object of the fiduciary agreement, the creditors may not carry out the execution themselves. But must file a petition for the execution on the district court. Thus, the constitutionality rights of debtors and creditors are protected equally. “Therefore, the Court has the opinion of the Petitioners’ petition is legally based for some,” Suhartoyo said. ■

SRI PUJANTI



Pronunciation Session of the Verdict on Case of Judicial Review of the Fiduciary Guarantee Law (UUJF), Monday (1/6) in the Plenary Room of the Constitutional Court Building.

2019 Court Records

April

25



The Constitutional Court won the 1st place in the 2019 National Best Archive Unit for State Institutions/ Non-Ministerial Government Institutions organized by the National Archives of the Republic of Indonesia (ANRI) in Makassar.

April

25



The Constitutional Court states grant some petitions for judicial review of the State Civil Apparatus Law petitioned by Hendrik in the registered case Number 87/PUU-XVI/2018.

April

22



The Secretary General of the Constitutional Court M. Guntur Hamzah and the Chairman of the Press Council Yosep Adi Prasetyo signed a Memorandum of Understanding in the activity of "Improvement Program of the Understanding of Citizens' Constitutional Rights for Journalists throughout Indonesia".

May

21



The Constitutional Court opened the reception service of the petition for the 2019 General Election Results Dispute case from Tuesday, May 21, 2019 at 01.46 Western Indonesian Time, in line with the General Election Commission's Decision on the Determination of Presidential Election Results, Legislative Election in 2019 Election.

May

24



The Candidate Pair of President and Vice President Prabowo Subianto and Sandiaga Salahuddin Uno filed the case of the Dispute on the Election Results for President and Vice President (Presidential PHPU) to the Constitutional Court.

June

11



Candidate Pair of President and Vice President Number 01 Joko Widodo-Ma'ruf Amin through their attorney team came to the Constitutional Court to register as a Related Party in the 2019 Presidential and Vice President PHPU case petition.

November

03



Chairperson of the Malaysian Alliance Court Tengku Maimun binti Tuan Mat transferred the position of the President of the AACC to the President of the Kazakhstan Constitutional Council Kairat Mami Abdarazakuly on Sunday (3/11/2019) in Nusa Dua, Bali.

September

20



MKRI for the first time to host The 1st International Expert Meeting in 2019 with the theme "The Role of Judicial Institutions to Promote Social Justice and Protect Economic and Social Rights" in Serpong, Tangerang.

September

12



The Constitutional Court's financial statement regained the Fair Without Exception (WTP) opinion. The Constitutional Court was included in 43 ministries and state institutions that received the award with the WTP Financial Statement from 2014 - 2018.

November

04



The Vice President of the Republic of Indonesia Ma'ruf Amin officially opened The 3rd Indonesian Constitutional Court International Symposium (ICCIS 2019) in Nusa Dua, Bali.

November

19



The Constitutional Court obtained a score of 4.04 with an excellent rating in terms of evaluating public services provided by the Ministry of Administrative Reform and Bureaucratic Reform. The results of this evaluation was received directly by the Clerk of the Constitutional Court Muhidin.

November

21



The Constitutional Court received the 2019 Public Entity Information Openness award as an Informative Public Agency.

January

28



Entering 2019, the Constitutional Court held 2018 Reflections and 2019 Performance Projections in Jakarta. This activity aims to convey the performance of the Constitutional Court during 2018 and the projected performance of the Constitutional Court in 2019 which is a political year.

January

31



The Constitutional Court held the oath of office of the Clerk of Constitutional Court Muhidin who previously served as Junior Clerk I, then replaced the Clerk of Constitutional Court Kasianur Sidauruk who had entered retirement.

February

19



Chief Justice of the Constitutional Court Anwar Usman together with the Minister of Home Affairs Tjahjo Kumolo signed a memorandum of understanding regarding the use of data on the Population Identification Number (NIK) and the electronic Resident Identity Card.

March

28



The Constitutional Court confirmed the validity of the use of a certificate (suket) of electronic Resident Identity Card recording as a condition of voting in the 2019 Election on April 17, 2019. Thus, the Constitutional Court's Decision which granted part of the of petition for Law No. 7/2017 on Elections.

March

25



Constitutional Justice Aswanto was re-elected as Deputy Chief Justice of the Constitutional Court for the period 2019 - 2021. This decision was adopted after going through a voting process by all constitutional judges.

March

19



The Constitutional Judge Nominating Committee from the Commission III of the House of Representatives re-elect Aswanto and Wahiduddin Adams as constitutional judges for the 2019-2024 period after conducting a number of selection processes.

June

14



The Constitutional Court held the inaugural session on the handling of General Election Results Dispute cases for President and Vice President 2019. The case trial under Registration Number: 01/PPU-PRES/XVII/2019 was filed by the Presidential and Vice President Candidate Pair Prabowo Subianto and Sandiaga Salahuddin Uno.

June

27



The Constitutional Court rejected all the petition for the 2019 Presidential and Vice-Presidential Election Results Dispute case which was filed by the Presidential and Vice-Presidential Candidate Pair Prabowo Subianto-Sandiaga Salahuddin Uno.

July

19



The Constitutional Court received the 2019 Indonesian Child Protection Commission (KPAI) Award in the Ministry/State Institution category for its commitment to child protection.

September

10



The Constitutional Court in collaboration with the People's Consultative Assembly, the Corruption Eradication Commission and Gadjah Mada University held the 2019 Constitution and Anti-Corruption Festival at Gadjah Mada University (UGM), Yogyakarta.

August

28



Commemorating the 16th anniversary of the Constitutional Court, a total of 25 books with the theme of law and constitution were launched at the "Book Launching and Book Review of the Constitutional Court of the Republic of Indonesia".

August

15



The Indonesian World Records Museum (MURI) conferred 3 (three) records to the Constitutional Court on Thursday (8/15/2019) at the Shangri-La Hotel, Jakarta. These are the Records of "The Longest Non-Stop Judicial Session", "Judicial Session with the Most Case Files", and "The Most Transparent Trial Process".

December

10



Constitutional Court - Ombudsman signed a memorandum of understanding. The Secretary General of the Constitutional Court M. Guntur Hamzah and the Secretary General of the Ombudsman Suganda Pandapotan Pasaribu signed the agreement witnessed by the Deputy Chief Justice of the Constitutional Court Aswanto and the Chief of the Ombudsman Amzulian Rifai.

December

11



Ex-convicts must wait for a time gap of five years after passing the term of imprisonment if they want to run for governor, regent or mayor. Thus, the Verdict of the Constitutional Court Number 56/PUU-XVII/2019 filed by Indonesia Corruption Watch (ICW) and Association for Elections and Democracy (Perludem).

December

11



The Constitutional Court received the predicate of excellent and very good service in the 2019 Public Service Evaluation Results based on an evaluation of public services by the Ministry of Administrative and Bureaucratic Reform.

VERDICT OF 2019 PHENOMENAL LAWS AND REGULATIONS

Of the 92 verdicts in judicial review, there are five cases that have been phenomenal because they have a major impact on the life of the nation and state. One of these verdicts, namely Verdict Number 20/PUU-XVII/2019 that reviewed the Law Number 7 of 2017 concerning General Elections (Election Law). In the verdict of the petition filed by the Association for Elections and Democracy (PERLUDEM), et al., The Constitutional Justice Board confirmed that the use of an Electronic Identity Card recording certificate from the department for population and civil registration of related agencies can be used in elections as a substitute for Electronic Identity Card. According to the Petitioner, as many as 7 million people in Indonesia do not yet have an Electronic Identity Card. Even though the Electronic Identity Card is used as one of the requirements to vote in the Election Law. These requirements are considered vulnerable to cause the loss of voting rights. Whereas the right to vote is guaranteed by the constitution.

Then in the same case, regarding the limitation of the time for vote counting, the Constitutional Court had an opinion, part of the Petitioners' argument as long as it related to the time limit for vote counting in the Polling Station/ Overseas Polling Station as provided for in Article 383 paragraph (2) of the Election Law. It's just that, to reduce all the possible risks, especially the risk of fraud, the length of the extension of the vote counting is sufficient to be given no more than 12 (twelve) hours.

The Constitutional Court also stated the phrase "no later than 30 (thirty) days" in Article 210 paragraph (1) of the Election Law contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted "no later than 30 (thirty) days before the polling day except for voters due to unpredictable conditions beyond the ability and willingness of voters due to illness, natural disasters, being a prisoner, as well as carrying out their duties at the time of voting is determined no later than 7 (seven) days before polling day".

In addition, the verdict declares the phrase "only done and finished at the relevant Polling Station/ Overseas Polling Station on polling day" in Article 383 paragraph (2) of the Election Law contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted "only done and finished at the relevant Polling Station/Overseas Polling Station on the on polling day and in the case of unfinished vote count can be extended without pause later than 12 (twelve) hours after the end of polling day.

Rules for Ex-Convicts run in Local Elections

In addition to the requirements regarding voting, the Constitutional Court also examined cases related to the requirements for regional head candidates who were ex-convicts. This is reflected in Decision Number 56/PUU-XVII/2019 concerning the judicial review of the Local Election Law. The petition for judicial review of the Local Election Law was filed by Indonesia Corruption Watch (ICW) and the Association for Elections and Democracy (Perludem). ICW and Perludem conducted a judicial review of Article 7 paragraph (2) letter g of the Local Election Law which regulates the requirements of regional head candidates for ex-convicts.

In this verdict, the Constitutional Court returned to the legal considerations of the previous verdict. The Constitutional Court reaffirmed the cumulative conditions in Verdict Number 4/PUU-VII/2009. Likewise regarding the length of the deadline, the Constitutional Court remained consistent with the Constitutional Court Verdict Number 4/PUU-VII/2009. Legal considerations of the Constitutional Court Verdict Number 4/PUU-VII/2009 state that candidates for regional heads who have finished serving a prison sentence are required to wait 5 years to be able to run for regional head candidate.

In the Injunction Number 56/PUU-XVII/2019, the Constitutional Court states that Article 7 paragraph (2) letter g of the Local Election Law is contradictory to the 1945 Constitution and not have binding legal force on a conditional basis, as long as it does not mean that it has passed the 5 (five) years period after the ex-convicts has finished serving a prison sentence

based on the court verdicts that have permanent legal force.

The use of GPS when driving

A phenomenal decision does not always mean a decision granted by the Constitutional Court. Two petitions which were included in the 2019 phenomenal decision were two decisions that were rejected by the Constitutional Court. One of them is a petition for judicial review of the Traffic and Road Transportation Law. The material tested was the use of the Global Positioning System (GPS) application in a mobile phone (smartphone) when driving. Decision Number 23/PUU-XVI/2018 was petitioned by Toyota Soluna Community (TSC) and Irfan, an online transportation driver.

According to the Constitutional Court, the phrase “full of concentration” in the Traffic and Road Transportation Law aims to protect the wider public interest due to the adverse effects of the behavior of the driver whose concentration is distracted when driving his/her vehicle. Along with that, the Constitutional Court understands that the operation of GPS in smartphones today is very helpful for drivers to get to the destination by taking the best route in accordance with the GPS display.

The Constitutional Court has an opinion, using a cellular phone in which there are various features including the application of a satellite-based navigation system commonly called GPS when driving, within reasonable reasoning limits including things that can distract the concentration when driving that can have an impact on traffic accidents. In other words, the use of GPS can be justified as long as it does not distract the driver’s concentration when driving. This means that not every driver who uses GPS can be immediately judged as distracting driving concentrations which endanger other road users which can be judged as breaking the law, so the application must be reviewed casually. Thus, there is no question of unconstitutionality related to the Elucidation of Article 106 paragraph (1) of the Traffic and Road Transportation Law. Thus the Petitioners’ argument has no legal grounds.

Quick Count in Quiet Period

In addition, two petitions for judicial review of Law Number 7 of 2017 concerning General Elections (Election Law), namely in Decision Number 24/PUU-XVII/2019 and Decision Number 25/PUUXVII/2019



which were rejected by the Constitutional Court were included in the phenomenal decision 2019. The petition filed by the survey institute and several national private television stations questioned the prohibition of announcing the results of the survey or opinion polls in the quiet period.

The Constitutional Court has an opinion, the quiet period is the stage, where the unusable period to carry out campaign activities until the voting stage. Thus, if during a quiet period it is permissible to announce the results of a survey or opinion poll on elections, then this is not in line with the nature and purpose of the quiet period in the design of stages of the holding of elections in Indonesia.

In addition, a number of analysts have empirically indicated that there are indications that a number of pollsters or polls are affiliated with certain election contestants. Therefore, if the Election Law allows the announcement of the results of surveys or opinion polls on elections in the quiet period, it is the same as accepting the empirical facts. Likewise, the number of broadcasting institutions. Thus, justifying the announcement of the results of a survey or opinion poll in a quiet period is tantamount to justifying a campaign in a quiet period. ■

NUROSIKIN ANA



HUMAS MK

SKLN: DISPUTES BETWEEN CHAIRPERSONS OF REGIONAL PEOPLE'S REPRESENTATIVE COUNCIL

One of the authorities implemented by the Constitutional Court in 2019 was to resolve Disputes over the Authority of State Institutions (SKLN) whose authority was granted by the 1945 Constitution. During 2019, the Constitutional Court only received one SKLN petition.

On January 8, 2019, the Constitutional Court received a petition filed by the Chairperson of the Regional People's Representative Council of the Republic of Indonesia (DPD RI) for the period 2014 - 2019 which sued the Chairperson of the DPD RI for the

period April 2017 - September 2019. The Petitioners Number 1/SKLN-XVII/2019 consist of Gusti Kanjeng Ratu Hemas, Farouk Muhammad, Nurmawati Dewi Bantilan. While the DPD Chairperson for the period April 2017 - September 2019, namely DPD Chairperson Oesman Sapta Odang, DPD Deputy Chairperson II

Damayanti Lubis, and DPD Deputy Chairperson I Nono Sampono.

In their petition, the Petitioner as a representative of the DPD consisting of the chairperson and members of the DPD for the period 2014-2019. As a DPD member based on Article 297 of the MD3

Law, each DPD member has voting rights (One Man One Vote) and the DPD Chairperson based on Article 261 of the MD3 Law can serve to represent the DPD in the Court. The Petitioner is a DPD Institution based on the results of the 2014 Election which then elects the Leadership of the Institution to participate in a 5-year membership period, i.e. the 2014-2019 period based on DPD Decision Number 02/DPD RI/1/2014-2015 dated October 2, 2014, sworn in by the Chief Justice of the Supreme Court on October 2, 2014. Therefore, in the 2014-2019 period new leaders were not allowed to emerge with a term of 2 years 6 months, such as the Respondent. The Petitioner also argued that there had been a dispute over the authority of the state institution because the existence of the Respondent

had taken and/or impaired all constitutional authorities as provided for in Article 22C paragraph (3), Article 22D paragraph (1), paragraph (2), and paragraph (3), Article 23E paragraph (2) of the 1945 Constitution, and Article 23F (1) of the 1945 Constitution which is being carried out by the Petitioner from April 4, 2017 to the present.

Responding to the petition, the Constitutional Court decided not to have the authority to hear the Petitioner's petition. In legal consideration, the Constitutional Court explained that the Petitioners were not a state institution within the meaning of a state institution in this case DPD but, as explained in their petition, were the chairperson of the DPD who exercised the authority of the DPD for the 2014-2019 Period. The Constitutional Court

also explained that the Respondent was not a state institution within the meaning of a state institution in this case DPD but, as explained in the petition, was the chairperson of the DPD who exercised the DPD authority for the 2017-2019 Period.

In addition, the Constitutional Court also explained that the disputed object also did not constitute or was not related to the authority of the DPD whose authority was granted by the 1945 Constitution which was taken over by another state institution, but rather an internal dispute regarding the dismissal of Petitioner I and Petitioner II as Deputy Chairperson of the DPD which could not be relinquished from the personal dimension of the warring parties. ■

LULU ANJARSARI



I DEWA GEDE PALGUNA

"I WILL ALWAYS MISS THE DEBATES IN THE JUDGES' CONSULTATIVE MEETING"

Dewa Gede Palguna entered retirement in 2020 after serving as constitutional judge for two terms. Various experiences experienced by this man who was born on December 24, 1961 is known to be friendly. One of the memorable ones according to him, when gathering with other judges in the Judges' Consultative Meeting (RPH) in the Constitutional Court (MK).

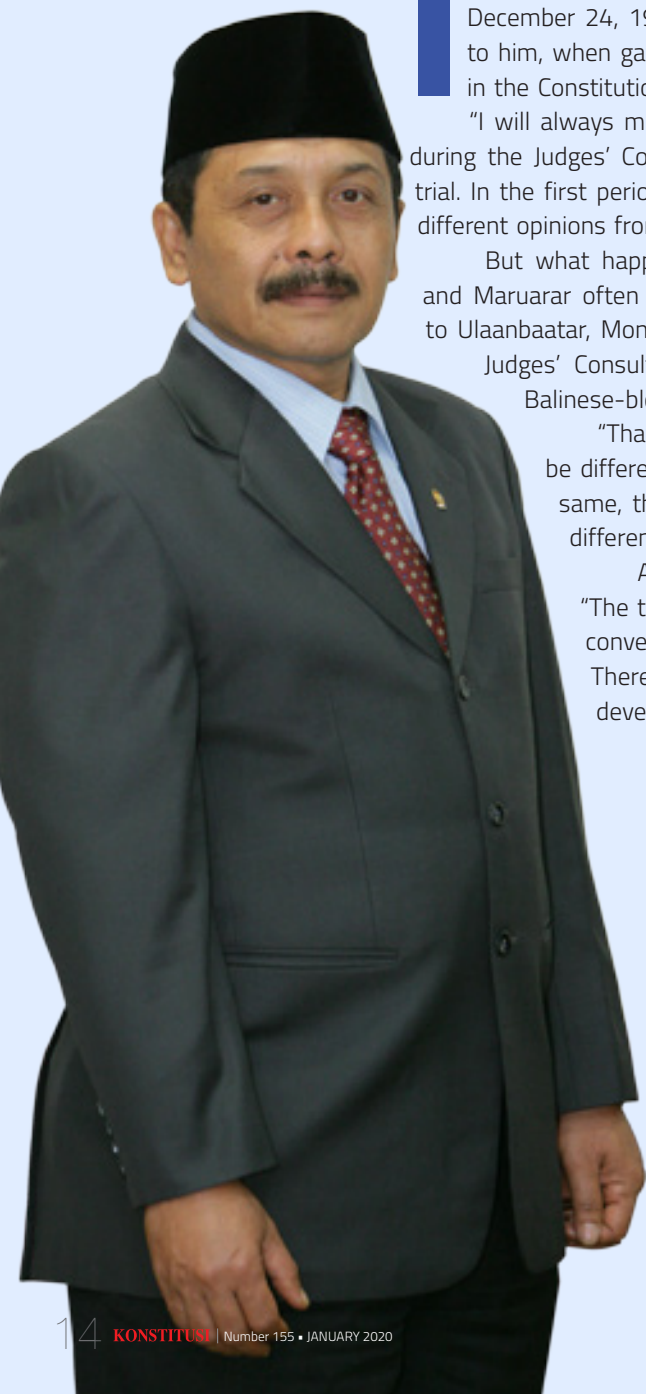
"I will always miss the debates with my friends of the Constitutional Court Judges during the Judges' Consultative Meeting, before deciding various matters related to the trial. In the first period as a judge, in the Judges' Consultative Meeting I most often had different opinions from Judge Maruarar Siahaan", said Palguna.

But what happened next, said Palguna, in various international events, Palguna and Maruarar often became tandem. For example, when they participated in activities to Ulaanbaatar, Mongolia and several other international activities. "Even though in the Judges' Consultative Meeting, we most often have different opinions," said the Balinese-blooded man.

"That means that the facts may be the same, but the interpretation can be different and produce different reportage. although the references are the same, they arrive at different conclusions. Because people see things from different angles. that's interesting", Palguna said.

According to Palguna, truth in law is not truth of correspondence. "The truth in law is the truth of the consensus in the peer. If legal experts convey expertise that is accepted as opinion, then it is considered as truth. Therefore, it is not uncommon for dissenting opinions to become the next development of an event," said Palguna. ■

NANO TRESNA ARFANA



DON BOSCO SELAMUN

CLEAN AND TRANSPARENT CONSTITUTIONAL COURT PERFORMANCE

As President Director of Metro TV, a member of the Media Group, Don Bosco Selamun, appreciated the performance of the Constitutional Court, because it was considered to have succeeded in upholding justice, especially when holding disputes in the 2019 Presidential Election results.

In addition to appreciating, one of the main figures who built the news television industry in Indonesia, also highlighted the role of the Constitutional Court when deciding the results of the 2019 Presidential Election dispute. Although under pressure, the Panel of Judges of the Constitutional Court were very firm and held the principle of justice and could decide the case fairly.

“We would like to express our highest appreciation as well as appreciation for the performance of the Constitutional Court so far. Because right, yesterday was a truly extraordinary, historic, transparent, and determined trial of the future of this country”, said the man born in Bonda, Flores, East Nusa Tenggara in the Media Group area, Kedoya, West Jakarta.

The senior Indonesian journalist also revealed that the public appreciated the performance of the Constitutional Court. Therefore, the Constitutional Court has produced a fair decision during the 2019 Presidential Election session and in the Judicial Review hearing everyday. He also hoped that the Court would be more authoritative in the future. In addition, it is also clean and transparent as has been done so far.

In addition, member of the Indonesian Broadcasting Commission for the period 2007-2010 also convinced the Constitutional Court was able to become the most trusted institution by the public, because until now the public placed great trust for the Constitutional Court in 2020. According to him, the Constitutional Court has been on the right track when looking at performance during 2019. “I believe the Constitutional Court can go to the peak point that can be trusted by the public and the public places great trust in the performance of the Constitutional Court in 2020”, he concluded. ■



BAYU/LULU



HUMAS MKRI/DEL

Chief Justice of the Constitutional Court Anwar Usman during a visit to the Constitutional Court of Jordan on Thursday (12/19/2019) in Amman, Jordan. Photograph: Indonesian Constitutional Court Public Relations.

EXCHANGE OF KNOWLEDGE THROUGH BILATERAL MEETING

As a judicial institution that has contributed to the meetings and cooperation of the world Constitutional Court, the Constitutional Court of the Republic of Indonesia (MKRI) has increasingly expanded the reach of bilateral cooperation with various countries. Towards the end of 2019 until early 2020, the MKRI visited and collaborated with several countries in the context of knowledge exchange between state institutions in bilateral meetings.

The Strategic Role of the Constitutional Court in the Movement of Democracy

Chief Justice of the Constitutional Court Anwar Usman and his staff visited Jordan's Constitutional Court on Thursday (12/19/2019) in Amman, Jordan. This visit was based on the strategic role

of the Constitutional Court of Jordan in the democratic movement in the Arab countries. As a judicial institution that is established in Asia as well as in a country with a majority Muslim population, Anwar expects an exchange of knowledge between the two Constitutional Courts through this bilateral meeting.

In addition, Anwar officially invited the Constitutional Court of Jordan to participate in the activities of the Indonesian Constitutional Court International Symposium (ICCIS). As is known, the Indonesian Constitutional Court is one of the three permanent secretariats of the Association of Asian Constitutional Court and Equivalent Institutions (AACC) and is the organizer of ICCIS.

Present to accompany the Indonesian Constitutional Court delegation, the Ambassador of the

Republic of Indonesia in Amman, Andy Rachmianto. Anwar's presence was welcomed by Deputy Chief Justice of the Constitutional Court of Jordan Mansour al-Hadidi, Justice Member Numan el-Khatib, and Secretary General represented by the Head of the Department of Alaa al-Shaara Public Relations. On this occasion, Mansour shared the experience of the Constitutional Court of Jordan who not only participated in the Arab countries, but also in Germany and France. At the direction of the King of Jordan Abdullah II, the Constitutional Court of Jordan was asked to open with the Constitutional Court of foreign countries. Furthermore, welcoming the presence of the Indonesian Constitutional Court delegation, Mansour admitted that he was trying to increase cooperation with the Constitutional Court in other countries. This was also conveyed by Mansour in response to a request for support for the Indonesian Constitutional Court as the host of the sixth World Conference on Constitutional Justice, which is planned to be held in 2024.

Top Priority for Diplomacy

The effort to protect Indonesian citizens wherever they are being a constitutional mandate that must be carried out properly. Moreover, increasing the protection of Indonesian citizens abroad is one of the top priorities of diplomacy that needs to be developed through cooperation between ministries and state institutions. To that end, Chief Justice of the Constitutional Court of the Republic of Indonesia Anwar Usman visited the residence of the Ambassador of the Republic of Indonesia to Jordan in Amman on Thursday (12/19/2019).

Anwar's visit was welcomed openly by Indonesian Ambassador Andy Rachmianto who had previously accompanied Anwar and his staff to visit the Jordan Constitutional Court. In addition to exchanging information about their main duties and functions, Anwar and Andy also complement each other's knowledge regarding the history of the Kingdom of Jordan. During the meeting, Andy also briefly revealed that the residence status of illegal migrant workers is a problem that is often faced by Indonesian citizens in Jordan. Andy said that the Indonesian Embassy has a policy of repatriating Indonesian citizens in such cases. In line with the main purpose of Anwar's visit to Jordan, Anwar expressed his hope that the Indonesian Embassy in Amman supports the move of the Indonesian Constitutional Court to build bilateral relations with the Jordan Constitutional Court.

Tightening Relationships

Chief Justice of the Constitutional Court of the Republic of Indonesia Anwar Usman was accompanied by Secretary General M. Guntur Hamzah undertook work to Malaysia to fulfill the invitation of the Malaysian Supreme Court to attend the Opening Legal Year 2020 procession at the Inter-National Convention Center, Putrajaya, Malaysia, on Friday (10/1/2020). On this occasion, Anwar was received directly by Chairman of the Malaysian Supreme Court Tan



HUMAS MKNOEL

Chief Justice of the Indonesian Constitutional Court Anwar Usman visited the residence of the Indonesian Ambassador to Jordan in Amman on Thursday (12/19/2019).

Sri Tengku Maimun binti Tuan Mat who expressed his gratitude for the presence of the Indonesian Constitutional Court delegation. In particular, he also expressed his appreciation for Indonesian Constitutional Court's support of the Malaysian Supreme Court while serving as President of the AACC for the 2017-2019 period.

The event was also attended by Chairman of the Supreme Court of Singapore Sundaresh Menon, Deputy Chairman of the Indonesian Supreme Court for the Non-Judicial Affairs Sunarto and several representatives of other friendly countries. The Opening Legal

Year is an annual procession organized by the Malaysian Supreme Court as a sign of the opening of judicial activities in all Malaysian countries. The procession was attended by all judges at the federal level, as well as judges at the state level.

The presence of the Indonesian Constitutional Court delegation is with a mission to strengthen relations between the two institutions for joint work which will be applied to the association of AACC, WCCJ (World Conference on Constitutional Justice), as well as judicial conferences of countries of the OIC (Organization of Islamic Cooperation) member planned to be held in Jakarta in



HUMAS MKNOEL

Chief Justice of Indonesian Constitutional Court Anwar Usman congratulated Chairman of Malaysian Supreme Court Tan Sri Tengku Maimun binti Tuan Mat for the successful implementation of the "Opening Legal Year 2020" in Putera Jaya, Malaysia, on Friday (10/1/2020).



Secretary General of the Constitutional Court of the Republic of Indonesia M. Guntur Hamzah and IIUM Vice-Chancellor Noor Faridah Abdul Manaf signed a memorandum of understanding between Indonesian Constitutional Court and IIUM in the Conference Room, Muhammad Abdul Rauf Building, Gombak, Kuala Lumpur, Malaysia on Friday (10/1/2020) afternoon.

2020. After attending the Opening Legal Year and meeting with the Chairman of the Malaysian Supreme Court, the agenda of the Indonesian Constitutional Court's delegation continued to sign a collaboration with the International Islamic University of Malaysia/IIUM.

Institutional Collaboration

The Indonesian Constitutional Court's delegation led by the Chief Justice of the Constitutional Court of the Republic of Indonesia Anwar Usman visited the International Islamic University of Malaysia (IIUM) Campus as a form of collaboration between the two institutions that had been initiated since mid-2019 ago. The collaboration between the Clerk and the Secretariat General of the Constitutional Court with IIUM was outlined in a Memorandum of Understanding signed by the Secretary General of the Constitutional Court of the Republic of

Indonesia M. Guntur Hamzah and IIUM Vice-Chancellor Noor Faridah Abdul Manaf in the Conference Room, Muhammad Abdul Rauf Building, Gombak, Kuala Lumpur, Malaysia, on Friday (10/1/2020).

In the procession of the Memorandum of Understanding, beginning with the remarks of the Secretary General of the Indonesian Constitutional Court M. Guntur Hamzah who conveyed the achievements of the Indonesian Constitutional Court, both at the national and global level, the Indonesian Constitutional Court also had a series of achievements at the international level. "The Indonesian Constitutional Court is the foremost legal institution in utilizing technology in the judicial process," said Guntur.

Welcoming the presentation of the Secretary General of the Constitutional Court of the Republic of Indonesia, Noor Faridah Abdul Manaf conveyed that this

memorandum of understanding was something that had been awaited by any educational institution. IIUM has heard and learned how the Indonesian Constitutional Court became a pioneer in law enforcement in modern ways. Furthermore, in his remarks, Anwar Usman emphasized that the collaboration between Indonesian Constitutional Court and IIUM was the Indonesian Constitutional Court's commitment in increasing the capacity of Indonesian Constitutional Court staff as well as a place to share experiences and resources to be beneficial to the academic scope at IIUM. The collaboration between Indonesian Constitutional Court and IIUM can be implemented in several programs, i.e. internships, exchange of scientific visits, workshops, and exchange of library collections. ■

RAISA/ALIA/NOEL

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