

KONSTITUSI

Regency
Supervisory
Committee
(PANWAS)
changed to
Election
Supervisory
Body
(BAWASLU)



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Berita menarik dari sidang di Mahkamah Konstitusi (MK) terjadi di akhir Januari 2020. Ketika MK mengabulkan permohonan pengujian Undang-Undang Pemilu dalam perkara 48/PUU-XVII/2019 yang diajukan oleh sejumlah Komisioner Badan Pengawas Pemilu (Bawaslu) dari beberapa daerah.

Nomenklatur kelembagaan pengawas dalam UU Pilkada dan UU Pemilu berbeda. UU Pilkada menempatkan kedudukan Panwas Kabupaten/Kota sebagai lembaga *ad hoc* yang sewaktu-waktu dapat dibubarkan. Sedangkan UU Pemilu No. 7 Tahun 2017 menempatkan Bawaslu Kabupaten/Kota sebagai lembaga permanen yang memiliki masa jabatan tetap. Nomenklatur Panwas Kabupaten/Kota dalam UU Pilkada harus sesuai dengan UU Pemilu. MK pun memutuskan, "Panwas Kabupaten/Kota" harus dimaknai sebagai "Bawaslu Kabupaten/Kota".

Bagi Bawaslu, putusan MK tersebut memberikan kepastian hukum legalitas Bawaslu Kabupaten/Kota dalam melaksanakan fungsi pengawasan dalam Pilkada 2020. Kepastian hukum bagi Bawaslu sangat penting karena Bawaslu akan melakukan fungsi penegakan hukum, pengawasan. Dengan demikian, mengenai kepastian hukum itu menjadi dasar dan memiliki peran yang signifikan.

Informasi putusan MK itulah yang kami angkat menjadi "Laporan Utama" dalam Majalah Konstitusi Edisi Februari 2020. Selain berita putusan itu, masih banyak berita-berita lain yang menarik dan informatif dari ruang sidang maupun nonsidang. Termasuk berbagai materi dan ulasan dari rubrik-rubrik khas dari Majalah Konstitusi.

Demikian pengantar singkat dari redaksi. Akhir kata, kami mengucapkan selamat membaca!



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REGENCY/CITY SUPERVISORY COMMITTEE CHANGED TO ELECTION SUPERVISORY BODY

Indonesia has different nomenclature of supervisory bodies in Regional Election Law and General Election Law. The Regional Election Law makes the Regency/City Supervisory Committee an ad hoc institution that can be dismissed at any time. While General Election Law No. 7 of 2017 institutes the Regency/City Election Supervisory Body as a permanent body with a fixed office term. The nomenclature of the Regency/City Supervisory Committee in the Regional Election Law must refer to the General Election Law, therefore the Constitutional Court has decided, "Regency/City Supervisory Committee" should be defined as the "Regency/City Election Supervisory Body".

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PERFORMANCE REPORT AND 2020 PROJECTION

THE GENERAL ELECTION AND REGIONAL ELECTION SUPERVISORY INSTITUTION MUST BE SYNCHRONOUS!

The Constitutional Court has just decided on the case regarding the examination of Governor, Regent, and Mayor Election Law which was most recently amended by Law Number 10 of 2016 (Regional Election Law). The Decision Number 48/PUU-XVII/2019 was passed by the Constitutional Court during a Public Plenary Session on 29 January 2020. In that case, Petitioner questioned the regulatory norms of election supervisory institution at regency/city level. The norms can be found in many articles in the Regional Election Law.

There are 3 (three) clusters of issues. First, the Petitioner sought the Constitutional Court to hold unconstitutional to the extent that the phrase "Regency/City Supervisory Committee" is not defined as a "Regency/City Election Supervisory Body". There were 45 (forty five) norms under the category. Second, the Petitioner also sought the Constitutional Court to hold unconstitutional to the extent that the phrase "each has members comprising 3 (three) persons" is not defined as "equal to the number of members of Provincial Election Supervisory Body and Regency/City Election Supervisory Body"; Third, the norms sought to be held unconstitutional are norms in Article 24 paragraph (1) and paragraph (2) of Regional Election Law. The Constitutional Court granted, in its injunction, the entire petitions of the Petitioner. It means, through legal argumentations constructed in such a manner and embodied in the legal consideration, the Constitutional Court basically agreed with the argumentations and legal ground proposed by the petitioner.

In general, such decision of Constitutional Court can be understood in several senses. First, the decision is a serious warning for the Authors of the Law regarding necessary synchronization of nomenclature of election supervisory institution, whether presidential election, legislative election, or regional head election, as provided in the Regional Election Law and General Election Law. The problem is not merely on the non-uniform nomenclature, but they may lead to the emergence of dual election supervisory institution at regency/city level, namely the institution in presidential election-legislative election and institution in regional head election. Whereas, the Election Supervisory Body constitutes inherent part of the general election committee as referred to in Article 22E Paragraph (5) of 1945 Constitution serving to carry out supervision against the implementation of general election throughout the territory of the Republic of Indonesia.

Secondly, the decision affirms necessary requirements and foresight of the Authors of Law in the synchronization of norms in the process of development of acts. Negligence or inaccuracy in synchronization will eventually lead to problems, both norm constitutionality issue and problems at the level of norm implementation. Grammatically, synchronous means in line, parallel; corresponding; or in harmony (with). From here, synchronization is defined as a matter of synchronizing or things related to the efforts to make and render something in line, appropriate, or in harmony. In the context of establishing legislation, there is such a thing as vertical synchronization, there is also horizontal synchronization. It means that the substances regulated in legislation products are not overlapping. Instead they should be complementary and interrelated. The aim, of course, is to create a regulatory basis that provides adequate legal certainty for the implementation of these regulations.

Third, in the event that the Authors of Law did not or has not aligned and harmonized the laws, the Constitutional Court can take that role. Provided that the non-synchronization between the laws touches on the aspects of constitutionality of norms that have the potential to violate constitutional lines and values. In this case, differences in the nomenclature

of election supervisory bodies regulated in Law 7/2017 (General Election Law) and Regional Election Law, especially in regency/city may cause problems in the form of non-uniformity of supervisory institution nomenclature. This non-uniformity can have an impact on the emergence of dual election supervisory institutions at the regency/city level in the presidential election-legislative election and regional head election. This should not happen. Because, in addition to carrying out oversight of the implementation of presidential elections and legislative elections, the Authors of Law provides duties and authorities to the Election Supervisory Body through the General Election Law and Regional Election Law to oversee the implementation of regional head elections. The assignment of duties and authority is the consequence of direct regional head elections.

Fourthly, there is an institutional change in the Election Supervisory Body through the General Election Law, regency/city level election supervisors who initially were only ad hoc institutions as regulated in the Regional Election Law must constitutionally adjust to become a permanent institution called Regency/City Election Supervisory Body and follow other changes as stipulated in the General Election Law. As long as there is no institutional adjustment for regency/city election supervisors as regulated in the Regional Election Law to the changes in the General Election Law, this causes legal uncertainty for the existence of regional head election supervisory institutions in regency/city. In fact, in accordance with Article 22E [paragraph (5) of the 1945 Constitution, the structure of organizing elections for legislative elections-presidential elections and the implementation of regional head elections should remain be the same despite carrying out the mandate of two different acts.

Fifth, by the decision, the Constitutional Court reiterates the constitutional interpretation of the position of the Election Supervisory Body. In positioning the organizer of the election, the Constitutional Court does not distinguish between the organizers of the legislative election-presidential election regulated in Article 22E paragraph (2) of the 1945 Constitution and the regional head election regulated in Article 18 paragraph (4) of the 1945 Constitution. The phrase "general election committee" in Article 22E paragraph (5) of the 1945 Constitution has been interpreted to refer to the election implementation functions which are stationary, permanent and independent. The election implementation function is not only carried out by the General Election Committee (KPU), but also by the General Election Supervisory Body as a single unit of the election implementation function. So, the Election Supervisory Body is an inherent part of the general election committee as referred to in Article 22E Paragraph (5) of the 1945 Constitution which functions to supervise the implementation of general elections in all regions of Indonesia.

The five things above are important to read integrally. The five things above reflect the role of the Constitutional Court in maintaining the democratic order of the state. So that when democracy moves forward, the speed is steady above the constitutional rail. Using constitutional judicial review authority, the Constitutional Court the arrangement of legislations related to general elections and regional head elections. In order that the arrangement do not overlap in the sense of principle compliance and synchronous. Along with that, the Constitutional Court kicked away legal uncertainty that haunts so far, especially about the existence of regional head election supervisory institutions in regency/city. Through the ruling, the Constitutional Court also stressed that the supervision of regional head elections is a necessity in the middle of a long way to realize regional head elections with democratic values maintained. Bravo Constitution! ■



CONSTITUTIONAL COURT SERVES PEOPLE'S INTEREST

While I did not know much about the Constitutional Court beforehand, being in this agency is very impressive to me because its role as an institution which is so effective in serving the interests of all Indonesian people with great interest in access to justice. I am very interested and impressed with the e-court system and Pancasila as well as center for constitutional learning to facilitate access to justice and educate the public to know about the world of justice. While I strongly believe that the constitutional court has done an extraordinary job in serving as the people's court and protecting constitutional rights despite being a relatively young legal institution. I strongly believe that information to facilitate access to justice for people with disabilities will be very useful for the public and further facilitate access to justice for all Indonesians. I hope that the constitutional court can become a more prominent institution on a global scale. The constitutional court has become a leader among other national institutions, but I hope the court can function also in international institutions. I believe that this can be activated through greater international involvement through the department of foreign cooperation, it is evident that the MKRI strives to play a greater international role, for example to become a WCCJ host nomination in 2024 and play an active role in the AACC.

Sermin Savan
Western Sydney University

PENGADILAN YANG MODERN, HANDAL, DAN TRANSPARAN

The Constitutional Court of the Republic of Indonesia is the only extraordinary institution. Before arriving here, I had several misconceptions about Indonesia and Indonesian law. The Constitutional Court completely resolves this misconception, the Constitutional Court shows that the courts are modern, reliable, and transparent. And the institution and its staff must be very proud of their work. First, I think the court needs to continue its efforts to create legal certainty and uniformity in decision making. Second, it should continue encouraging legal education and spreading awareness of the functions of the Constitutional Court. I hope the court can continue its activities and the active independence of the government. The key to the success of Indonesia as a democratic country is the independence of the court and its ability to hold the government accountable, it must remain strongly committed to the rules of law. I also hope that the Constitutional Court can continue programs such as international internships and other advanced programs to grow as institution and learning and others. Therefore, a mutually beneficial exchange of information will create stronger legal institutions both for the Constitutional Court and for those who interact with the Constitutional Court.

Luca Scroulig
Australian National University

CONSTITUTIONAL COURT UPHOLDS DEMOCRACY AND HUMAN RIGHTS

The Constitutional Court is an attractive organization that makes great progress towards the safeguarding of democracy and human rights. Everyone here is very optimistic and has a strong drive to move forward. I cannot wait to see what will be achieved next when the Institute turns mature and builds a strong jurisprudence body to ensure trust in the world of justice. I hope it can also be able to help building awareness and understanding in front of the wider community, it has become widely known and trusted by all citizens.

Freya Henfrey
Australian National University

THE ADVANCEMENT OF CONSTITUTIONAL COURT WITH STUDENTS

Being in the Constitutional Court of the Republic of Indonesia, I really like all the experiences while being here, we, students, were treated like very important people and felt highly valued as individual students, they really appreciated our opinions and gave us so many opportunities to grow and learn. For the advancement of the Constitutional Court I hope that there will be greater collaboration between us, intern students, and staffs at the Constitutional Court that we met here, for example I hope we can visit them, when they come to Australia.

Leyca Kaya
Macquarie University

THE SCOPE OF 20% EDUCATION BUDGET IN THE 1945 CONSTITUTION

"...in the preparation of the education budget, teacher salaries as part and component of education are included in the preparation of the State Budget and Regional Budget. If the teacher salaries is not included in the education budget in the preparation of the State Budget (APBN) and Regional Budget (APBD) and the education budget is less and 20% in the APBN and APBD then the laws and regulations concerning the revenue and expenditure budget are inconsistent with Article 31 Paragraph (4) of 1945 Constitution."
Ruling of Constitution Court Number 24/PUU-V/2007

On 20 February 2008, the Constitution Court decided on case number 24/PUU-V/2007 and resolved an endless conflict related to teacher salaries in the determination of the 20% APBN education budget based on the 1945 Constitution. The case was embodied in the petition for Examination of Law Number 20 of 2003 concerning the National Education System and Law Number 18 of 2006 concerning the 2007 State Revenue and Expenditure Budget.

Filed by Rahmatiah Abbas and Badryah Rifai, the Petitioners argued in their petition as teachers and lecturers who are educators they are educational components in the national education system according to the National Education System Law. The 1945 Constitution and the National Education System Law have stipulated a 20% education budget from APBN/APBD, but the increase in the budget, according to the Petitioners, does not benefit teachers and lecturers as an educational components due to the provisions of Article 49 paragraph (1) of the National Education System Law which excludes "educator salaries" from the 20% of APBN/APBD.

Article 31 Paragraph (4) of the 1945 Constitution states, "The State prioritizes the education budget of at least 20% from the state budget as well as the regional budget to meet the needs of national education implementation." The Constitution Court believes, with such formulations the 1945 Constitution does not open the existence of other possible interpretations other than that: (a) the state must prioritize the education budget in the APBN and APBD; (b) the priority must be at least 20% from the APBN and APBD.

The term education budget and education fund, according to the Constitution Court, are two different terms both from the substance contained in it, and from the etymology point of view. Budget or begroting is

commonly accepted and standardized definition, namely the state/regional revenue and expenditure plan within one year in the form of revenue and expenditure as well as financing in the form of each revenue that needs to be repaid and/or expenses that will be received back. While fund is interpreted as the result of realization of budget, so that fund may not be incurred without first being budgeted in the APBN/APBD.

The Constitution Court in its legal consideration explains that Article 31 paragraph (3) of the 1945 Constitution mandates the establishment of law on the implementation of the national education system, the materials of which should not regulate imperatively about the education budget, because the education budget is regulated in another paragraph, namely Article 31 Paragraph (4) of the 1945 Constitution.

In other words, the regulation concerning the allocation and amount of the education budget becomes the domain of the Law on the State Budget (APBN) which is set every year. Therefore, the National Education System Law should not regulate definitively or restrictively the educational budget amount which, in this law, is called education funding. Because the percentage of the education budget has been determined in Article 31 Paragraph (4) of the 1945 Constitution, so that the definitive and restrictive breakdown should be regulated further in the State Budget Law that is set every year.

Article 31 Paragraph (1) of the 1945 Constitution states that the state prioritizes the education budget of at least 20% from the State Budget and the Regional Budget to meet the needs of national education implementation, and as a follow-up or operational rules of the provisions is the enactment of the Law concerning the State Budget with a validity period of one year. So, according to the Constitution Court, the Law on the State Budget regulates the allocation of the education budget in

the form of all activities that increase the faith and devotion as well as noble character in order to educate the life of the nation [Article 31 Paragraph (3) of the 1945 Constitution], the management of which is designated to the technical departments or institutions that deal with education in general.

"The Court is of the opinion that the arguments of the Petitioners to the extent relating to the phrase "educator salaries and" in the provisions of Article 49 Paragraph (1) of the National Education System Law contradicts Article 31 Paragraph (4) of the 1945 Constitution is grounded so that the educator salaries must be fully taken into account in the preparation of the education budget," said Constitution Court. Furthermore according to the Court, with the inclusion of the educator salary component in the calculation of the education budget, it facilitates the Government and the Parliament in carrying out their obligations to meet the education budget of at least 20% (twenty percent) in the APBN.

"If the educator salary component is excluded, the education budget in the 2007 State Budget is only 11.8%. Whereas by including the educator salary component, the education budget in the 2007 APBN reaches 18%. Therefore, with the Court Ruling, there should be no reason to avoid or delay the fulfillment of the budget provisions of at least 20% for education, whether in the APBN or APBD in each province, regency, and city throughout Indonesia in accordance with the provisions of Article 31 Paragraph (4) of the 1945 Constitution," explained the Constitution Court.

The Constitution Court then emphasized that the Constitution is the highest law (*de hoogste wet*) that should not be delayed in implementation, including the provision regarding 20% education budget in accordance with Court Ruling Number 012/PUU-III/2005. Justice delayed, justice denied. ■

LUTHFI WIDAGDO EDDYONO



REGENCY/CITY SUPERVISORY COMMITTEE CHANGED TO ELECTION SUPERVISORY BODY

Indonesia has different nomenclature of supervisory bodies in Regional Election Law and General Election Law. The Regional Election Law makes the Regency/City Supervisory Committee an ad hoc institution that can be dismissed at any time. While General Election Law No. 7 of 2017 institutes the Regency/City Election Supervisory Body as a permanent body with a fixed office term. The nomenclature of the Regency/City Supervisory Committee in the Regional Election Law must refer to the General Election Law, therefore the Constitutional Court has decided, “Regency/City Supervisory Committee” should be defined as the “Regency/City Election Supervisory Body”

The institutional concept of “permanent” “Regency/City Election Supervisory Body” should also apply to the “Regency/City Supervisory Committee”, as it refers to the same institution as the “permanent” institution of

“Provincial Election Supervisory Body” in carrying out the oversight function of the implementation of regional head election and implementation of presidential, DPR, DPD and DPRD (legislative) elections. Therefore, the establishment of a new supervisory institution to oversee

the implementation of regional head elections becomes irrelevant and inconsistent with the institutional principles of an equitable, effective and efficient election organizer.

That was the argument for the Regional Election Law material examination filed by three



commissioners of the provincial Election Supervisory Body, namely Surya Efitrimen, Nursari, and Sulung Muna Rimbawan. Surya Efitrimen is the Chairperson of the General Election Supervisory Body (Bawaslu) of West Sumatra Province. Nursari is the Chairperson of Election Supervisory Body of Makassar City, and Sulung Muna Rimbawan is the Member of Ponorogo Regency Election Supervisory Body.

The application was filed with the Constitutional Court Registrar on 13 August 2019. The Constitutional Court Registrar registered the

application under Number 48/PUU-XVII/2019 on 10 September 2019. Further, the Petitioners revised the petition on 23 September 2019.

In the petition, the Petitioners examined a number of articles in Law Number 1 of 2015 concerning the Enactment of Government Regulations in lieu of Law Number 1 of 2014 concerning Governor, Regent, and Mayor Election into Law as amended by Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Enactment of Government Regulation in Lieu of Law Number 1 of 2014 concerning Governor, Regent and Mayor Election into Law as amended most recently with Law Number 10 of 2016 concerning Second Amendment to Law Number 1 of 2015 concerning Enactment of Government Regulation in Lieu of Law Number 1 of 2014 concerning Governor, Regent, and Mayor Election into Regional Election Law against the 1945 Constitution of the Republic of Indonesia.

The materials of Regional Election Law sought for examination by the Petitioners at the Constitutional Court are Article 1 point 17; Article 1 point 18; Article 5 paragraph (2) item e; Article 22A paragraph (1); Article 22A paragraph (3); Article 22B item e; Article 22B item f; Article 22B item h; Article 22B item j; Article 22D; Article 23 paragraph (1); Article 23 paragraph (2); Article 23 paragraph (3); Article 24 paragraph (1);

Article 24 paragraph (2); Article 24 paragraph (3); Article 25 paragraph (2); Article 30; Article 32; Article 34 item b; Article 34 item c; Article 34 item d; Article 82 paragraph (5); Article 83; Article 104 paragraph (11); Article 105 paragraph (1); Article 105 paragraph (7); Article 110 paragraph (1); Article 110 paragraph (3); Article 119 paragraph (1); Article 119 paragraph (2); Article 134 paragraph (1); Article 134 paragraph (5); Article 134 paragraph (6); Article 135 paragraph (2); Article 141; Article 144 paragraph (1); Article 144 paragraph (2); Article 144 paragraph (3); Article 146 paragraph (1); Article 146 paragraph (3); Article 152 paragraph (1); Article 152 paragraph (2); Article 154 paragraph (1); Article 154 paragraph (2); Article 193 paragraph (1); Article 193 paragraph (2); and Article 193B paragraph (2).

The Petitioners postulated that the norms sought for examination did not provide legal certainty. The subject matter of the petition of the Petitioner essentially postulates the enactment of norms in these articles had caused the supervisory function carried out by the Election Supervisory Body in the implementation of the Regional Head Election become additional duties and authorities. In addition, the supervisory institution at the regency/city level is temporary. Moreover, due to differences in nomenclature between Regency/

Article 1 point 17 of Regional Election Law

"Regency/City Election Supervisory Committee is a committee established by the Provincial Election Supervisory Body whose task is to oversee the implementation of Elections in a Regency/City."

Article 23 paragraph (3) of Regional Election Law

"Provincial Election Supervisory Body, Regency/City Supervisory Committee, and District Supervisory Committee respectively consist of 3 (three) members."



Veri Junaidi selaku kuasa hukum Pemohon saat menyampaikan pokok-pokok permohonan perkara pengujian UU Pemilihan Kepala Daerah (UU Pilkada), Selasa (17/9) di Ruang Sidang Pleno Gedung MK.

Body and they are permanent with a term of 5 years. “Then by number, previously it was determined that there are 3 members in the Regional Election Law, in fact there are already Regency/City Election Supervisory Bodies with 5 and 3 members.” said Veri.

Election Supervisory Committee Nomenclature

The election organizer institution has been regulated separately in a law, namely Law Number 15 of 2011 concerning General Election Organizers. This law is the main reference regarding the institutional organizers of elections, both in the implementation of Regional Head Elections and Presidential Election. Even it is explicitly stated in Article 1 point 10 of Law 1/2015 Jo. Law 8/2015 that the Election Supervisory Body that carries out the oversight function in the Regional Head Election is the Election Supervisory Body as regulated in the General Election Organizers Law.

Then, upon enactment of the General Election Law, the Election Organizer Law was revoked and codified in one law that substantially regulates the organization of the Election Organizer and the general election mechanism. The revocation of the Election Organizer Law, upon enactment of the General Election Law, has implications of “legal uncertainty” to the institutional system of the organizer of regional head elections and presidential election. In the Regional Head Elections, specifically regency/city level supervisors, they still use Regency/City Supervisory Committee terminology while in the 2019 Election there has been established permanent Regency/City Election Supervisory Bodies.

City Supervisory Committee and Regency/City Election Supervisory Body, Surya Efitrimen (Petitioner I) had to carry out the Regency/City Supervisory Committee re-recruitment process. As for Nursari (Petitioner II) and Sulung Muna Rimbawan (Petitioner III), they both must went through a re-selection process for Regency/City Supervisory Committee positions at each regional head election implementation. This not only wasted the energy and mind but also requires a large budget.

According to the Petitioners the entry into force of Article 23 paragraph (3) of the Regional Election Law has caused the absence of legal certainty and guarantees of livelihoods and decent work because of the total membership of the regional head election supervisory agency, being 3 people. This is not in line with institutional developments in the Election Supervisory Body.

The Petitioners have the potential to be excluded from the list of Provincial Election Supervisory Body and Regency/City Supervisory Committee commissioners. Because,

pursuant to Article 92 paragraph (2) of the General Election Law, the membership of the Provincial Election Supervisory Body consists of 5 people or 7 people and Regency/City Election Supervisory Body consists of 3 people or 5 people.

“In principle, Your Honor, we seek for two matters. The first relates to the Election Supervisory Committee nomenclature, and the second is related to the number of Election Supervisory Committee members in the election of regional heads,” said Veri Junaidi as the attorney of the Petitioners, when presenting the subject matter of the case during the Preliminary Examination of the Case Number 48/PUU-XVII/2019 which was held at the Constitutional Court on Tuesday (9/17/2019).

Veri affirmed the fact that there was no more Election Supervisory Committee which was an ad hoc by nature because after the general election in 2019, all Election Supervisory Committees at the regency/city level had become Regency/City Election Supervisory

Table of Comparison of Articles governing the Institution of Election Supervisory Body at Regency/City Level

REGIONAL ELECTION LAW	GENERAL ELECTION LAW	REMARK
<p>Article 1 point 10 The General Election Supervisory Board, hereinafter referred to as Bawaslu, is a general election organizer body tasked with overseeing the implementation of general elections in the entire territory of the Unitary Republic of Indonesia as referred to in the law governing general election organizers who are given duties and authorities in supervising the implementation of Elections based on the provisions stipulated in this Law.</p>	<p>Article 1 point 17 Election Supervisory Body, hereinafter referred to as Bawaslu, is an Election Organizer body that supervises the implementation of Election in all regions of the Unitary Republic of Indonesia.</p>	<p>The position is permanent</p>
<p>Article 1 point 16 Provincial Election Supervisory Body is a general election organizer body tasked with overseeing the implementation of general election in the province as referred to in the law governing general election organizers who are given duties and authorities in overseeing the implementation of Governor and Deputy Governor Election based on the provisions stipulated in this Law.</p>	<p>Article 1 point 18 Provincial Election Supervisory Body, hereinafter referred to as Bawaslu Provinsi, is a body that oversees the Implementation of Election in the province.</p>	<p>The position is permanent</p>
<p>Article 1 point 17 The Regency/City Election Supervisory Committee, hereinafter referred to as Panwaslu Kabupaten/Kota, is a committee established by the Provincial Election Supervisory Body whose task is to oversee the implementation of Elections in Regency/City areas;</p>	<p>Article 1 point 19 Regency/City Election Supervisory Body, hereinafter referred to as Bawaslu Kabupaten/Kota, is a body oversees the Implementation of Election in Regency/City areas</p>	<p>The position of the Supervisory Committee is temporary pursuant to Article 24 paragraph (1) of the Regional Election Law, while the Regency/City Election Supervisory Body is permanent</p>
<p>Article 23 paragraph (1) The supervision of the implementation of Election is carried out by the Provincial Election Supervisory Body, Regency/ City Supervisory Committee, District Supervisory Committee, Field Supervisory Officers (PPL), and Site Supervisory Officers (Pengawas TPS).</p>	<p>Article 89 paragraph (1) and paragraph (2)</p> <ol style="list-style-type: none"> I. The Supervision of the Implementation of Election is carried out by the Election Supervisory Body. II. The Election Supervisory Body as referred to in paragraph (1) consists of: <ol style="list-style-type: none"> a. Election Supervisory Body; b. Provincial Election Supervisory Body; c. Regency/City Election Supervisory Body; d. District Election Supervisory Committee e. Village Election Supervisory Committee; f. Foreign Election Supervisory Committee; and g. Site Election Supervisory Officers (Pengawas TPS) 	<p>Regional Election Law still uses Regency/City Supervisory Committee nomenclature, while Election Law uses Regency/City Election Supervisory Body</p>

The legal uncertainty regarding the institutional system of regional head election organizers and presidential election organizers is confirmed in the existence of the Election Supervisory Body at the regency/city level, which is based on Article 1 point 17 Jo. Article 24 paragraph (1) Regional Election Law “is temporary or ad-hoc”, while pursuant to the General Election Law (Law 7/2017), the Election Supervisory Bodies at the regency/city level are “permanent” with a term of 5 years.

Based on the comparison of the “institutional characteristics” of the Election Supervisory Body at the regency/city level in the regional head election and electoral regimes as given in the table above,

the setting of organizing institution in the Regional Election Law is irrelevant and inconsistent with the principle of legal certainty provided for in Article 28D paragraph (1) of the 1945 Constitution.

Law Number 7 of 2017 concerning General Election (General Election Law) has institutionally established the institution of Election Supervisory Body to be maintained at the regency/city level. The General Election Law no longer admits the term “Regency/City Supervisory Committee”, instead it was replaced by the position of “Regency/City Election Supervisory Body”. Therefore, the “permanent characteristic” should also be pertinent to the institution of the Election Supervisory Body in the

regency/city in the regional head election.

The distinction between the Regency/City Supervisory Committee in the Regional Election Law and the Regency/City Election Supervisory Body in the General Election Law is not in line with the principle of legal certainty and legal order, which requires legal justice as characterized by the granting of the same authority or the same approach (equal treatment) for the same institution, although in the implementation of elections for different types such as the election of regional heads, president, House of Representatives (DPR), Regional Representatives (DPD), and Regional House of Representatives (DPRD).

According to the Petitioners, the presidential election legal system and the regional head election legal system are systems that are closely related to each other. Therefore, the lagging of institutional arrangements of the Election Supervisory Body at the regency/city level in the Regional Election Law should be implemented or interpreted the same as the General Election Law to achieve the objectives of legal certainty and electoral justice.

“In principle, the Petitioner begs to the Honorable Court of Justice that the Regency/City Supervisory Committee nomenclature as stipulated in Article 1 point 17 of the Regional Head election Law be interpreted the same as the Regency/City Election Supervisory Body institutions in the General Election Law, being a permanent institution, which subsequently applies on mutatis mutandis basis to the Regency/City Supervisory

Table of Comparison of Articles governing the Institution of Election Supervisory Body at Regency/City Level

Regional Election Law	Law No. 7/2017	Remark
Article 23 paragraph (3) Provincial Election Supervisory Body, Regency/City Supervisory Committee, and District Supervisory Committee respectively has 3 (three) members.	Article 92 paragraph (2) Number of Members: a. Election Supervisory Body, 5 (five) people; b. Provincial Election Supervisory Body 5 (five) or 7 (seven) people; c. Regency/City Election Supervisory Body, 3 (three) or 5 (five) people; and a. District Election Supervisory Committee, 3 (three) people.	There are conflicts of norms between the General Election Law and Regional Election Law so that there are potential Provincial Election Supervisory Body members deactivated because the Regional Election Law determines only 3 members; In addition, if the Regency/City Election Supervisory Body is given additional authority as the organizer of the regional head election there are potential that some members of Regency/City Election Supervisory Body are dismissed because the Regional Election Law restricts to only 3 members

Committee arrangements which can be found in the body of the Regional Election Law,” said Muh. Salman Darwis as the attorney for the Petitioners during the trial with the agenda of revision of petition held at the Constitutional Court on Thursday (9/26/2019).

Members of Provincial Election Supervisory Body and Regency/City Election Supervisory Body

In the implementation of the 2019 Simultaneous Elections, the members of the Provincial Election Supervisory Body and Regency/City Election Supervisory Body have a membership composition of 5 people and their authority is divided into five divisions, such as: (1) organizational and human resources division, (2) supervision and inter institution relations division, (3) legal and information division, (4) violation enforcement division, and (5) dispute resolution division;

According to the Petitioners, Article 23 paragraph (3) of the Regional Election Law governing that the membership of the Provincial Election Supervisory Body and Regency/City Supervisory Committee is only three people is in contrary to the principle of legal certainty, because it has the potential to eliminate the constitutional rights of the Petitioners who have been appointed as Provincial Election Supervisory Body and Regency/City Election Supervisory Body commissioners based on the General Election Law. The reduction in the number of Provincial Election Supervisory Body and Regency/City Election Supervisory Body commissioners from 5 people under



HUMAS MKRFA

Pemohon Prinsipal dan Kuasa Hukumnya mengikuti sidang perbaikan uji materiil Undang-Undang Nomor 1 Tahun 2015 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota, Kamis (26/9) di Ruang Sidang MK.

the General Election Law to only 3 people as mandated by Article 23 paragraph (3) of the Regional Election Law is a form of waiver of Article 27 paragraph (2) of the 1945 Constitution.

Then, in line with the principles of “justice” and “benefits” that must be inherent in the judicial body’s decision, the Petitioners appealed to the Court to consider that the settlement of this case could be accelerated, so that it was in line with the election stages. Pursuant to General Election Committee Regulation No. 15 of 2019 concerning Stages, Programs and Schedule of the Implementation of the Simultaneous Regional Head Election 2020, the stage will start with the Signing of the Regional Grant Agreement Manuscript (NPHD) on 1 October 2019. When the petition was filed

with the Constitutional Court, the Regency/City Election Supervisory Body could not execute the regional grant agreement manuscript (NPHD) as they were yet to be considered as Regency/City Supervisory Committee as referred to in the Regional Election Law.

The history of direct regional head elections by the people has been started in 2005. The simultaneous regional head elections have been held since 2015, 2017 and 2018. The fourth simultaneous regional head elections will be held on 23 September 2020. Despite its shortcomings, the progress that have been achieved by our nation in the practice of democracy in the regions through the implementation of the regional head election need to be continued in the future. Moreover, the implementation of legislative

elections, direct presidential elections, and direct regional head elections over the past two decades resulted in a relatively stable democracy, which has become a reference for many countries in the world.

Simultaneous regional head elections in 23 September 2020 will take place in 270 regions, including nine governor elections, 224 regent elections, and 37 mayor elections. The regional head election stage itself, which covers 24 stages, has begun with the stages of program planning and budgeting that took place on 30 September - 1 October 2019. Simultaneous regional head election 2020 is also the largest simultaneous regional head election in terms of the number of regions that hold regional head elections, so it requires better preparation than before.

The Election Supervisory Body as one of the organizers of the simultaneous regional head election 2020 also wants to accelerate together with the General Election Committee (KPU) to prepare the supervision of the regional head election stages which become the main tasks and responsibilities as mandated by the Regional Election Law. However, the problem with the planned consolidation of the Election Supervisory Body is currently experiencing several obstacles. *First*, there is a “dualism” especially for Regency/City Supervisory Committee who were previously the elements of the 2019 Election Organizer and the Regency/City Election Supervisory Body status in accordance with the General Election Law. *Second*, the confusion about the regulation of the number of personnel and/or

the composition of the membership of the Supervisory Committee based on the Regional Election Law and Election Supervisory Body under the legal umbrella of the General Election Law. *Third*, the legality and legitimacy of Regency/City Supervisory Committee as one of the elements of regional head election organizers whose authority is established by the Provincial Election Supervisory Body as regulated by the Regional Election Law, but the Regency/City Election Supervisory Body based on General Election Law is actually established by Election Supervisory Body of central level.

As stated earlier, the Regional Election Law still considers the Regency/City Supervisory Committee as an ad hoc institution which can be dissolved at any time. While the General Election Law takes the Regency/City Election Supervisory Body as a permanent institution that has a permanent service term. Therefore, according to the Petitioners, in order to obtain legal certainty related to the implementation of the 2020 simultaneous regional head election legal framework, the essence of Regency/City Supervisory Committee according to the Regional Election Law must be seen as the Regency/City Election Supervisory Body as referred to by the General Election Law. That means, the Regency/City Supervisory Committee as referred to in Law No. 10 of 2016 should be interpreted the same as the Regency/City Election Supervisory Body as mandated by Law No. 7 of 2017.



HUMAS MK/GANIE

Syamsuddin Haris selaku Ahli yang dihadirkan Pemohon saat menyampaikan keahliannya dalam sidang perkara pengujian UU Pilkada, Senin (2/12) di Ruang Sidang Pleno Gedung MK.

The Subject Matter of the Petition was Granted to Its Entirety

The Constitutional Court had held the hearing of the case number 48/PUU-XVII/2019 for 6 times. The seventh session was held with the agenda of the ruling pronouncement, the most tense and decisive trial. The Constitutional Court in its ruling stated that it granted all of the petitions.

“The Injunction, adjudicates ... In Subject Matter of Petition, to grant the petitions of the Petitioners to its entirety,” said the Constitutional Court Chair Anwar Usman accompanied by eight Constitutional Justices, during the pronouncement of Ruling Number 48/PUU-XVII/2019 which was held at the Constitutional Court on Wednesday (01/29/2020).

The Constitutional Court had in its legal consideration divided the norms sought for constitutionality examination by the Petitioners into three categories. *First*, the norms sought to be declared inconsistent with the 1945 Constitution and has no binding power to the extent the phrase “Regency/City Supervisory Committee” is not interpreted as a “Regency/City Election Supervisory Body”. The norms included in this first category are: Article 1 point 17; Article 1 point 18; Article 5 paragraph (2) item e; Article 22A paragraph (1); Article 22A paragraph (3); Article 22B item e; Article 22B item f; Article 22B item h; Article 22B item j; Article 22D; Article 23 paragraph (1); Article 23 paragraph (2); Article 24 paragraph (3); Article 25 paragraph (2); Article 30; Article 32; Article 34 item b; Article 34 item c; Article 34 item d; Article 82 paragraph (5); Article 83; Article



HUMAS MK/GANIE

Komisioner Badan Pengawas Pemilihan Umum Republik Indonesia (Bawaslu RI) Fritz Edward Siregar memberikan keterangan dalam sidang perkara pengujian UU Pilkada, Selasa (12/11) di Ruang Sidang Pleno Gedung MK.

104 paragraph (11); Article 105 paragraph (1); Article 105 paragraph (7); Article 110 paragraph (1); Article 110 paragraph (3); Article 119 paragraph (1); Article 119 paragraph (2); Article 134 paragraph (1); Article 134 paragraph (5); Article 134 paragraph (6); Article 135 paragraph (2); Article 141; Article 144 paragraph (1); Article 144 paragraph (2); Article 144 paragraph (3); Article 146 paragraph (1); Article 146 paragraph (3); Article 152 paragraph (1); Article 152 paragraph (2); Article 154 paragraph (1); Article 154 paragraph (2); Article 193 paragraph (1); Article 193 paragraph (2); Article 193B paragraph (2) Regional Election Law.

Secondly, the norms sought to be declared inconsistent to the 1945 Constitution and does not have binding power to the extent the phrase “each consists of 3 (three) people” is not interpreted as “equal to the number of Provincial Election Supervisory Body and

Regency/City Election Supervisory Body members as referred to in the General Election Law”. The norm included in this second category is the norm in Article 23 paragraph (3) of the Regional Election Law.

Third, the norms sought to be declared inconsistent with the 1945 Constitution and have no binding power. Norms included in in this third category are norms in Article 24 paragraph (1) and paragraph (2) of the Regional Election Law.

With regard to the organizer of the Regional Head Election, in its legal consideration Sub-paragraph [3.10.1.41 point 7, page 97, of the Decision of the Constitution Court Number 31/PUU-XVI/2018, dated July 23, 2018, the Court declares:

“....Even though the legal regime of the General Election and Regional Head Election is considered different, the organizer of the Regional Head Election which is given the tasks by Law 10/2016 to



Ilustrasi papan nama Bawaslu Kabupaten Ponorogo.

carry out Regional Head Election is the organizer of the General Election which is established in accordance with Article 22E paragraph (5) of the 1945 Constitution. Therefore, the structure of the organizer of the General Elections and Regional Head Elections should remain the same despite carrying out the mandate of two different laws.”

With reference to the legal considerations of the Decision of the Constitutional Court Number 31/PUU-XVI/2018, in positioning the election organizer, the Court does not differentiate between the organizers of public elections for the President and Vice President, members of the DPR, DPD, and DPRD as stipulated in Article 22E paragraph (2) of the 1945 Constitution with the election of Governor, Regent, and Mayor as stipulated in Article 18 paragraph (4) of the 1945 Constitution which in the Regional Election Law includes the election of the Deputy Governor,

Deputy Regent and Deputy Mayor. In accordance with the consideration in the ruling *a quo*, all of the elections are to hold in accordance with the spirit of Article 22E paragraph (5) of the 1945 Constitution.

Article 22E paragraph (5) of the 1945 Constitution emphasizes, “*the general election is held by a general election committee.*” With regard to such provision of Article 22E paragraph (5) of the 1945 Constitution, as confirmed in the Decision of the Constitutional Court Number 11/PUU-VIII/2010 in examining Law Number 22 of 2007 concerning General Election Organizer (Law 22/2007), dated 17 March 2010, the phrase “general election committee” in the provisions of Article 22E paragraph (5) of 1945 Constitution is interpreted to refer to the implementation of general election functions that are of national scale, permanent and independent. At this point, the implementation of

the general election function is not only carried out by a General Election Committee (KPU), but also includes a General Election Supervisory Body as an integrated function of the election implementation function. In this case, the Election Supervisory Body is an inherent and general election committee as referred to in Article 22E paragraph (5) of the 1945 Constitution which functions include to supervise the implementation of general elections in all regions of Indonesia.

As the institution that carries out oversight functions in the implementation of elections, in accordance with the provisions of Article 22E paragraph (5) of the 1945 Constitution, the national, permanent, and independent Election Supervisory Body carries out the duties and authorities of supervision of the implementation of election of DPR members, DPD members, the President and Vice President, and DPRD members. In which case, the supervision task is carried out by the Election Supervisory Body and its networks according to the hierarchy of the institution according to the scope of the province, regency, city to the village level and polling stations (TPS).

In addition to supervising the implementation of the elections of president and vice president, DPR members, DPD members, and DPRD members which is explicitly stated in Article 22E paragraph (2) of the 1945 Constitution, the Authors of Law also give duties and authorities to the Election Supervisory Body through the Election Organizer Law and Regional Election Law to oversee the implementation of regional

head elections. The assignment of such duties and authorities is as the consequence of the regulation that the regional head election is carried out directly. Last time, the law specifically regulating election organizer was Law Number 15 of 2011 concerning General Election Organizers (Law 15/2011). After that, the material related to the election organizers regulated in Law 15/2011 is incorporated or combined into the General Election Law material, namely Law Number 7 of 2017 concerning General Election.

In its development, as election organizer institution which oversees the implementation of elections throughout the Republic of Indonesia, the Election Supervisory Body institution is most recently regulated in Law 7/2017. With the establishment of Law 7/2017, Law 15/2011 was declared null and void. One of the fundamental substances in Law 7/2017 is the institutional change in the Election Supervisory Body. In this case, Article 89 paragraph (2) of Law 7/2017 states that the Election Supervisory Body consists of: a. Election Supervisory Body; b. Provincial Election Supervisory Body; c. Regency/City Election Supervisory Body; d. District Election Supervisory Committee; e. Village Election Supervisory Committee; f. Foreign Election Supervisory Committee; and g. TPS Supervisory Officer. Furthermore, Article 89 paragraphs (4) and paragraph (5) state explicitly the institutional characteristic of each election supervisory organization in a hierarchical manner, where Election Supervisory Body, Provincial Election Supervisory Body and Regency/

City Election Supervisory Body are permanent, whereas District Election Supervisory Committee, Village Election Supervisory Committee, Foreign Election Supervisory Committee and TPS Supervisory Officers are *ad hoc*.

General Election Regulation Changes

The differences in election supervisory institution nomenclature between those regulated in the Regional Election Law and Law 7/2017 are due to changes in election regulations. This change occurred because Law Number 42 of 2008 concerning General Election of President and Vice President, Law 15/2011, and Law Number 8 of 2012 concerning General Election

of Members of the DPR, DPD and DPRD were merged into one law, namely Law 7/2017.

In fact, even though the election supervisor nomenclature at regency/city level, as stipulated in the Regional Election Law is the same as those regulated in Law 15/2011, when the substance of Law 15/2011 has been replaced with Law 7/2017, the election supervisory nomenclature is not uniform for all types of elections. In this case, the election supervisory institution, in this case the regional head election supervisory body at the regency/city level in the election of regent and deputy regent and mayor and deputy mayor is carried out by the Regency/City Election Supervisory Committee.



Kepala Biro Hukum Kementerian Dalam Negeri (Kemendagri) Raden Gani Muhammad saat menyampaikan keterangan Pemerintah dalam sidang perkara pengujian UU Pemilu, Rabu (23/10) di Ruang Sidang Pleno Gedung MK.

When Law 7/2017 was passed, in Article 571 item b of the Law it is affirmed “*Law Number 15 of 2011 concerning Election Organizers was revoked and declared null and void*”. The Concluding Provisions of Law 7/2017 not only confirms the substance of the status of Law 15/2011 which has been adopted in Law 7/2017, but also shows the change or replacement of the Law which is the basis or reference for the institutional arrangements for election organizer. When the electoral institutional legal basis changes, all laws and regulations that refer to Law 15/2011 should also adjust and/or be adjusted to the replacement made.

When the Regional Election Law governing election supervisory

institutions, which in fact are election supervisors as regulated by Law 7/2017, is not adjusted to the change in the regency/city level election supervisory nomenclature, this will lead to a non-uniformity of regulation in the implementation of the oversight function, especially in the election of regional heads. This non-uniformity can affect the emergence of two election supervisory institutions at the regency/city level in the election of DPR members, DPD members, the President and Vice President, and DPRD members with regional head elections. In fact, the Election Supervisory Body institution as regulated in Law 7/2017 is an institution that is given permanent status until regency/city level. Meanwhile, the Regional Election

Law precisely regulates different establishment, nomenclature, and nature of the supervisory institution in the election of regional heads.

The changes in Regency/City Election Supervisory Body institution under Law 7/2017 not only affect the position of Regency/City Election Supervisory Body in overseeing the implementation of elections, but also in organizing supervision of regional head elections. This means, with the duty and authority of the Election Supervisory Body to supervise the election of regional heads in accordance with the Regional Election Law, the institutional change of the Election Supervisory Body under Law 7/2017 automatically applies in the implementation of regional head elections, so that the adjustment to the changes as referred to in the Regional Election Law becomes very urgent. In this context, Law 7/2017 as the legal basis governing the institution of Election Supervisory Body must be used as a reference when the body is given the task and authority to oversee regional head elections. In a sense that the task and authority of the election supervision in the Regional Election Law is carried out by the Election Supervisory Body in accordance with the nomenclature, nature and hierarchy of the institution as referred to in Law 7/2017.

With the changes made by Law 7/2017, regency/city level election supervisors who were initially only ad hoc institutions as regulated in the Regional Election Law must also constitutionally adjust to become a permanent institution under the name Regency/City Election Supervisory Body and follow other changes as stipulated in Law 7/2017.

Thus, according to the Constitutional Court, the norms of



HUMAS MKCGANIE

Surya Eftrimen selaku Pemohon Prinsipal didampingi kuasa hukumnya Muh. Salman Darwis sesuai mendengarkan sidang pleno pengucapan putusan perkara pengujian UU Pilkada, Rabu (29/1) di Ruang Sidang Pleno Gedung MK.

articles examined in the Regional Election Law to the extent the phrase “Regency/City Supervisory Committee” is not meant to be a phrase “Regency/City Election Supervisory Body” is inconsistent with the 1945 Constitution is legally grounded.

Composition of Membership of Election Supervisory Body

Furthermore, the Constitutional Court’s legal considerations on the second category, namely the phrase “each consisting of 3 (three) people” in Article 23 paragraph (3) of the Regional Election Law. The petitioner sought that the phrase be declared in contrary to the 1945 Constitution and has no binding power to the extent it was not interpreted “equal to the number of Provincial Election Supervisory Body and Regency/City Election Supervisory Body members as referred to in the General Election Law”.

The Constitutional Court reaffirmed the regency/city level supervisor nomenclature as regulated in Law 15/2011 is the basis or reference in determining the nomenclature of supervisors regulated in the Regional Election Law. With the adoption of the substance of Law 15/2011 into Law 7/2017, Regency/City Election Supervisory Committee institutions which are changed to Regency/City Election Supervisory Body are determined as permanent institutions, in which the members hold the positions for 5 (five) years.

The composition of the membership of the Provincial Election Supervisory Body as regulated in Law 15/2011 is 3 people and the members of Regency/City Election Supervisory Committee are 3 people. With the change of law governing the

election organizers, the composition of Provincial Election Supervisory Body members is 5 (five) or 7 (seven) people, and Regency (City) Election Supervisory Body members are 3 (three) or 5 (five) people. In addition to the composition of the members, changes also occur in the mechanism of recruitment of Regency/City Election Supervisory Body members. Initially, under Law 15/2011, Regency/City Election Supervisory Committee members were selected and determined by the Provincial Election Supervisory Body, then under Law 7/2017 it was changed into a selection process through the Selection Team established by the Election Supervisory Body.

“.....If the number of members of Provincial Election Supervisory Body and members of Regency/City Election Supervisory Body in Article 23 paragraph (3) Regional Election Law is not interpreted the same as the number of members of Provincial Election Supervisory Body and Regency/City Election Supervisory Body as referred to in Law 7/2017, such action raises legal uncertainty that is in contrary to the norm of Article 28D paragraph (1) of the 1945 Constitution. Thus, the argument of the Petitioners regarding the unconstitutionality of Article 23 paragraph (3) of the Regional Election Law has legal grounds,” said the Constitutional Justice Saldi Isra reading the legal considerations of the Constitutional Court.

Next, legal considerations on the third category related to the Petitioner’s argument regarding the authority of the Provincial Election Supervisory Body in forming and establishing the Regency/City Supervisory Committee as

stipulated in Article 24 paragraph (1) and paragraph (2) of the Regional Election Law. The Constitutional Court reiterated that the filling of positions of Regency/City Election Supervisory Body should also be adjusted to changes in Law 7/2017. The definition of Regency/City Supervisory Committee in Article 1 point 17 of the Regional Election Law that still includes the phrase “formed by the Provincial Election Supervisory Body” must also be adjusted so as not to cause legal uncertainty.

Moreover, the Constitutional Court is of the opinion that Article 1 point 17 of the Regional Election Law is not enough just to state the phrase “Regency/City Supervisory Committee” is constitutional as long as it is interpreted as “Regency/City Election Supervisory Body”, but also for reasons of legal certainty, the phrase “formed by the Provincial Election Supervisory Body” should be held invalid so that the filling should refer to the provisions of Law 7/2017.

The same applies to Article 5 paragraph (2) item e of the Regional Election Law. Although this provision was not argued and was not sought for examination by the Petitioners, the Constitutional Court stated that it was not enough just to state the phrase “Election Supervisory Committee Regency/City” is in contrary to the 1945 Constitution to the extent it was not interpreted as “Regency/City Election Supervisory Body”. “It should also be held that the phrase “Regency/City Election Supervisory Committee” in Article 5 paragraph (2) item e of the Regional Election Law is unenforceable and no longer a formulation of the norm *a quo*,” said Saldi. ■

NUR ROSIHIN ANA



QUESTIONING THE MECHANISM OF APPOINTMENT OF MEMBERS OF DPRP PAPUA

The mechanism for appointing DPRP Papua members is considered to cause problems. Therefore, a number of Papuans filed the examination of Law Number 21 of 2001 concerning Special Autonomy for Papua Province with the Constitutional Court. The case which was registered under Number 4/PUU-XVII/2020 was filed by Penetina Cani Cesyha Kogoya, a private employee. In this petition, the Petitioner argues that Article 6 paragraph 2 of the Law on Special Autonomy for Papua Province which reads, "DPRP consists of members elected and nominated based on legislation" is considered inconsistent with the 1945 Constitution.

Habel Rumbiak as the Petitioner's attorney in the first session held on 20 January 2020 said that the election was the real actualization of democracy. The people can declare sovereignty in the administration of government, both in central government and in the regions, moreover in regions that adhere to the principles of decentralization and regional autonomy. In this case, continued Rumbiak, the practice of nominating members of DPRP Papua and West Papua Provinces carried out by regional governments is an act of deviation from democracy that has been adopted in the constitutional system in Indonesia, negating the principle of people's sovereignty, creating

discrimination, injustice, and potentially causing conflicts.

Rumbiak further explained that in reality, according to the Governor of Papua, the appointment of members of DPRP has caused conflict. So that the 2014-2019 DPRP membership should continue to the next period so as not to cause new problems. On the contrary, in West Papua Province, the recruitment of candidates for members of DPRP by appointment faced a legal problem because a Chairperson of the West Papua Provincial People's Assembly was appointed and became a member of the selection committee.

This disorder in the mechanism of appointment of members of DPRP,

Rumbiak explained, shows that there is an undemocratic recruitment process that is in contrary to the applicable legislation. The specialties of the Provinces of Papua and West Papua do not lie, among other things, in the presence of elected members of DPRP, but the number of members is higher than other DPRPs, namely the DPRP 1 1/4 times the previous DPRP.

"Thus there is no obstacle for Papuans or Petitioners to become members of DPRP in both Papua and West Papua Provinces if they are recruited through legislative elections due to the protection of Papuan natives who are prioritized in the recruitment of political parties" said Rumbiak before a hearing chaired by Constitution Justice Arief Hidayat who was accompanied by Constitutional Justices Suhartoyo and Saldi Isra.

Constitutional Losses

In response to the petition, Saldi noted the need for the Petitioner to explain the constitutional impairment suffered. The Petitioner must be able to describe the factual losses suffered by the passage of the phrase in the article or losses that have been incurred so far. In addition, Saldi also emphasized that the Petitioner explain the intentions of the Petitioner who claimed as the representative of Papuan women. In this case, the Petitioner is expected to be able to show evidence of her involvement in a forum for women's representation in an organization or forum that can act within the scope of the law.

Meanwhile, Suhartoyo advises the Petitioner to include the Relief sought from the Court as a systematic requirement for the petition. "There are no reliefs listed as a requirement of a systematic petition. This may lead to giving different judgment of a petition," said Suhartoyo.

In addition, Suhartoyo also demanded that the Petitioner made a search of previous petitions that had been filed with the Constitutional Court relating to the Law on Special Autonomy for Papua Province, especially in connection with the membership of councilors representing indigenous peoples. In line with this, Arief also suggested that the Petitioner observes closely if the petition was granted, as well as the impact that could occur later considering the phrase "and nominated" was once regulated in the Special Regional Regulation (Perdatus) No. 9/2009 which has set this provision very clearly and specifically. "The Perdatus requires that (he or she) must be the indigenous people of Papua. If the phrase is deleted, it will fall freely, won't it? This means that to fill this DPRP it should be based on the General Election Law. This makes it possible to have representatives of Papua People. Think again," explained Arief.

Revision of Petition

Then during revision session held on 10 February 2020, the Petitioner affirmed her petition. According to the Petitioner, the mechanism for organizing the appointment of members of the Papuan People's Representative Council (DPRP) and the West Papua People's Representative Council (DPRPB) by the governor, national unity department (Kesbang), and the selection committee is actually a pattern of recruitment like the one carried out by the New Order regime under the leadership of the President Soeharto who appointed members of the DPR from Military (ABRI) and Police (Polri) Faction, and members of the People's Consultative (MPR) and regional delegation groups.

"This kind of practice actually closes the room and suppresses the right of the Petitioner to use her constitutional rights to elect her

representatives and the right to be elected as a representative in the Provincial House of Representatives, which has the potential to discriminate the right of the Petitioner to have equal position before law and the government," Ivan stated before the Constitutional Court Panel of Justice consisting of Constitutional Justice Arief Hidayat as the Chair of the Panel accompanied by two panel members namely Constitutional Justice Sahdi Isra and Constitutional Justice Suhartoyo.

In addition, Ivan continued, the Petitioner argued the lack of protection for the Petitioner to obtain the same opportunity. The petitioner is the representative of women group who have been actively engaged in organizations to defend the interests of Papuan women, for example as Secretary of the National Committee for Indonesian Youth (KNPI) of Jayawijaya Regency from 2000 to 2004 and a number of other tasks.

"As a citizen who has equal legal position before the government, (she) then become the victim of the mechanism of appointment of members of the Papua Province DPRP. As happened to the Petitioner in 2019. When the registration process was carried out, the Petitioner was later disqualified and excluded by the Selection Committee and the national unity department and the Governor of Papua so that she failed to become a member of the Papua Provincial People Representative who was appointed for the first time after the Constitutional Court ruling Number 116/PUU-XVII/2019," said Ivan.

Dismissed

The Constitutional Court Panel of Justice dismissed the petition to its entirety. The Court considered that if the effort to give a greater role and recognition through the appointment mechanism is changed or interpreted

as “elected by the people of Papua” as sought by the Petitioner, the Court was of the opinion that this was not in line with the spirit of special autonomy mandated by the 1945 Constitution.

So said the Constitutional Justice Arief Hidayat when reading out the legal considerations of the Court in the verdict hearing held on Wednesday (2/26/2020). “Injunction, Adjudicates, To Dismiss the Petitioners’ Petition to its entirety,” said Constitutional Court Chair Anwar Usman for the case registered under Number 4/PUU-XVIII/2020.

Furthermore, regarding the Petitioners’ argument which stated that the appointment of members of DPRP could have raised conflicts, Arief explained that if it was true that the filling of Members of DPRP through the appointment mechanism as regulated in Article 6 paragraph (2) of the Law a quo had caused conflict, this was not a problem of constitutionality of the norms. But it is the application or implementation of the norm that matters. In connection with the implementation of these norms, the Court considers that the specialties in the filling of the members of the Provincial DPR, both in Papua and West Papua Provinces, through the appointment mechanism by the Selection Committee is a democratic effort in the filling of the members of DPRP through the appointment mechanism.

According to the Court, if there were problems related to the existence of members of the Selection Committee who had a “tendency to have closeness with political parties,” this matter was again not related to the constitutionality of the word “appointed” in Article 6 paragraph (2) of the Law a quo. In fact, as the implementation of norms in accordance with the legal considerations of Constitutional Court Number 116/PUUVIII/2009, the regulation regarding membership composition of the Selection Committee can be adjusted without questioning the constitutionality of the word “appointed” in the norm of Article 6 paragraph (2) of Law 21/2001, including for example by considering “representation of women” in a professional manner and also considering “representation of indigenous peoples” in accordance with “customary territories” in Papua and West Papua Provinces. Likewise, to keep off “tendency to have closeness with political parties” that members of the Selection Committee are not from elements that can be judged to be from political parties.

Reduce the Opportunities

Next regarding the Petitioner’s argument that there will be chaos under the mechanism of “appointment” of members of the Provincial Parliament determined by Perdasus, indicating the existence of an undemocratic

recruitment process, the Court considers the existence of Perdasus is a characteristic given by the Law a quo. While the substance or material of the Perdasus itself is not the authority of the Court to evaluate it.

Meanwhile, the argument claiming that the filling of members of DPRP and DPRPB through the appointment mechanism is in contrary to the direct, general, free, and confidential principles of General Election, according to the Court, is not appropriate to use to assess the constitutionality of the word “appointed” in the norm a quo. Because the appointment mechanism is indeed not intended to be carried out through direct selection as stipulated in Article 22E paragraph (1) of the 1945 Constitution.

“When we use it in the context of Papua’s special autonomy, this mechanism is a form of specificity of Papua and West Papua, while at the same time giving greater space for the people of Papua to sit in the DPRP and DPRPB. If we follow the logic of the Petitioner, the word “appointed” is interpreted as “chosen by the indigenous people of Papua”, beside reducing the specific character of Papua and West Papua in the NKRI frame, this action can reduce the chances of Papuan indigenous people to become members of the DPRP and DPRPB,” explained Arief. ■

SRI PUJANTI



EXAMINING SANCTIONS ACCORDING TO HIGHWAY TRAFFIC LAW FOR PARENTS WHO LET THEIR CHILD RIDING MOTOR VEHICLE

SOME of the Students of the Faculty of Law, Sahid University of Jakarta, Novan Lailathul Rizky, and his friends, proposed material examination of Article 311 paragraph (2), paragraph (3), paragraph (4) and paragraph (5) of Law Number 22 of 2009 concerning Traffic and Road Transportation (Traffic

Law). The trial of Traffic Law material examination was held on Wednesday (2/19/2020) in the Constitutional Court courtroom.

The Petitioners argued that the possibility for minors to drive a motor vehicle cannot be parted from the role of the person and/or owner of the motor vehicle whom, by agreement allowing and/or lending the motor vehicle to child under the age of 7-10 years.

"This not only threatens the safety of the child's but also threatens the safety of the lives of other motorbike riders, including the Petitioners who use motorbikes in daily activities. These conditions can be prevented if there are criminal sanctions that threaten motor owners or people who deliberately lend motor vehicles to minors," said Viktor Santoso Tandiansa, the attorney-at-law of the Petitioner in Case Number 15/PUU-XVIII/2020.

Based on the matter, the Petitioners sought in their Relief for the Court to declare Article 311 of the Traffic Law with respect to the word "deed" is in contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force insofar as it is not interpreted in case the "deed" was committed by minor, the criminal liability should also be imposed on the persons participating in allowing, giving and/or lending the motor vehicles to minors. (Nano Tresna A.)



MECHANISM OF REPLACEMENT OF REGIONAL HEADS IN THE ELECTION LAW EXAMINED

THE mechanism of appointment to fill the position of Deputy Governor of DKI Jakarta becomes the background of a student to file a material examination of Law No. 10 of 2016 (Regional Head Election Law). Michael, who is a student of a private university, is listed as the Petitioner of Case Number 7/PUU-XVIII/2020.

In the first hearing held on Monday (2/3/2020), Michael postulated Article 176 of the Regional Head Election Law is inconsistent with the 1945 Constitution. He presented an analogy if a minister is elected by the president, when the minister resigns, then his successor will still be chosen by the president. Likewise with the regional head, when the community elects the regional head, the election of his successor must also be chosen by the people.

He said, there had been a real case in 2017 in the appointment of Djarot Syaiful Hidayat as the Governor of DKI Jakarta replacing Basuki Tjahja Purnama. According to the Petitioner, this means that a person can occupy a position of regional head without going through the process of regional head election (pilkada). "So Article 176 of the Regional Head Election Law violates the requirement of 50 percent plus 1 vote as a condition for determining regional head candidates," explained Michael.

Article 54D of Law Number 1 of 2015 provides an elected regional head is one who gets more than 50 percent legitimate votes plus one vote, while none of the appreciation number of a political party reach such figure. Thus, when the deputy head of the region appointed by a political party, it does not meet the requirements in making the appointment of the deputy head of the region. To that end, the Petitioner sought that the Court declare Article 176 of the Regional Head Election Law is in contrary to the 1945 Constitution and ordered the General Election Committee to immediately hold a general election to elect the deputy governor of DKI Jakarta. (Sri Pujianti)

MECHANISM OF NOMINATION OF CHAIRPERSON INCONSISTENT, 3 JUDGES EXAMINES TAX COURT LAW

TRİYONO Martanto, Haposan Lumban Gaol, and Redno Sri Rezeki who are tax court judges filed a review of Law Number 14 of 2002 concerning Tax Courts (Tax Court Law) with the Constitutional Court. The trial of the Case Number 10/PUU-XVIII/2020 which was held on Wednesday (12/2/2020) in the Constitutional Court Plenary Room was led by Constitutional Justice Suhartoyo accompanied by Constitutional Justice Manahan M.P. Sitompul and Enny Nurbaningsih.

In their petition, the Petitioners argued that Article 5 paragraph (2) and Article 8 paragraph (2) of the Tax Court Law contradicts Article 24 paragraph (1) and Article 25 of the 1945 Constitution. Article 5 paragraph (2) of the Tax Court Law reads, "Organizational, administrative and financial guidance for the Tax Court shall be carried out by the Finance Department" While Article 8 paragraph (2) of the Tax Court Law reads, "The Chair and Vice Chair shall be appointed by the President and Judges proposed by the Minister after obtaining the agreement of the Chief Justice of the Supreme Court".

In the session, Haposan, one of the Petitioners, said that the provisions of the norm a quo were detrimental because the appointment of the Chair and Deputy Chair proposed by the Minister in Article 8 paragraph (2) of the Tax Court Law caused problems. This is related to the system of appointment and dismissal, especially in terms



of impartiality, independence, and authority of judges to examine, hear, and decide tax disputes. Furthermore, Haposan considered that the law a quo did not clearly and firmly stipulate the mechanism for determining the candidates for the Chair and Deputy Chair of the tax court prior to requesting the approval of the Chief Justice and proposed to the President by the Minister of Finance. The Petitioners also said that since the establishment of tax court in 2002, the mechanism for nominating candidates for chairman and deputy chairman has been carried out differently, it was once done through an election mechanism and from and by the judge to be subsequently proposed to the finance minister. Then, it was also once done based on proposals of the former chairman before retirement.

In addition, the Petitioners also stated that the Tax Court Law does not provide for the chairman term of service. (Sri Pujianti)



PREVENTED FROM BEING JAKARTA DEPUTY GOVERNOR, PRIVATE PERSON REVIEWED THE ELECTION LAW

THE Constitutional Court held a trial to examine the Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors (Regional Head Election Law). The first trial of the case number 13/PUU-XVIII/2020 was held on Thursday (2/13/2020) in the Constitutional Court Plenary Room. The case was filed by Hendra Otekan Indersyah, a private person. He claimed of being aggrieved by the enactment of Article 176 paragraph (2) of the Regional Head

Election Law which states, "Political Parties or a combination of supporting Political Parties proposes 2 (two) candidates for Deputy Governor, Deputy Regent, and Deputy Mayor to the Regional House of Representative through the Governor, Regent, or Mayor, to be elected in the plenary meeting of the Regional House of Representatives."

In his petition, Hendra, who appeared without legal counsel, said that he had constitutional rights to become a Deputy Governor of DKI Jakarta for the Remaining Service Term (SMB) 2017-2022. The Petitioner claimed that his constitutional rights have been impaired by the enactment of Article 176 paragraph (2) of the Regional Head Election Law, in which the Petitioner did not get enough opportunities to participate in the nomination, i.e., from the selection of candidates, then fit & proper test, and so on, in the Election of Deputy Governor (Pilwagub) of DKI Jakarta SMB 2017-2022.

"I did not get a chance to be a nominee in the Election of Deputy Governor of DKI Jakarta 2017-2022," he said before the Panel of Judges led by Constitutional Justice Saldi Isra.

In addition, the Petitioner argued that the Petitioner should have been able to take the lead in the management of regional government or the direction of the progress of the administration of DKI Jakarta Province in the effort to overcome civil engineering issues, especially water management. For this reason, in his relief, the Petitioner sought that the Court declare Article 176 paragraph (2) of the Regional Head Election Law is in contrary to the 1945 Constitution. (Lulu Anjarsari)



AGGRIEVED BY STATE ADMINISTRATION COURT DECISION, THE STATE ADMINISTRATION LAW EXAMINED

LAW Number 30 of 2014 concerning Government Administration (Government Administration Law) is again submitted for material examination at the Constitutional Court. The petition for the Case Number 11/PUU-XVIII/2020 was filed by Perkumpulan Maha Bidik Indonesia in Lebak, represented by Moch. Ojat Sudrajat S. as the Chairman.

The Petitioner examines Article 75 paragraph (1) of the Government Administration Law, "Citizens who are harmed

by decisions and/or actions can submit administrative relief to the government officials or their superiors who determine and/or make decisions and/or take the actions."

The Petitioner is a non-governmental organization in the form of incorporated associations. The Petitioner claimed of being disadvantaged because based on the Decision on Case Number 45/G/2019/PTUNSRG, it was stated that they had no direct or real interest and loss on the object of the lawsuit in the form of Banten Governor's Decree on the Appointment of Banten Province Inspectors who were known to have a track record in their former position as being in contrary to the legislation.

Based on the decision of the State Administration Court (PTUN), the Petitioner is of the opinion that there will be other PTUN decisions in government administrative disputes, especially concerning the election of position in an agency or other public institution, which will frustrate the business and activities carried out by the Petitioner as an institution with a vision of concern for various public policies.

The Petitioners argued that the provisions of Article 75 paragraph (1) of the Government Administration Law violated the constitutional rights of the Petitioners, so that the Petitioners suffered a constitutionality loss due to the loss of the opportunity of the Petitioners in the PTUN court, namely in the form of a lawsuit that could not be accepted if the article a quo was interpreted as the aggrieving citizens must have interest and experience the loss of opportunity directly and real. For this reason, the Petitioner sought that the Petitioner claims at PTUN cannot be accepted. For reason, it has no real interest and no real loss. (Nano Tresna A.)



DISAGREE WITH TRAFFIC TICKETING, TWO STUDENTS EXAMINE TRAFFIC LAW

ELIADI Hulu and Ruben Saputra Hasiholan Nababan who are students of the Faculty of Law at the Christian University of Indonesia examined the material that requires a motor rider to turn on headlights as stipulated in Article 107 paragraph 2 and Article 293 paragraph 2 of the Traffic Law.

In the petition No. 8/PUU-XVIII/2020, the Petitioners argued that they have been ticketed by the police using the two articles tested. Ruben argued that the articles did not reflect the principle of clarity of the formula because the phrase "during the day" was not easy to understand. As a result, continued Ruben, giving rise to various interpretations in the implementation. Whereas every law and regulation must be able to realize order in the society through the guarantee of legal certainty. However, the enforcement of these articles has clearly led to legal uncertainty for the Petitioners.

"That the Explanation section of the article a quo only reads 'self-explanatory' which means there is no further explanation related to the phrase 'during the day' so that it creates legal uncertainty because it is not clear when the time starts and when it ends according to the norm," Ruben explained.

For this reason, the Petitioners sought that the Court declare the two articles are in contrary to the 1945 Constitution and hold that the two constitutional articles were conditional as long as the phrase "during the day" is changed to "all day". (Sri Pujianti)



Presiden RI Joko Widodo menyampaikan sambutan kenegaraan dalam Sidang Pleno Khusus Refleksi Kinerja MK Tahun 2019 dan Proyeksi Kinerja MK Tahun 2020, Selasa (28/1) di Ruang Sidang Pleno Gedung MK. Foto Humas/Gani.

PERFORMANCE REPORT AND 2020 PROJECTION

Following hard and smart working throughout 2019, which ended with a variety of events from national to international level the Constitutional Court has arrived the end of the year with the obligation to submit an achievement report. Not to forget, to welcome 2020 the Constitutional Court must submit projected activities to carry out in the public in a published report.

On Tuesday (01/28/2020), the Constitutional Court held a Special Plenary Session in order to submit Performance Reflection report of

the Constitutional Court in 2019 and the Projected Performance of the Constitutional Court in 2020 in the Plenary Session Room of the Constitutional Court. Constitutional Court Chief Justice Anwar Usman as the chairperson of the Special Plenary Session accompanied by other eight constitutional justices conveyed the judicial and non-judicial aspects that had been carried out by the Constitutional Court throughout 2019.

Anwar said, during 2003-2019 the Constitutional Court had received as many as 3005 cases. The case

consisted of 1317 Law Examination (PUU) cases, 982 Regional Head Election Result Disputes (PHP Kada), and 671 Legislative Election Result Disputes (PHPU). Meanwhile, specifically for 2019, the Constitutional Court received 85 PUU cases and 37 PUU cases originating from 2018 cases, so that during 2019, the Constitutional Court examined 122 cases. As of the end of 2019, there were 92 PUU cases decided. Furthermore, in 2019 there were 51 laws sought for examination, including the Election Law, State Civil Apparatus Law, and others.

Meanwhile, for non-judicial aspects the Constitutional Court has sought to improve the capacity and quality of human resources through various activities, including recharging programs, degree pilot programs, and education and training as well as technical assistance. "Thanks to the hard work of all Human Resources in 2019, the Constitutional Court received

a number of appreciations from various parties. For Constitutional Court, getting an award is not the main goal because the main thing is to do the best, maintain full integrity, trustworthy, full of dedication, and professional," said Anwar in the Special Plenary Session attended by the President of the Republic of Indonesia Joko Widodo, Speaker of the Indonesian House of Representatives Puan Maharani, Supreme Court Chief Justice Muhammad Hatta Ali, and invited guests from various state institutions and embassies of neighboring countries.

Appreciation and Achievement

In his presidential address, the 7th President of Indonesia, Joko Widodo, expressed his appreciation for the great achievements of the Constitutional Court during 2019 in resolving disputes on the results of the presidential and vice presidential elections and the legislative general election in 2019 with a very transparent, open process,

and careful consideration to carry out democratic process that is trusted by the people. Furthermore, for the achievement of the Constitutional Court during 2019, Jokowi also appreciated the activities of the Constitutional Court in the global world so that in the future it is hoped that the Constitutional Court will be more respected by the world.

In his speech, Jokowi also reminded all invited guests to understand the rapid changes at the world level so that Indonesia must develop new ways of working faster and more efficiently to respond to the development of the world. One of them is fast steps by simplifying and trimming the complexity in various matters including various rules.

Jokowi admitted that the Indonesian people must be grateful for the efforts that had been made by the nation's founders by formulating a state constitution that is timeless. It has set the fundamental things that make it

easier for the Indonesian people today to make derivative regulations.

"However, we then over-complicate the rules below which can hinder our performance. For this reason, the Government and the House of Representatives synchronize the laws by aligning them with legal expectations and then becoming simple, responsive, and quick to absorb changes," Jokowi explained.

In addition to improving the law, Jokowi continued, the Government and Parliament also made improvements to central and regional regulations considered as entangled and trapped in complexity. So that government regulations to local regulations must be simplified to respond to very quick changes in the world.

"Then we need common support for the government in the same vision to create simple laws for the realization of social justice for all Indonesian people," explained Jokowi. ■

SRI PUJIANTI





Ketua Mahkamah Konstitusi (MK) Anwar Usman melakukan media visit ke Media Nusantara Citra (MNC Group) yang disambut oleh Hary Tanoesudibjo selaku Komisaris Utama MNC Group, Jumat (31/01) di iNews Tower, Jakarta.

THE IMPORTANCE OF SYNERGY OF CONSTITUTIONAL COURT AND MASS MEDIA

Ahead of the implementation of grand regional democratic party in the coming September 2020, the Constitutional Court is, among other things, given the mandate to become an institution that is expected to be able to settle disputes over the results of the election of regional heads which will be held in 270 regions, namely 9 provinces, 224 regencies, and 37 cities. To facilitate and broaden the absorption of information related to the five-year activities, the Constitutional Court cooperates with several local mass media whose coverage is acceptable to all Indonesians, spread to remote villages and even front islands of Indonesia.

Important Roles of Media

The Constitutional Court Chief Justice Anwar Usman paid a visit to Media Nusantara Citra (MNC Group). The visit was welcomed by the MNC Group President Commissioner, Hary Tanoesudibjo, on Friday (01/31/2020), at iNews Tower, Jakarta, together with a number of media editorial leaders who were members of the MNC Group.

Anwar said the Constitutional Court budget in 2020 which was reduced compared to 2019 would affect the implementation of the programs of each work unit in the Constitutional Court. Anwar gave an example the public relations work unit whose duty was to disseminate understanding of the constitution and the Constitutional

Court was also affected, "the fact is that the public and even many state officials do not understand the constitution and the Constitutional Court," said Anwar.

Therefore through the 2019 annual report, the Constitutional Court informs its media partners about what has been achieved in 2019 and what will be done in 2020, including the problems faced by the Constitutional Court. However, Anwar stressed, the Constitutional Court will continue to carry out the mandated tasks, including facing simultaneous regional head elections in 270 regions, either provinces, regencies/cities.

To the MNC Group editors present, Anwar said, the media has an important role to protect the Constitutional Court by criticism as a function of media

control and dissemination of news about the Constitutional Court. Anwar said, when something is wrong just don't praise it because it will actually let it down. Anwar also expressed his gratitude to the media friends who had made coverage about the Constitutional Court.

On that occasion, iNews news director, Ray Wijaya, asked the Constitutional Court for television news crews to be given the right point in the courtroom to get a good picture, because it is important for the public. Ray revealed, that in the dispute session of the Presidential election results his side carried out a broadcast that lasted for 21 hours, but because it did not get a strategic location, it was forced to do the broadcast directly in the middle of the road so it did not get a good picture.

Strengthening Mass Media Support

The Constitutional Court conducted a media visit to the Transmedia Group (CNN Indonesia and detikcom) on Thursday (2/6/2020) at the Transmedia Building, Jakarta. Constitutional Court Chief Justice Anwar Usman who was accompanied by Constitutional Court Clerk Muhidin, Head of Public Relations and Protocol Bureau Heru Setiawan and Head of Public Relations and Domestic Cooperation Department Fajar Laksono welcomed by the Director of CNN Indonesia Titin Rosmasari and the Chief Editor of Detikcom Alfito Deannova and CNN Indonesia board of directors.

In his remarks, the Constitutional Court Chief Justice Anwar Usman said that the mass media also contributed to the success handling of the 2019 election cases. He hopes that the cooperation between the Constitutional Court and mass media can continue. Therefore, the Constitutional Court conducted media visit activities to thank for the roles of the media. "CNN and Detikcom often report on the Constitutional Court to the public. For this, we say thank you," said Anwar.

Anwar said he hoped the roles of mass media in supporting the Constitutional Court would not stop only at handling election result disputes. According to him, the participation of the media is also expected to monitor the implementation of other authorities of the Constitutional Court, such as examining the laws. He hopes that mass media can help the Constitutional Court providing an understanding on examination of laws. "Moreover, the Constitutional Court cannot supervise the enforcement of the ruling," he said.

On that occasion, the Head of Public Relations and Constitutional Court Protocol Bureau Heru Setiawan also said that many law examination cases that had been decided by the Constitutional Court were actually interesting and always related to the community. However, he continued, not many people knew about the Constitutional Court's decision because lack of dissemination. "We really need creative content like CNN's. When a Law is examined, it needs announcement,

so that the public knows that the Law produced by the DPR and the Government is being examined at the Constitutional Court and it is important to know," he said.

Responding to this, Alfito welcomed and hoped that he could increase cooperation with the Constitutional Court. According to him, both CNN Indonesia and detikcom can help disseminating the Constitutional Court's decision by packaging it into news that can reach wider community. He explained that CNN Indonesia had collaborated with several institutions, such as BKKBN. "CNN controls the news content on Transmedia. CNN also has several collaborations, such as with the BKKBN. For example, there is a dissemination to be made related to rulings, we can load it into the news," he said.

Publication Level

The Constitutional Court held a media visit to PT Surya Citra Media Tbk (SCTV and Indosiar) on Thursday





PUJIAS MARGANIE

Ketua MK Anwar Usman kunjungan media ke Transmedia Grup (CNN Indonesia dan detikcom), Kamis (6/2) di Gedung Transmedia, Jakarta.

(02/13/2020) at the SCTV Tower Building, Jakarta. The Constitutional Court Chief Justice Anwar Usman accompanied by the Constitutional Court Secretary General M. Guntur Hamzah, Head of Public Relations and Domestic Cooperation Department Fajar Laksono, and Constitutional Court Researcher Nalom Kurniawan were welcomed in person by SCM Deputy Commissioner Suryani Zaini, Director of SCTV Sutanto

Hartono, Director of Program of SCTV David Suwanto, and a number of commissioners and directors of other SCM programs.

The Constitutional Court Chief Justice Anwar Usman in his remarks explained that the Constitutional Court as a constitutional justice institution has in its journey carried out many activities related to increasing the understanding of citizens on the constitution. However,

this still requires further efforts to further expand the work of the Constitutional Court as a judicial institution, including the publication of Constitutional Court activities at the international level.

“In 2020, the MKRI together with the world Constitutional Court which is incorporated under the Organization of Islamic Cooperation or ICO will hold a meeting related to the roles of Islamic countries in peace and the development of international law. So, for this big event the Constitutional Court needs to work together with media partners to publish it to the wider community throughout Indonesia,” explained Anwar.

Meanwhile, the Constitutional Court Secretary General M. Guntur Hamzah said that the media visit to SCM was an attempt to foster closer cooperation between the judiciary and the media. This is done so that both parties can jointly report information that occurs in the Constitutional Court to the public regarding the work of the Constitutional Court as the guardian of the constitution.

Responding to these hopes, SCM Deputy Commissioner Suryani Zaini welcomed the openness of the collaboration that would later be established. “It is an obligation for the media to play a role in providing an understanding of the constitution through its broadcasts,” he said.

On this occasion, the President Director of SCTV Sutanto Hartono also presented the results of the SCM study related to the still dominant interest of the Indonesian people to enjoy television broadcasts. For this reason, with the quite high rating of SCTV program viewers in Indonesia, the publication of Constitutional Court’s publications can be known and understood by the Indonesian people, especially in relation to improvement of understanding of the constitution. ■

ILHAM/LULU/SRI PUJIANTI



PUJIAS MARGAYU

Ketua MK Anwar Usman hadir didampingi oleh Sekretaris Jenderal MK M. Guntur Hamzah melakukan kunjungan media ke PT Surya Citra Media Tbk (SCTV dan Indosiar) pada Kamis (13/2/2020) di Gedung SCTV Tower, Jakarta.

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