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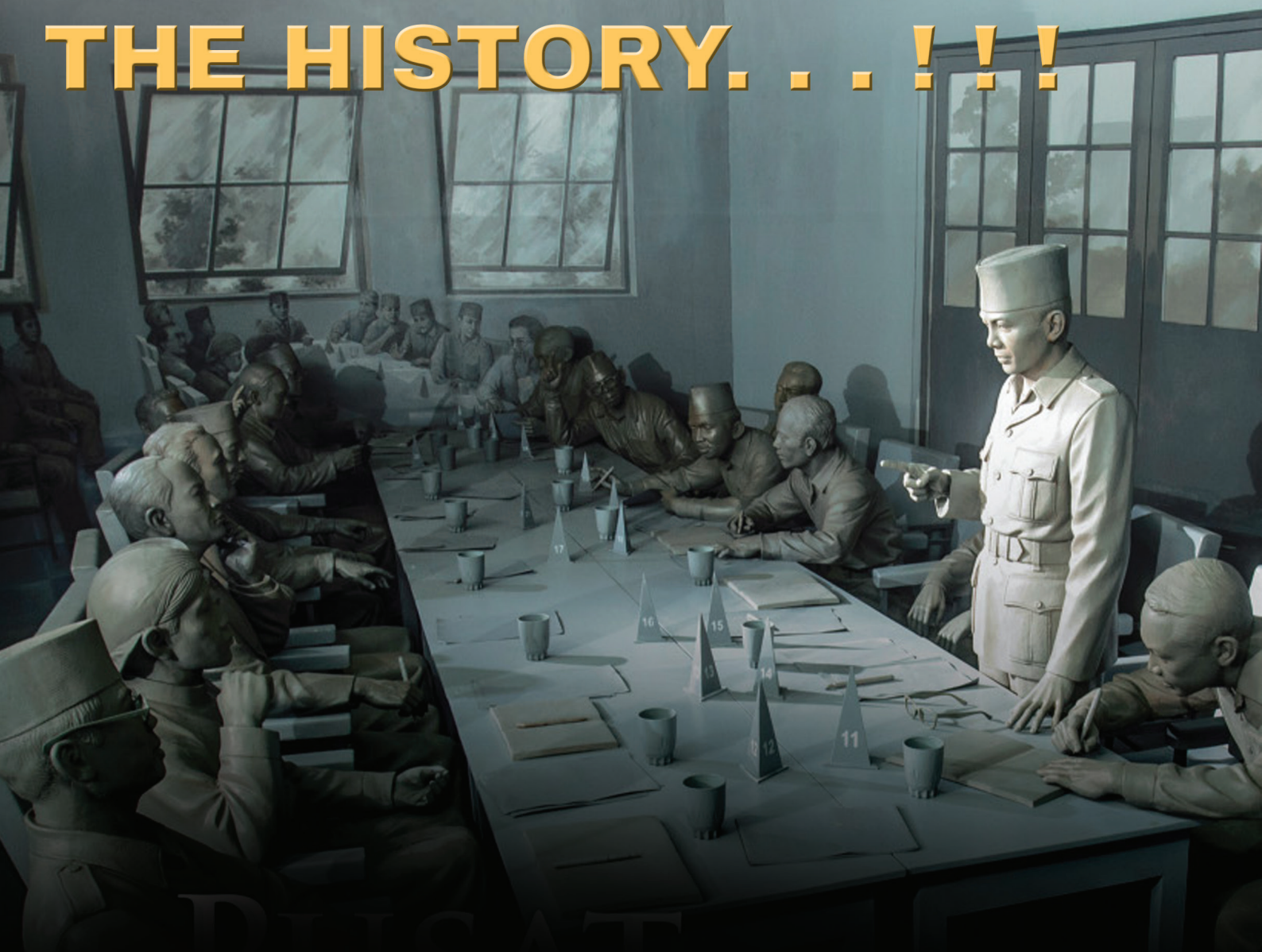
E-MAGAZINE

KONSTITUSI

ORGANIZING CONSTITUTIONAL DEMOCRATIC SYSTEM



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Editor's Foreword

On May 24, 2023, the Constitutional Court (MK) published its 2022 Annual Report, which focuses on "Organizing the Constitutional Democratic System." The annual report highlights the progress of the Constitutional Court (MK) as an institution and case developments throughout 2022. The Headline News of the May 2023 edition of Konstitusi Magazine presents a brief overview of the Annual Report.

Konstitusi Magazine's Editorial Team also provides an overview of the recent leadership change in the Constitutional Court. The topic focuses on the election of the Chief Justice and Deputy Chief Justice of the Constitutional Court for the 2023-2028 term, which was initiated by Constitutional Court Decision Number 96/PUU-XVIII/2020 on June 20, 2022. Readers can find the coverage of this change in the Special Coverage section.

In addition to the previously mentioned rubrics, several other rubrics are included, such as WINDOW, which explores the intriguing history of the 1998 Reformation, KHAZANAH, MILESTONES OF CONSTITUTION, and more. Enjoy your reading!

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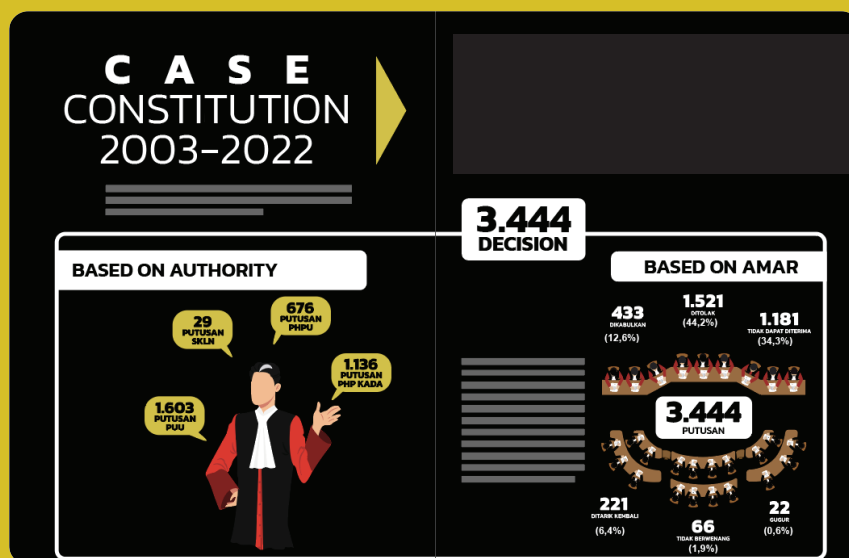
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HEADLINE NEWS

CONSTITUTIONAL COURT IN ORGANIZING THE CONSTITUTIONAL DEMOCRACY SYSTEM

In preparation for the Simultaneous Elections in 2024, the Constitutional Court (MK) has received a significant number of material judicial reviews regarding the General Election Law (Election Law) in 2022. The decisions made by the Constitutional Court regarding the Election Law play a vital role in organizing the constitutional democratic system.



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COMMITTED TO MAINTAINING THE CONSTITUTION AND DEMOCRACY.



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OUR POLITICS AND DEMOCRACY

...der Wille zur Macht. Many people associate the philosopher Nietzsche with the idea that the desire for power fuels life. In one of his writings, he suggested that the longing to rule can actually be a sign of inner weakness, as people may be afraid of their own vulnerabilities and try to compensate by acting like royalty. Despite this, Nietzsche believed that those who seek power ultimately become enslaved to their followers and their own fame.

According to Goenawan Mohammad's thought-provoking essays, *"considering power as unimportant prevents one from becoming a slave to it."* That is indeed true, despite the fact that human history suggests otherwise. Power seems to become the core and remains the most alluring aspect of life. People compete relentlessly to acquire it, especially in politics, where the struggle for power means obtaining the authority to govern a nation.

Power is what they seek, even if it requires resorting to any means necessary through the most despicable and deceitful tactics like distorting one's conscience or destroying others; attaining power is the ultimate goal for some individuals. People seek power with the intention of using it for the benefit of others. However, it seems that this intention disappears over time. In today's world, power often leads to a lack of sensitivity and increased greed, as people focus on fulfilling their own desires and those of their family, colleagues, and group. Mahatma Gandhi famously warned, *"While the world has enough resources to meet everyone's needs, it does not have enough to satisfy everyone's greed."*

Powerful thrones are destined to fall as time inevitably swallows them up. This can happen in various ways, sometimes peacefully, such as when Airlangga, the 12th-century King of Kediri, chose to abdicate, retreat from the chaos of power, and lead a secluded life. Other times, it can end in bloodshed through revolutions, rebellions, and armed conflicts, much like the wars that plagued Javanese history during power successions. This is similar to the great Bharatayuda war in the Mahabharata, which lasted 18 days at Kurusetra, claimed the lives of 80 thousand warriors, and wiped out entire generations.

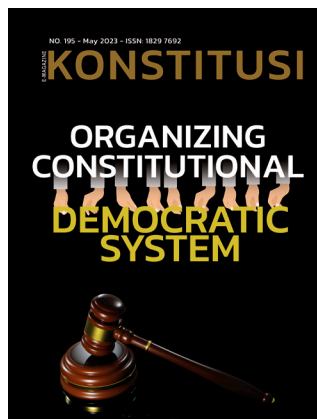
In the story, Wisanggeni dies, Bima loses Gatutkaca, Arjuna is separated from Abimanyu, and Karna meets his end. This leads to power being either relinquished or coming to an end. The cycle of seeking, attaining, losing, and reclaiming power repeats itself time and time again.

Does politics always have to be about winning or losing in the struggle for power? Can't there be a connection between politics and ethical or good aspects? According to an essay, Pakubuwana IV's book, *"Wulangreh,"* written in the 18th century, discusses political power in relation to socially accepted good behavior. The book, *Wulangreh* means "The Teachings of Governing" and was intended for young aristocrats of that time.

Politics arose as a means for people to coexist harmoniously. It serves as a system for distributing positions and power. Unfortunately, not everyone can have an equal share due to the limited availability of positions and power. This creates a destructive force and a harmful dynamic where conflicts and competitions arise over who gets what. *Wulangreh* promotes an ethical approach emphasizing caution, moderation, respect for elders, and religious rules.

We hold the belief that politics is not always as it appears on the surface, with its negative aspects we see today, such as "dirty" practices, prejudice, selfishness, insincerity, deceit, bribery, and other behaviors that do not align with goodness. Politics is an ongoing process of transition, change, and dynamism that moves forward and never remains stagnant. A certain level of power control is necessary to guide politics toward its better side. However, the question remains: where does this power originate from?

The power in politics is derived from the participation of all parties. It is based on a sense of solidarity and consensus and is rooted in a shared national vision and mission. The need for unity and the desire for equality and justice all contribute to the power of politics, and all of these elements can be achieved. The key is to find ways to prioritize them and make them the driving force of politics. By doing so, we can build trust and work together toward justice and the aspirations of our constitutional democracy. Long live Constitution!





FORGETTING

I D.G.Palguna

*"The struggle of man against power is the struggle of memory against forgetting"
(Pergulatan manusia melawan kekuasaan adalah pergulatan ingatan melawan lupa)*

Milan Kundera, Novelist.

Forgetting things can be frustrating, even though it's actually good for our brains, as it is one of the brain's "ways" to prevent memory overload. Unfortunately, forgetfulness tends to "strike" at the worst possible moments, making us feel annoyed and powerless. This is especially true for corruption suspects, who often "use" forgetfulness as a survival mechanism when various parties, especially law enforcement, question them about their dishonest behavior in embezzling public funds. By claiming they can't remember, they hope to avoid further scrutiny. However, this tactic hasn't been proven to be effective, and saying "I don't remember" is still a popular choice among suspects involved in corrupt activities.



Recently, concerns have been raised about our nation's collective memory and how easily we tend to forget important historical events. One such event that is often overlooked is the May 1998 tragedy. It's alarming that people can forget about the riots that caused chaos and went against our national ideals. These riots occurred between May 13 and May 15,

1998, in three major Indonesian cities: Jakarta, Medan, and Surakarta (Solo). They targeted Indonesian citizens of Chinese descent and their properties. Despite forming a Joint Fact-Finding Team to investigate the tragedy, the reasons and causes remain unclear and controversial. It's uncertain whether the government systematically orchestrated the tragedy or if it resulted from provocations by certain groups that then spread and escalated. Data suggests that there were 152 reported cases of sexual assault in Jakarta alone, resulting in 20 fatalities, in addition to the burning and looting of shops, factories, and companies. If we break it down, 103 people were raped, 26 were raped and physically assaulted, nine were raped and set on fire, and 14 were sexually harassed.

However, one thing is certain: the tragedy was preceded by

demonstrations led by university students demanding an end to the New Order regime under President Suharto, who had been ruling the country for more than three decades. The demonstrations gained momentum as the New Order government could not handle an economic crisis, which led to a political crisis. The demonstrations grew more intense after three students from Trisakti University (Elang Mulia Lesmana, Heri Hertanto, and Hafidin Royan) were fatally shot during demonstrations demanding President Suharto's resignation on May 12, 1998. This tragedy further inflamed the emotions of the students and the general public, ultimately resulting in violent incidents against the Chinese ethnic group and President Suharto's eventual resignation from power.

So, how is it that forgetting can so easily invade people's collective memory of such a terrible human tragedy? What exactly is forgetting? Is there an "explanation" for this? In his book "The Seven Sins of Memory: How the Mind Forgets and Remembers" (2001), Daniel Schacter explains that forgetfulness is related to memory malfunctions, which he categorizes into seven fundamental violations, or "sins." These include transience, absent-mindedness, blocking, misattribution,

suggestibility, bias, and persistence. The first three "sins" (transience, absent-mindedness, and blocking) are referred to as "sins of omission" by Schacter because they result in a failure to remember certain ideas, facts, or events. The remaining four "sins" (misattribution, suggestibility, bias, and persistence) are labeled "sins of commission" because they involve some form of memory present, but it is not accurate or desired information, facts, events, or ideas.

According to Schacter, transience is when one memory affects another. This occurs when a particular memory deteriorates over time and is further hindered by interference from other memories. There are two types of interference: proactive interference, which impedes the ability to recall new memories due to old memories, and retroactive interference, which hinders the ability to accurately recall old memories due to new memories. Schacter explains, "Since memory experiences contain diverse aspects of information, there are more vulnerable areas in episodic memory." Episodic memory pertains to the past personal experiences of an individual.

Regarding the second "sin" of memory failure, which is absent-mindedness, Schacter explains that

it happens when attention and memory intersect. Examples of this include forgetting where you put your keys or forgetting a promise you made. Why does this happen? This occurs because, during the encoding process, insufficient attention is given to remembering important details such as time and place. Schacter emphasizes that absent-mindedness happens when a person's attention is focused on something else, and they miss the marking process.

Regarding blocking, Schacter explains that blocking occurs when the brain tries to retrieve or label information, but other memories disrupt or hinder this process. Blocking is identified as the primary cause of the "tip of the tongue" phenomenon, which refers to the temporary inability to access stored information.

It's the sensation of knowing that something is just at the edge of your memory, but you're unable to recall or express it.

Another aspect is misattribution. Schacter succinctly describes misattribution as "a significant issue that involves correctly recalling information but attributing it to the wrong source." This error occurs when individuals mistakenly link memory to an incorrect stimulus.

For instance, if someone witnesses a murder after watching a TV show, they may wrongly attribute the crime to a character from the show. In the legal system, this mistake can have grave consequences because of the prevalence of this misattribution, as the reliability of witness testimony and accuracy of identifying suspects depends on correctly attributing the source of information. In this context, Schacter uses an example from the 1995 Oklahoma City Bombing, a domestic terrorist attack that had a profound impact on the United States. Two days before the attack, the bomber rented a van. An employee at the rental company reported seeing two individuals renting the van together, and one matched the actual bomber's description. However, the other person mentioned turned out to be one of the van renters the following day and was not involved in the bombing. This illustrates the risks of misattribution in critical situations.

What about suggestibility (being easily influenced by suggestions)? According to Schacter, suggestibility

is similar to misattribution as both involve being susceptible to external suggestions. Suggestibility means accepting false suggestions others make, which can affect our memories and recollections. Memories or past recollections can be influenced by how they are recalled, and subtle emphasis on certain aspects can make them appear consistent with a typical memory of an event. Sometimes, these emphasized aspects become integrated into our memory, regardless of whether they actually happened or not. For example, if someone witnesses a crime being committed by a blond-haired man. After reading in the newspaper that a brown-haired man committed the crime, the witness now "remembers" a brown-haired man instead of a blond-haired man.

When it comes to bias, Schacter explains that it's similar to suggestibility in that current emotions and beliefs can influence memories from the past. This can apply to specific events as well as general concepts held during a certain period in life. Memories associated with

strong emotions and triggers are more likely to be remembered. For instance, happy adults may recall the happy moments of their childhood due to the positive memories associated with that time, even if it doesn't reflect the overall mood of their childhood.

Persistence, on the other hand, refers to the inability of the memory system to filter out unwanted and disturbing information. These memories can range from minor disruptions in daily activities to extremely traumatic experiences. If these memories are strongly remembered, they can lead to the development of phobias, post-traumatic stress disorder, or even suicidal thoughts in response to deeply distressing or disturbing events.

When discussing the May 1998 riots and the act of forgetting them, it raises the question of which of these seven types of memory failures were at play. It is impossible to know for sure which ones occurred or were chosen. Only God knows the truth (Wallahualam).

Catalog

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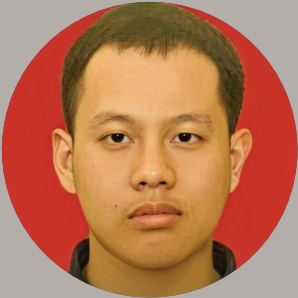
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Bagus Hermanto, S.H., M.H.

THE DYNAMICS OF THE 2024 GENERAL ELECTION: A SHIFT IN THE STANCE OF THE CONSTITUTIONAL COURT

The current general election is a reality of constitutional law that we must accept. Its purpose is to allow representatives to emerge based on the majority representation of the people and maintain government stability. This principle has been quoted and analyzed in Prof. Moh. Mahfud MD's book. *"Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi"* (2013, p. 35-36, 137-139).

In democratic countries, it is common to have periodic political events. Theoretically, it is unsurprising that a democratic rule of law must be built with mechanisms for periodic political contests as a commitment rooted in constitutionalism and the internalization of democratic values in the nation and state. Indonesia is the third-largest democratic country in the world, after India and the United States. It has been striving for progress following the two-decade struggle for reformation. However, it is important to note that Rachael Diprose, along with Dave McRae and Prof. Vedi Hadiz, in their article "Two decades of reforms in Indonesia: its illiberal turn" (Journal of Contemporary

Asia - 2019), highlights certain illiberal characteristics have emerged in Indonesia's democracy lately. This includes the rise of religious sentiments, illiberal policy formulations, and approaches to resolving past issues that have resulted in social injustices due to imbalances and societal polarization. Nonetheless, democratic institutions still have a role to play in realizing general elections as a means of contestation in ensuring smooth and stable political succession as well as a means to prove the functionality of these institutions within a civil society framework.

The General Election scheduled for 2024 is a political agenda that has been continuously and consistently carried out periodically on the basis of affirming the amendments to the 1945 Constitution since the first direct election in 2004 and running until the preparations for the upcoming 2024 political event.

Although the process is lengthy, it is based on various observations made during previous direct elections. Along the way, there have been several revisions to the

laws governing general elections, which have resulted in some Government Regulations in Lieu of Law (Perppu) that have been controversial regarding general and regional head elections. However, the emphasis has shifted towards consolidation through the codification of a single law, known as Law No. 7 of 2017 on General Elections. This law covers various aspects, including organizers, participation or candidacy, processes or stages, electoral constituencies, budgeting, candidate reporting, enforcement institutions, and the mechanisms available for pre-and post-election complaints and challenges to election results. There have been ongoing discussions and debates about the application of open and closed proportional representation for future general elections. Additionally, the establishment of the Indonesian Capital City (IKN) and the emergence of new DOBs in the form of the creation of new provinces through the expansion of Papua and West Papua prompted the issuance of Perppu 1 of 2022, which was recently passed into law by the DPR.

Likewise, the Constitutional Court (MK) is a highly important and strategic institution in Indonesia's governance. Its authority lies in examining laws and settling disputes arising from elections. As per Marcus Mietzner's article titled "Political conflict resolution and democratic consolidation in Indonesia: The Role of the constitutional court" (published in the *Journal of East Asian Studies*, 2010), the MK has played a significant role in transforming Indonesia into the most stable democracy in Southeast Asia. This has been achieved by promoting mechanisms to resolve potential democratic deviations and upholding human rights as indicators of democratic consolidation. The MK plays a crucial role as an independent agent of democratization through judicial activism, as evident in its bold stances taken through its existing decisions. Nevertheless, in its development, as outlined by Simon Butt and Prayekti M. in "What Constitutes Compliance?

Legislative Responses to Constitutional Court Decisions in Indonesia" (*International Journal of Constitutional Law* – 2022), there are challenges both internally and externally when it comes to complying with court decisions in Indonesia. These challenges include issues related to the government's responses to court decisions, the effectiveness of the rulings made by the Constitutional Court, and conflicts of interest between legislators, the government, and the Court regarding the substance of the decisions and their implications. This is particularly evident in important legal examinations such as the Criminal Code, the Code of Criminal Procedure, the Election Law, and the Regional Election Law. The Constitutional Court has predominantly focused on examining the Election Law over various time periods, from the era of Jimly Asshiddiqie to the current time of Anwar Usman. This highlights the complexity of legal issues that affect the implementation of elections in Indonesia. The Court's decisions on election-related matters have shifted over time, indicating changes in paradigms and interpretations. For instance:

First, the separation of the Electoral System from Regional Elections has significant implications for the urgency of a Special Election/Regional Election jurisdiction, as seen in decisions made by Indonesia's Constitutional Court. In Decision Number 072-073/PUU-II/2004, the principle of unity of the constitution was interpreted to mean that Article 18 of the 1945 Constitution was in line with an open legal policy. Later, in Decision Number 97/PUU-XI/2013, Article 22E of the 1945 Constitution was interpreted from the perspective of original intent and systematic interpretation. This led to the conclusion that Regional Elections were not part of the Electoral System. Despite this shift, the Constitutional Court still retains the authority to handle Regional Election outcomes, but the establishment of

special Regional Election courts was mandated by Law 10/2016. However, there was no follow-up after the regulation, leading to the 2022 Decision Number 85/PUU-XX, which reaffirmed the Constitutional Court's full authority.

This decision was made based on fundamental and substantive reasons, considering that establishing special courts was no longer relevant. The decision was driven by substantive justice considerations, considering the urgency of legal needs, the avoidance of budgetary issues, and the necessity to reinforce the existing legal framework without mandating the creation of new special courts.

Second, another issue to consider is the eligibility of ex-convicts to run for legislative positions, particularly their right to be elected. The recent MK Decision Number 12/PUU-XXI/2023 reaffirms this right, the right of ex-convicts to become candidates for the Regional Representative Council (DPD), with the condition that ex-convicts must not have been convicted of crimes carrying a sentence of five years or more (except for negligence or political crimes due to dissent with the government). This decision applies to ex-convicts who have served at least five years in prison, have openly and honestly disclosed their past criminal

record, and have not committed any repeat offenses. This accommodation has been acknowledged in various MK decisions such as Number 14-17/PUU-V/2007 and Number 15/PUU-VI/2008, with certain limitations for ex-convicts who received a sentence below five years and were not involved in political crimes due to conflicting views with authorities. Other decisions, like Number 4/PUU-VII/2009 and Number 120/PUU-VII/2009, have placed restrictions on publicly elected positions and limited the accommodation to five years after completing their sentence. However, exceptions exist for ex-convicts who openly and honestly disclose their past criminal record, have not committed any repeat offenses, and whose electability depends on the people's choice. MK Decision Number 42/PUU-XIII/2015 and MK Decision Number 51/PUU-XIV/2016 also acknowledged this accommodation. Despite this, disharmony in implementing norms arose between MK Decision Number 71/PUU-XIV/2016 and MK Decision Number 56/PUU-XVII/2019 concerning the same legal subjects. In order to address this issue, MK Decision Number 87/PUU-XX/2022 was introduced. This decision requires legislative candidates to wait for five years after completing their sentence

before they can run for office. This waiting period will allow candidates to reflect on their actions and reintegrate into the community, similar to the requirements for regional leaders. This decision is meant to ensure that ex-convicts have the opportunity to participate in the political process while also safeguarding their fundamental rights. Ultimately, this will result in the election of reputable representatives chosen by the people.

The third aspect to consider is the timing of elections. In 2009 and 2014, elections for members of various councils, including the House of Representatives (DPR), Regional Representative Council (DPD), and Regional Legislative Councils (DPRD), were held before the Presidential and Vice-Presidential elections, similar to the 2004 elections. However, the Indonesian Constitutional Court (MK) altered its stance in Decision Number 14/PUU-XI/2013, shifting away from its previous decision in Number 51-52-59/PUU-VI/2008. This change was based on four key factors: (1) the relationship between the electoral and presidential systems, (2) the original intention of the 1945 Constitution's creators, (3) efficiency in conducting elections, and (4) citizens' rights to vote with intelligence. Despite this shift, the 2014 elections still maintained

the separation of elections for various councils from the Presidential and Vice-Presidential elections. Essentially, the Constitutional Court (MK) dealt with the issue of when elections for members of the DPR, DPD, and DPRD should take place. These elections are not held simultaneously with Presidential and Vice-Presidential elections.

The MK addressed this issue in Decision Number 55/PUU-XVII/2019, using five simultaneous models or another single model. In Decision Number 16/PUU-XIX/2021, the MK emphasized that lawmakers can choose to conduct these elections simultaneously, but they must do so within the boundaries of the constitution. The decision also stressed the importance of careful consideration of technical implications to ensure high-quality elections, as reaffirmed in MK Decision Number 35/PUU-XX/2022.

Fourth, the issue of the provisional threshold for electability based on the votes obtained by candidates. The Indonesian Constitutional Court, through MK Decision Number 3/PUU-VII/2009, declared that a parliamentary threshold of 2.5 percent is constitutionally permissible as a policy to simplify the political landscape of

parties. Article 202 paragraph (1) of Law 10/2008 allows any citizen to form a political party, but they must meet the parliamentary threshold requirement to secure representation in the DPR. The specific threshold figure is considered an open legal policy, as upheld in MK Decision Number 56/PUU-XI/2013, where a parliamentary threshold of 3.5 percent was deemed lawful to streamline political parties and was not in conflict with the constitution. After MK Decision 52/PUU-X/2012, there was a disagreement about the divisor used to determine the number of voters and the possibility of unequal representation due to the tiered parliamentary threshold. As a result, the 3.5 percent parliamentary threshold was only applicable at the national level and not for local-level elections. The legal reasoning behind this decision was that implementing the threshold for district/city legislative councils (DPRD) and provincial legislative councils went against the people's sovereignty, political rights, and rationality.

The discourse of judicial restraint versus judicial activism has been discussed by many researchers and authors in Indonesia's legal studies. They acknowledge that changing one's stance is not wrong. The Constitutional

Court (MK) makes decisions based on substantial reasoning when rectifying or amending changes, as seen in MK Decision Number 24/PUU-XVII/2019. Similar to the strict adherence to precedent/stare decisis/res judicata in the United States, the Supreme Court has the ability to adjust its position on constitutional matters. This demonstrates the Court's capacity to adapt to changing legal contexts.

However, as Indonesia gears up for the 2024 General Election, which is considered to be a highly complex and systematic democratic event that may consume significant energy and preparedness in all aspects, several challenges need to be addressed. These include four major issues that are currently being deliberated upon by the Constitutional Court. The Court has always been committed to upholding constitutionalism and the rule of law and ensuring that justice is delivered in line with the current governance dynamics of the nation. This has been reflected in various decisions taken by the Court, which have been rational and enforceable. These developments are a sign of Indonesia's progress towards internalizing democracy and achieving political maturity.

CONSTITUTIONAL COURT IN ORGANIZING THE CONSTITUTIONAL DEMOCRATIC SYSTEM

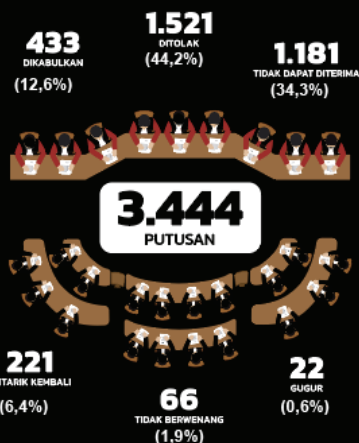
CASE
CONSTITUTION
2003-2022

BASED ON AUTHORITY



3.444
DECISION

BASED ON AMAR



As the Simultaneous Elections in 2024 approach, the Constitutional Court (MK) has received numerous material judicial reviews related to the General Election Law (Election Law) throughout 2022. The court's decisions regarding the Election Law will have a significant impact on shaping the constitutional democracy system, albeit indirectly.

In 2022, MK handled many cases related to general and regional elections. They have decided on 25 cases involving the Election Law and 7 cases involving the Pilkada Law. There were some significant cases that caught the public's attention, such as the presidential threshold, party verification, the follow-up DKPP's decision allowing appeals to PTUN, the participation of former drug convicts in local election contests, the authority to determine electoral districts, and MK's role in deciding election disputes permanently. These decisions highlight the significant contribution of MK in organizing democracy, particularly with the Simultaneous General Election coming up in 2024.

Concerning the handling of constitutional cases, the MK has registered 3,463 cases and made decisions on 3,444 of them. In 2022, the MK managed a total of 146 cases, which consisted of 143 judicial review cases and three pilkada cases. Among these 146 cases, 121 were registered in 2022, while 22 were registered in the previous year. Out of all these cases, the MK has made decisions on 124 judicial review cases and four pilkada cases, one of which was carried over from the previous year. As of the end of

2022, there are still 18 cases under examination.

When it comes to reviewing the constitutionality of cases, different approaches can be taken. These include material judicial review, formal judicial review, or a combination of both material and formal judicial review. Out of the 143 judicial review cases that were analyzed, 104 were subject to material judicial review, 11 were subject to formal judicial review, and 6 underwent both reviews. If grouped based on the verdict, the judicial review (PUU) cases in 2022 are as follows:

Out of the 15 PUU case verdicts granted, one verdict declared the special regional election court unconstitutional in case number 85/PUU-XX/2022. The other 14 decisions were granted with conditional unconstitutional rulings.

Time period

In 2022, MK had to decide on 124 PUU cases. On average, it took them 2.6 months to resolve each case, which was an improvement from the previous year's average of 2.97 months per case. To handle these cases, MK conducted a total of 527 sessions, which included 256 Panel Sessions and 271 Plenary Sessions. These sessions comprised

254 Preliminary Sessions, 145 Examination Sessions, and 28 verdict pronouncement sessions.

In addition to open hearings, Constitutional Court (MK) also held closed sessions called Justice Deliberation Meetings (*Rapat Permusyawaratan Hakim/RPH*). This consisted of 118 Plenary RPH and 112 Panel RPH to decide on the handled cases.

Award

The Constitutional Court (MK) has been recognized for its impressive performance and achievements, receiving numerous accolades from various institutions and organizations. In 2022 alone, MK was honored with 11 awards across different categories. Furthermore, MK presented the "*Anugerah Konstitusi*" (Constitutional Award) to its partners, who greatly contributed to the successful implementation of MK's vision, mission, and responsibilities.

Projection for 2023

On Wednesday, May 24th, 2023, during the Special Plenary Session for the 2022 Annual Report, Chief Justice Anwar Usman shared projections for Constitutional Court's upcoming activities in 2023. He emphasized that Constitutional

HEADLINE NEWS



AWARD MIRROR OF TRUST

PUBLIC APPRECIATION FOR THE CONSTITUTIONAL COURT



Penghargaan dari Venice Commission atas suksesnya kegiatan Kongres kelima WCCJ



Penghargaan BKN Award 2022 Special Mention – Pilot Project SIASN



Penghargaan BKN Award 2022 Implementasi Manajemen ASN Terbaik



Penghargaan BKN Award 2022 Implementasi Penerapan Manajemen Kinerja



Penghargaan BKN Award 2022 Pemanfaatan Data-Sistem Informasi dan CAT



Penghargaan Peringkat Kesembilan Kinerja Anggaran Tahun Anggaran 2021 Nilai 95,36 dan Predikat Sangat Baik



Penghargaan Satuan Kerja dengan Indikator Kinerja Pelaksanaan Anggaran (IKPA) Terbaik III Pagu 100-500 Miliar



Penghargaan Unit Penyelenggara Pelayanan Publik Kategori Sangat Baik



Penghargaan dari Wajib Pajak Pemungut dengan Kontribusi Pembayaran Pajak Terbesar ke -II



Laporan Keuangan dengan Opini WTP



Anugerah Komisi Informasi Publik sebagai Badan Publik Informatif 92,96



Penghargaan Hasil Pengawasan Kearsipan kepada Mahkamah Konstitusi dengan kategori "AA" (Sangat Memuaskan) dengan nilai sebesar 91,70

Court was ready to welcome the Simultaneous General Election in 2024, as mandated by the Constitution. Resolving disputes arising from the 2024 simultaneous elections is Constitutional Court's responsibility. Chief Justice Usman expressed the organization's commitment to preparing various elements to support the smooth and high-quality handling of disputes over general election results (PHPU). In 2023, Constitutional Court organized several activities, including the Legal Procedure of Constitutional Court Workshop, workshops on administration and general administration for employees, and improvements in ICT infrastructure and facility readiness to handle cases.

According to Anwar, the Legal Procedure of MK Workshop aims to provide enough information to election participants, the legal representatives of candidates, and other stakeholders to ensure smooth PHPU hearings during the 2024 simultaneous elections. The preparation activities for the workshop and infrastructure are also crucial for internal consolidation, which guarantees access to justice and optimal service to the public and those seeking justice.

On Wednesday, May 31st, a Special Plenary Session was held in the Plenary Session Room of the Constitutional Court. Nine constitutional justices were in attendance to submit the 2022 Annual Report. Photo by: Public Relations/Ifa.

On Wednesday, May 31st, President Joko Widodo gave a speech

Anugerah Konstitusi bagi Jurnalis Media Online

 Terbaik I	 Terbaik II	 Terbaik III
Andi Saputra (detik.com)	Yustinus Paat (beritasatu.com)	Muhammad Zulfikar (antaranews.com)

Anugerah Konstitusi bagi Jurnalis Media Televisi

 Terbaik I	 Terbaik II	 Terbaik III
Kompas TV	TV One	iNews TV

Anugerah Konstitusi bagi Jurnalis Media Cetak

 Terbaik I	 Terbaik II	 Terbaik III
Mimi Kartika (Republika)	Indriyani Astuti (Media Indonesia)	Vendy Yhulia Susanto (Harian Kompas)

Anugerah Konstitusi bagi Pengelola Video Conference

 Terbaik I	 Terbaik II	 Terbaik III
Fakultas Hukum Universitas Brawijaya	Fakultas Hukum Universitas Pattimura	Fakultas Hukum Universitas Lambung Mangkurat



SEMBILAN HAKIM KONSTITUSI MENGHADIRI SIDANG PLENO KHUSUS PENYAMPAIAN LAPORAN TAHUNAN 2022 PADA RABU (31/5) DI RUANG SIDANG PLENO MK. FOTO: HUMAS/IFA

HEADLINE NEWS



PRESIDEN JOKO WIDODO MENYAMPAIKAN SAMBUTAN DALAM SIDANG PLENO KHUSUS PENYAMPAIAN LAPORAN TAHUNAN 2022 PADA RABU (31/5) DI RUANG SIDANG PLENO MK. FOTO: HUMAS/IFA

during the Special Plenary Session for Submission of the 2022 Annual Report. The event took place in the Plenary Session Room of the Constitutional Court. Photo by: Public Relations/Ifa.

During a Special Plenary Session, President Joko Widodo thanked the Constitutional Court (MK) for working diligently to uphold constitutional justice. This is a crucial aspect of democracy, human rights, and the rule of law. Although

the government may not always agree with MK's views, the President acknowledged that it always respects and implements MK's decisions.

The President emphasized that organizing the nation's affairs based on the constitution is necessary for a well-governed country. As political activities are expected to increase this year and next, the President sincerely hoped that MK would make thorough preparations to act as a fair arbitrator for disputes, whether

related to the Presidential or Regional Head elections. He also stressed the importance of issuing timely and just decisions, as delayed justice is a form of injustice. The President emphasized the need to strive for a high-quality democratic process during the Simultaneous General Election in 2024 as a testament to the quality of Indonesian democrac. ■

(LULU ANJARSARI P)

THE CAPTAIN OF THE CONSTITUTIONAL COURT THROUGH TIME



The Constitutional Court (MK) in Indonesia has faced several challenges in its pursuit of upholding constitutional authority in the fields of law enforcement and justice. It has also played an active role in contributing to international affairs, which has earned Indonesia greater recognition on the global stage.

As the Court approaches its 20th anniversary in August 2023, it is important to acknowledge the need for maturity in thinking, acting, and adapting to the changing times.

Time waits for no one, and change is inevitable. Nothing is eternal in this world. Even the Chief Justice, Deputy Chief Justice, and Constitutional Justices must eventually be replaced, as positions of

power are temporary and ultimately determined by a higher force. The rise and fall of individuals in certain positions are predetermined by a higher power.

It is undeniable that there are challenges to upholding law and justice, and sometimes these challenges arise from within the Constitutional Court itself. Unfortunately, there have been instances where the Court has been shrouded in disgrace. One such memory is the involvement of Chief Justice M. Akil Mochtar in a bribery case related to a legal matter, which came to light during a Hand arrest operation (OTT) conducted by the Corruption Eradication Commission (KPK) on October 2, 2013. Similarly, the dignity of the Constitutional Court was once again tarnished

when Constitutional Justice Patrialis Akbar was caught in a KPK OTT on January 25, 2017.

The unfortunate incidents serve as important reminders for all members of the Constitutional Court, particularly for the constitutional justices who hold the esteemed position of statesmen. Constitutional justices must work together and synergize their efforts to ensure the Constitution remains strong and unyielding. As guardians of the Constitution, constitutional justices must steadfastly adhere to the “Sapta Karsa Code of Ethics and Behavior for Constitutional Justices,” which includes principles such as independence, impartiality, integrity, decency, equality, competence, fairness, wisdom, and prudence.

CONSTITUTIONAL COURT LEADERSHIP FROM TIME TO TIME

CHIEF JUSTICE OF THE
CONSTITUTIONAL COURT



Prof. Dr. Jimly Asshiddiqie, S.H.
(August 19, 2003- May 31, 2008)

DEPUTY CHIEF JUSTICE OF THE
CONSTITUTIONAL COURT



Prof. Dr. H. M. Laica Marzuki S.H.
August 19, 2003- August 19, 2008)



Dr. Harjono, S.H., MCL
(June 4, 2008- August 16, 2008)

Term of Office 2003-2008



Prof. Dr. Mohammad Mahfud MD, S.H.
(August 19, 2008- April 1, 2013)



Prof. H. Abdul Mukthie Fadjar, S.H., M.S.
August 21, 2008- December 31, 2009)



Prof. Dr. Achmad Sodiki, S.H.
(January 14, 2010- July 22, 2013)

Term of Office 2008-2013

Term of Office 2013-2015



Dr. H. M. Akil Mochtar, S.H., M.H.
(April 5, 2013-October 5, 2013)



Dr. Hamdan Zoelva, S.H., M.H.
(April 5, 2013-November 4, 2013)

Term of Office 2013-2015



Dr. Hamdan Zoelva, S.H., M.H.
(November 6, 2013- January 7, 2015)



Prof. Dr. Arief Hidayat, S.H., M.S.
(November 1, 2013-January 12, 2015)

Term of Office 2015-2018



Prof. Dr. Arief Hidayat, S.H., M.S.
(January 12, 2015-July 14, 2017)
(July 14 2017-April 2, 2018)



Dr. Anwar Usman, S.H., M.H.
January 14, 2015 – April 11, 2016)
(April 11, 2016 - April 2, 2018)

Term of Office 2018-2023



Dr. Anwar Usman, S.H., M.H.
(April 2, 2018- October 2, 2020)



Prof. Dr. Aswanto, S.H., M.Si., DFM
(April 2, 2018- October 2, 2020)

Term of Office 2023-2028



Dr. Anwar Usman, S.H., M.H.
March 20, 2023-March 20, 2028)



Prof. Dr. Saldi Isra., S.H., MPA.
(March 20, 2023-March 20, 2028)

THE ELECTION OF ANWAR USMAN AND SALDI ISRA

On June 20th, 2022, the Constitutional Court issued Ruling No. 96/PUU-XVIII/2020 regarding the material judicial review of the Constitutional Court Law (UU MK). According to the legal considerations outlined in this ruling, the Court was required to elect a Chief Justice and Deputy Chief Justice within nine months from the date of the verdict. On March 15, 2023, the Constitutional Court held an election for the Chief Justice and Deputy Chief Justice. The election was preceded by a closed plenary session that ran from 11:00 AM to 2:00 PM WIB. This session aimed to select the Chief Justice and Deputy Chief Justice through consensus-based deliberation or Justice Deliberation Meetings (RPH). However, as no agreement was reached, a voting process involving the nine Constitutional Justices was conducted. Ultimately, an open voting process was used to determine the election outcome.

Constitutional Justices Anwar Usman and Saldi Isra were officially appointed as the Chief Justice and Deputy Chief Justice of the Constitutional Court (MK) for the 2023-2028 term. The selection process involved a public vote during the Plenary Meeting of Justices on Wednesday, March 15, 2023, in the Plenary Courtroom of the Constitutional Court.

Anwar explained that, in the meeting, it was agreed to hold an open voting process for the election



PEMILIHAN SUARA KETUA PUTARAN PERTAMA DENGAN SUARA IMBANG ANTARA HAKIM KONSTITUSI ANWAR USMAN DAN HAKIM KONSTITUSI ARIEF HIDAYAT (TENGAH). FOTO: HUMAS/IFA

of the Chief Justice and Deputy Chief Justice of the Constitutional Court for the 2023–2028 term. The voting will take place in the plenary session of justices and will be open to the public.

He went on to say that the nine constitutional justices had equal rights to be elected and to vote for the positions of Chief Justice and Deputy Chief Justice. Anwar Usman, Arief Hidayat, Wahiduddin Adams, Manahan M. P. Sitompul, Suhartoyo, Saldi Isra, Enny Nurbaningsih, Daniel Yusmic Pancastaki Foekh, and M. Guntur Hamzah are the nine constitutional justices.

Three Rounds of Voting

The election for the Chief Justice of the Constitutional Court

was conducted in three voting rounds. During the first and second rounds, both Constitutional Justices Anwar Usman and Arief Hidayat obtained four votes each, while one vote was void as two judges were selected. In the third round, Anwar received five votes, while Arief received four votes. Based on the voting results, Anwar Usman was elected as the Chief Justice for the 2023–2028 term.

“As I always said on many occasions, I believe that positions are solely in the hands of Allah. Tonight, my fellow Constitutional Justices have entrusted me with this duty. We request that the media keep a watchful eye on us,” stated Anwar, accompanied by Constitutional Justice Saldi Isra after the election.

In the recent election for the Deputy Chief Justice, Constitutional Justice Saldi Isra was appointed for the 2023–2028 term after receiving five votes. Constitutional Justice Daniel Yusmic Pancastaki Foekh received three votes, and one vote abstained during the single-round voting. Saldi has stated that the Constitutional Court’s leadership will prioritize preparing for the upcoming Simultaneous General Elections in 2024.

“As we move forward, we acknowledge that we have difficult tasks ahead of us. The nine Constitutional Justices have engaged in heartfelt discussions about the importance of restoring trust in the Constitutional Court. In 2024, we will face national agendas, including electoral disputes involving the presidential, legislative, and regional elections. Our top priority is maintaining solidarity within the institution,” Said Saldi.

It is important to note that the election of the Chief Justice and Deputy Chief Justice was conducted to comply with Article 4 paragraph (3) of the Constitutional Court Law regarding the term of office for the Chief Justice and Deputy Chief Justice, following Decision No. 96/PUU-XVIII/2020 dated June 20, 2022. According to the ruling, “... Article 87 letter a of Law No. 7/2020 is no longer legally binding as of the issuance of this decision. However, to prevent any administrative issues with the previous decision (a quo), the current Chief Justice and Deputy Chief Justice of the Constitutional Court will remain valid until the

election of new officials, as mandated by Article 24C paragraph (4) of the 1945 Constitution. The election of the Chief Justice and Deputy Chief Justice must be conducted within nine months from the date of this ruling.”

Subsequently, the election of the Chief Justice and Deputy Chief Justice was conducted according to Constitutional Court Regulation (PMK) No. 6 of 2023 concerning the Procedures for the Election of the Chief Justice and Deputy Chief Justice of the Constitutional Court. This regulation states that the Constitutional Justices elect the Chief Justice and Deputy Chief Justice for a term of five years. At least seven Constitutional Justices must be present for the election to take place. If there are fewer than seven judges, the election can be postponed for up to two hours. If the required number is still not met after the postponement, the election will proceed even with fewer than seven judges present. The election is done through consensus-based deliberation in a closed Plenary Meeting of Judges. If consensus cannot be reached, the decision is based on the highest number of votes through a public voting process during the open Plenary Meeting of Judges in the Plenary Courtroom of the Constitutional Court Building.

Inauguration

In a special plenary meeting held in the afternoon of March 20, 2023, Constitutional Justices Anwar Usman and Saldi Isra were sworn in as Chief Justice and Deputy

Chief Justice, respectively, for the 2023-2028 term. The oath-taking ceremony took place at the Plenary Courtroom of the Constitutional Court in the presence of other Constitutional Justices, as well as the President of the Republic of Indonesia, Joko Widodo, and Mahfud MD, the Coordinating Minister for Political, Legal, and Security Affairs, who previously served as Chief Justice for the 2008-2013 term. Also present were Jimly Asshiddiqie, the first Chief Justice, and several other officials.

During his speech, Anwar acknowledged that court decisions could never fully satisfy everyone involved. He emphasized that those whose interests are accommodated will naturally defend the decision, while those who disagree will reject it. Anwar also revealed that constitutional justices often have differing opinions, even differing from the majority opinion of other constitutional justices, including the Chief Justice or Deputy Chief Justice.

Therefore, he reminded all members of the nation and society to act wisely and provide education to ensure that the public can respond maturely to judiciary decisions.

Anwar also mentioned that he and Saldi Isra were given the responsibility of serving as the Chief Justice and Deputy Chief Justice of the Constitutional Court for the 2023–2028 term. He welcomes advice, support, and criticism from all parties for the betterment of the nation and state. ■

(NUR ROSKIN/LULU ANJARSARI P.)

JUDICIAL REVIEW DECISIONS

No.	Case Number	Case Subject	Petitioners	Decision	Date	Decision Link
1	38/PUU-XXI/2023	Material Judicial Review of Law Number 7 of 2021 Concerning Harmonization of Tax Regulations	Heriyansyah	withdrawn	May 30, 2023	Click Decision
2	27/PUU-XXI/2023	Material Judicial Review of Law Number 8 of 1981 concerning Criminal Procedure Code	M. Yasin Djamaludin	Reject the petition in its entirety	May 30, 2023	Click Decision
3	33/PUU-XXI/2023	Material Judicial Review of Law Number 8 of 1981 concerning Criminal Procedure Code	Asep Muhidin and Rahadian Pratama	Reject the petition in its entirety	May 30, 2023	Click Decision
4	112/PUU-XXI/2022	Material Judicial Review of Law Number 19 of 2019 on the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission	Nurul Ghufron	Grant the Petitioner's request in its entirety	May 30, 2023	Click Decision
5	31/PUU-XXI/2023	Material Judicial Review of Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 7 of 2020 on the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court and Law Number 7 of 2017 concerning General elections	Herifuddin Daulay	Grant the Petitioner's request partially	May 30, 2023	Click Decision

6	32/PUU-XXI/2023	Material Judicial Review of Law Number 7 of 2017 concerning General Elections	Viktor Santoso Tandiasa	Reject the petition in its entirety	May 30, 2023	Click Decision
7	34/PUU-XXI/2023	Material Judicial Review of Law Number 7 of 2017 concerning General Elections	Suryadin	Reject the petition in its entirety	May 30, 2023	Click Decision
8	26/PUU-XXI/2023	Material Judicial Review of Law Number 14 of 2002 concerning the Tax Court	Nurhidayat, Allan Fatchan Gani Wardhana, and Yuniar Riza Hakiki	could not be accepted	May 30, 2023	Click Decision Click Decision
9	37/PUU-XXI/2023	Material Judicial Review of Law Number 8 of 2011 as amended by Law Number 7 of 2020 on the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court and Law Number 11 of 2021 concerning the Attorney General's Office	Irnensif, Zulhadi Savitri Noor, Wilmar Ambarita, I Wayan Dana Aryantha, Made Putriningsih, Mangatur Hutauruk, and Zairida	Reject the petition in its entirety	May 30, 2023	Click Decision
10	36/PUU-XXI/2023	Law Number 1 of 2023 concerning the Criminal Code	Leonardo Siahaan and Ricky Donny Lamhot Marpaung	could not be accepted	May 30, 2023	Click Decision



FACTORY WORKERS RAISE CONCERNS ABOUT INCOME TAX PROVISIONS

The Constitutional Court (MK) has conducted a material judicial review of the provisions on income tax, which cover benefits in kind and/or privileges as stipulated in Law Number 7 of 2021 on Harmonization of Taxation Regulations (HPP Law). Heriyansyah, a factory worker living in Bekasi Regency, filed the petition. The preliminary hearing of Case Number 38/PUU-XXI/2023 was held on Wednesday, May 3, 2023, in the Plenary Courtroom of the Constitutional Court.

Constitutional Justice Enny Nurbaningsih presided over the session, accompanied by Constitutional Justices Wahiduddin Adams and Manahan MP. Sitompul. During the hearing, Hendrawan, the petitioner's legal counsel, explained that the petition concerns Article 4 paragraph (1a) of the HPP Law. He argued that this article could be interpreted as benefits in the form of health facilities, which contradicts Article 28D paragraphs (1) and (2) of the 1945 Constitution.

In response to the Petitioner's request, Justice Manahan M.P. Sitompul

said that the Petitioner had met the Petition's format. However, the substance of the petition was not sufficiently elaborated in accordance with the Constitutional Court Regulation (PMK). Justice Manahan advised the Petitioner to take note of and follow PMK No. 2 of 2021, which is an update from the old PMK, and observe Articles 8 to 10, which detail the Petition's format and substance, as well as mention the Petitioner's identity, including the representative if there is one. ■

UTAMI ARGAWATI, LULU ANJARSARI P.

PLN WORKERS' UNION CHALLENGES JOB CREATION LAW

On May 8, 2023, the Constitutional Court (MK) conducted a material judicial review of the regulations on provisions on electricity supply as stipulated in Articles 38 and 42 of the Material Judicial Review of Law Number 6 of 2023, which pertains to the enactment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law (Job Creation Law). Case Number 39/PUU-XXI/2023 was heard in the Plenary Courtroom of the Constitutional Court, following a petition filed by ten workers' unions, including the workers' union of the state-owned electricity company PT Perusahaan Listrik Negara (Persero) or SP PLN, the workers' union of Indonesia Power or PP IP, the workers' union of PT Pembangkitan Jawa Bali, and 109 individuals.

During the hearing, on behalf of the Petitioners, legal counsel Mohammad Fandrian Hadistiano stated that the Job Creation Law regulates the provision of electricity supply for the public interest to be unbundling or non-integrated. Prior to the a quo Law, Article 10 paragraph (2) and Article 11 paragraph (1) of Law No. 30 of 2009 on Electricity had been interpreted constitutionally through Constitutional Court Decision No. 111/PUU-XIII/2015. Meanwhile, the Court revoked the Electricity Law No. 20 of 2002 on December 21, 2004, with Decisions 001-021-022/PUU-I/2003 due to the unbundling system in the electricity supply being deemed unconstitutional. However, the latest Job Creation Law has reenacted this unbundling system.

In addition, the petitioners provide various reasons for their petition. They stated that the Job Creation

Law restructured the distribution of electricity for public interest in a way that separates its different functions (unbundling). The unbundling system means that the electricity supply business be separated into generation, transmission, distribution, and sales businesses. This clause practically commodifies electricity. The Petitioners asserted that electricity business activities that are carried out competitively by treating business actors equally and by separate or unbundled business entities are unconstitutional following the legal considerations of the Constitutional Court Decisions 001-021-022/PUU-I/2003. Therefore, in their petition, they request that the two articles be declared unconstitutional. ■

UTAMI ARGAWATI, LULU ANJARSARI P.





HUNDREDS OF WORKERS ACCUSE JOB CREATION LAW FACILITATES LAYOFF

The Constitutional Court (MK) conducted a formal and material judicial review hearing of articles 80 and 81 of Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Job Creation Law) in relation to the 1945 Constitution of the Republic of Indonesia. The hearing of Case Number 40/PUU-XXI/2023 took place on Tuesday, May 9, 2023, and was presided over by Constitutional Justices Arief Hidayat, Suhartoyo, and Enny Nurbaningsih.

The petition was filed by 121 Petitioners, comprising ten workers' unions and 111 individual workers. Through legal counsel M. Fandrian Adhianto, the Petitioners argued that

the Job Creation Law is formally flawed and that the a quo articles contradict Article 27 paragraph (2), Article 28C paragraph (2), Article 28D paragraph (1), and (2) of the 1945 Constitution.

Another legal counsel, Endang Rokhani, explained the background of the petition, including the approval of DPR (House of Representatives) regarding the stipulation of Government Regulation in Lieu of Law (Perppu) No. 2 of 2022 on Job Creation into law (Job Creation Law). According to the Petitioners, this means that the House of Representatives (DPR RI) approved the president's justification of the compelling crisis situation for the stipulation of the perppu of the Job Creation Law.

The enactment of Article 81 of the Job Creation Law is claimed to

be the cause of the loss or potential constitutional losses experienced by the Petitioners, which could lead to job losses. According to legal counsel Mustiyah, the Job Creation Law has facilitated employers to terminate or lay off employees, which has negatively affected workers. Mustiyah also believes that the changes in manpower regulations outlined in the Job Creation Law have reduced the level of protection that workers previously had under Law Number 13 of 2003 concerning Manpower. This seems to contradict the President's argument that the stipulation of the Job Creation Perppu bill into law is necessary to address the compelling crisis situation in the manpower aspects, which he presented during a work meeting between the House's Legislation Body (Baleg) and the Government on February 14, 2023.

In response to the 112-page petition, Constitutional Justice Enny Nurbaningsih suggested that the Petitioners review previous Constitutional Court decisions to understand the standard format of the petition. She also recommended that they examine the substance of the norms being petitioned.

Meanwhile, Constitutional Justice Suhartoyo cautioned the Petitioners to carefully consider their arguments since the petition pertains to formal and material judicial review. If they choose to combine the two, they should concentrate on the articles being petitioned and ensure they are clearly presented in the petition submitted to the Constitutional Court. ■

SRI PUJANTI, NUR R.

KSBSI CHALLENGES THE ENACTMENT OF JOB CREATION LAW



On May 10, 2023, the Constitutional Court (MK) conducted a formal judicial review hearing of Law Number 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Job Creation Law) in relation to the 1945 Constitution of the Republic of Indonesia. The petition was filed by the Confederation of All Indonesian Labor Unions (KSBSI), and it was represented by Elly Rosita Silaban, who is the President of the National Executive Council, and Dedi Hardianti, who is the Secretary General of the National Executive Council. The hearing of Case Number 41/PUU-XXI/2023 took place at the Constitutional Court and was presided over by a panel

of Constitutional Justices, namely Arief Hidayat, Suhartoyo, and Enny Nurbaningsih.

During the hearing, legal counsel Nikasi Ginting, on behalf of the Petitioners, argued that the subject matters of the formal judicial review petition of the Job Creation Law, which originated from Government Regulation in Lieu of Law Number 2 of 2022 (Perppu), did not meet the provisions based on the 1945 Constitution. There were eight reasons for this. Firstly, the approval of the Indonesian Parliament (DPR) of Government Regulation in Lieu of Law Number 2 of 2022 was formally or constitutionally flawed. Secondly, the DPR session decided to approve Government Regulation in Lieu of Law Number 2 of 2022 into law without meeting the forum quota (quorum).

Thirdly, it contradicts Constitutional Court Decision Number 91/PUU-XVIII/2020. Fourthly, it does not meet the requirements of compelling urgency. Fifthly, it is unclear who initiated Government Regulation in Lieu of Law Number 2 of 2022. Sixthly, it does not meet the principle of harmony between type, hierarchy, and substance. Seventhly, it does not meet the principle of clarity. Lastly, it does not meet the principle of transparency.

Constitutional Justice Suhartoyo advised the Petitioner, who is represented by the president and secretary-general, to provide the organization's statute/bylaw (AD/ART). These documents should clarify who has the authority to represent the organization, both inside and outside the court. Additionally, he advised that the petition should include the organization's concentration regarding the existence of the Job Creation Law being reviewed in this petition.

Meanwhile, Constitutional Justice Enny Nurbaningsih reminded the Petitioners about the petition submission deadline. The deadline falls within the 45 days allotted for the formal review of the Law. She also advised the Petitioners to concentrate on issues related to the formulation of Law Number 6 of 2023 instead of Government Regulation in Lieu of Law Number 2 of 2022, even though the former originated from the latter. ■

SRI PUJANTI, NUR R.



DRIVING LICENSE EXPIRATION PERIOD IN LLAJ LAW CHALLENGED

On May 10th, 2023, the Constitutional Court (MK) conducted a preliminary hearing for the judicial review of Law Number 22 of 2009, which pertains to Traffic and Road Transportation (LLAJ Law). The petition was filed by Arifin Purwanto, a professional advocate, under Case Number 42/PUU-XXI/2023.

During the hearing he attended in person, he expressed his frustration about renewing his driving license (SIM) every five years. Arifin feels

disadvantaged when he has to renew his driver's license (SIM) after the 5-year expiration period.

He believes that the requirement has no legal basis and the criteria for extending the license are unclear, as it is unclear which institution assesses the criteria. Arifin also mentioned that renewing the SIM after it expires requires a significant amount of money, time, and effort, which adds to the inconvenience.

As per the UU LLAJ regulations, every driver must possess a driver's

license. However, obtaining a driver's license is a challenging process, especially when it comes to the theory test and practical driving test. The theory test results only indicate whether the test-takers passed or failed without specifying which correct or incorrect answers. Additionally, the criteria for the content of these tests lack a clear legal basis, and it is uncertain whether they are based on assessments from competent and authorized institutions with expertise in the exam's content. This contradicts Article 28D paragraph (1) of the 1945 Constitution.

In response to the petition, Constitutional Justice Manahan MP Sitompul advised the petitioner to use the Constitutional Court's regulations (PMK) as a guide in drafting the petition. Meanwhile, Constitutional Justice Enny Nurbaningsih requested that the petitioner observe the past petitions in the Constitutional Court. Additionally, She also asked the petitioner to provide a detailed explanation of the reasons behind the petition and which specific articles are being challenged as contrary to the 1945 Constitution. ■

UTAMI ARGAWATI, NUR R.

CONSTITUTIONALITY OF STNKB AND TNKB EXPIRATION PERIOD CHALLENGED

The Constitutional Court (MK) held a preliminary hearing to review the constitutionality of the provisions regarding the Vehicle Registration Certificate (STNKB) and the Vehicle Registration Number (TNKB) as regulated in Law Number 22 of 2009 concerning Traffic and Road Transportation (UU LLAJ) on Thursday, May 11, 2023, in the Plenary Session Room of the Constitutional Court. Arifin Purwanto, an advocate by profession, filed Case No. 42/PUU-XXI/2023. The hearing was presided over by

Constitutional Justice Wahiduddin Adams.

The Petitioner, who attended the hearing in person, said that Article 70 paragraph (2) of the LLAJ Law had violated his constitutional rights. He revealed that when renewing his STNKB and TNKB documents, he must bring his vehicle to the vehicle document registration center (Samsat office). This poses a problem for him, whose motorcycle is now in Surabaya, and he would have to bring the motorcycle from Madiun to Surabaya to renew the STNKB and TNKB.

He proposed that the STNKB and TNKB should have permanent validity as it was before Indonesia gained independence until 1984. He argued that this would prevent the forgery of these documents and prevent wasting money. Therefore, in the petition, he requested that the Court declare the phrase “shall be valid for 5 (five) years which ratification shall be requested each year” in Article 70 paragraph (2) of the LLAJ Law unconstitutional. ■

UTAMI ARGAWATI, LULU ANJARSARI P.





THE IMPORTANCE OF PUBLIC PARTICIPATION IN LAWMAKING

Two students, Albert Ola Masan Setiawan Muda and Andrew Chua, from Bintan International University, have filed a case challenging the constitutionality of regulations related to public consultation activities in the process of lawmaking. The regulations in question are mentioned in Article 96, paragraph (6) of Law Number 13 of 2022 on the Second Amendment to Law Number 12 of 2011 on Lawmaking.

The case, with case number 44/PUU-XXI/2023, was heard in the Constitutional Court (MK) plenary

courtroom on Thursday, May 11, 2023, with Enny Nurbaningsih presiding over the session.

Article 96 paragraph (6) of the Lawmaking Law states, "To fulfill the rights as referred to in paragraph (1), the legislators may conduct public consultation activities through (a) public hearings; (b) work visits; (c) seminars, workshops, and discussions; and/or (d) other public consultation activities."

According to legal counsel Risky Kurniawan, the Petitioners believe their constitutional rights have been violated by Article 96, paragraph 6, of the Lawmaking Law. Kurniawan stated

that using the word "may" does not make public consultation activities mandatory but rather optional. The Petitioners argue that to require public participation, "may" should be replaced with "shall." To illustrate their point, they compared it to the Job Creation Law, which the Court found conditionally unconstitutional due to a formal flaw caused by the lack of public participation.

In response, Constitutional Justice Manahan M. P. Sitompul suggested that the petitioners thoroughly review the substance of their petition. This includes considering the Court's authority, the background of the petition, which has not detailed the touchstones in the 1945 Constitution against the norm in question, and the petitum submitted to the court.

Constitutional Justice Daniel Yusmic P. Foekh also emphasized the need for evidence to support the Petitioners' claims of constitutional impairment. Additionally, Constitutional Justice Enny Nurbaningsih advised the Petitioners to make their subject more specific and carefully review the Court's authority over the case, their qualifications for filing the petition, and the argument of constitutional loss due to the norm being petitioned. ■

SRI PUJIANI, LULU ANJARSARI P.

SEVERAL COOPERATIVES QUESTION THE MANAGEMENT OF PLANTATION BUSINESS FUNDS

On May 15, 2023, the Constitutional Court (MK) held a material judicial review hearing of Law No. 39 of 2014 on Plantation (Plantation Law). The Palm Oil Farmers Union (SPKS), Karya Mandiri Savings and Loans Cooperative (KSP), Renyang Bersatu Plantation Cooperative, and Harapan Baru Ratu Plantation Producer Cooperative filed a petition as Petitioners I-IV. They claimed that Article 93 paragraph (4) of the Plantation Law violated Article 28D paragraph (1) of the 1945 Constitution. The hearing, Case Number 45/PUU-XXI/2023, was presided over by Constitutional Justices Daniel Yusmic P. Foekh, Wahiduddin Adams, and Suhartoyo.

During the hearing, the Petitioners' legal counsel, Markus Manumpak Sagala, explained that one of the sources of plantation business financing comes from fundraising from plantation business actors. He further said that Article 93 Paragraph (4) of the Plantation Law has a restrictive meaning on the allocation and use of funds collected from business actors. Funds collected from plantation business actors are optimized for



the benefit of the community, so it is regulated in a limitative manner. Thus, the purpose of the Plantation Law can be achieved, as stipulated in Article 3 of the Plantation Law. Sagala also pointed out that the allocation and use of funds collected from plantation business actors, as stipulated in Article 93 paragraph (4) of the Plantation Law, is regulated by Government Regulation No. 24 of 2015 on the Collection of Plantation.

In response, Constitutional Justice Wahiduddin Adams requested that the Petitioners as organizations must include their organization's statute or bylaw that contains information about

who is authorized to represent the organization in and out of court, as well as confirmation of the petition's filing. Additionally, he asked for clarification on the petition submitted to the Constitutional Court.

Meanwhile, Constitutional Justice Suhartoyo emphasized the legal subject of the petition and added that it could be accumulative and was important for their legal standing.

Furthermore, Constitutional Justice Daniel Yusmic P. Foek advised the Petitioners to consider the object of the petition, as the norm has changed due to Law No. 2 of 2023. ■

SRI PUJANTI, LULU ANJARSARI P.



ENGAGED IN ENFORCING CONSTITUTION AND DEMOCRACY

Speaking about procedural law practices and resolving various constitutional cases are the duties of constitutional justices. Here are snapshots of constitutional justices engaging in discussions with academics and students about constitutional and democratic issues.

Dynamics of Perppu Being Challenged on Constitutional Court



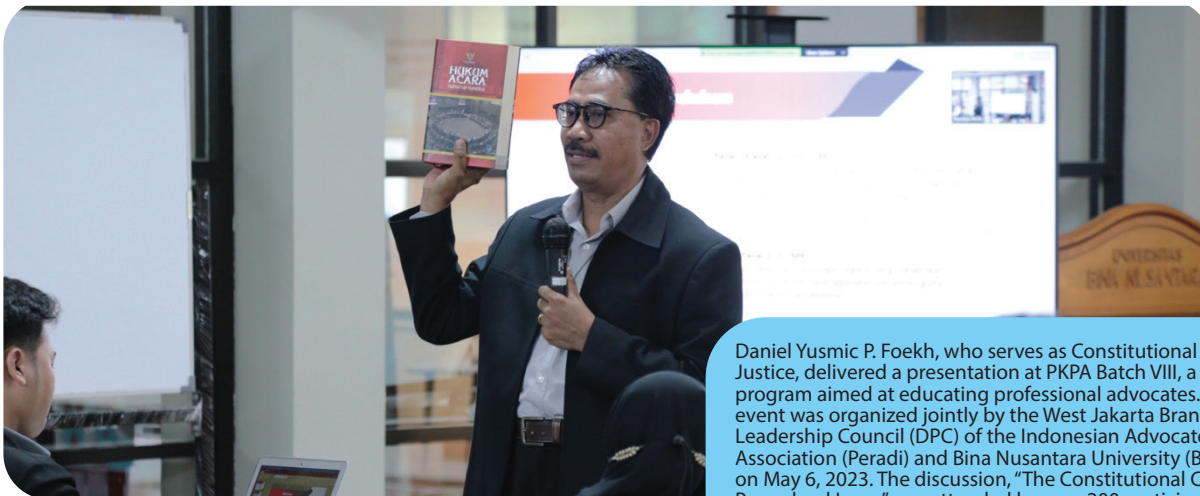
Constitutional Justice Daniel Yusmic P. Foeckh talked about the judicial review of government regulations in lieu of laws (perppu) in the Constitutional Court (MK) before the students and faculty members of the Sunan Ampel State Islamic University (UINSA) of Surabaya on Friday, May 5, 2023.

Enforcing Constitution and Democracy Amidst Global Instability



On Friday, May 5, 2023, Constitutional Justice Suhartoyo gave a presentation at a National Seminar titled "The New Direction of the Enforcement of the Constitution and Democracy amid Global Instability." The seminar took place in International Room I, Faculty of Law, University of Bengkulu. It was organized collaboratively by the Faculty of Law of the University of Bengkulu and the Constitutional Court. Justice Suhartoyo's presentation focused on "Constitutionalism and Democracy."

MK Procedural Law



Daniel Yusmic P. Foekh, who serves as Constitutional Justice, delivered a presentation at PKPA Batch VIII, a program aimed at educating professional advocates. The event was organized jointly by the West Jakarta Branch Leadership Council (DPC) of the Indonesian Advocates Association (Peradi) and Bina Nusantara University (Binus) on May 6, 2023. The discussion, "The Constitutional Court's Procedural Laws," was attended by over 200 participants in person and online.

Deputy Chief Justice Saldi Motivates Students of SMAN 1 Padang



On Thursday, May 11, 2023, students from State Senior High School 1 (SMAN 1) Padang, West Sumatra, visited the Constitutional Court. Deputy Chief Justice Saldi Isra warmly welcomed them in the meeting room located on the eleventh floor. Accompanying the deputy chief justice was Abdul Ghoffar Husnan, an expert assistant to constitutional justice. During the visit, Saldi motivated the students.



Key to Successful Election Dispute Resolution



On Friday, May 12, 2023, the Chief Justice of the Constitutional Court (MK), Anwar Usman, attended the inauguration of the mini courtroom smart board. The event is a collaboration between the Constitutional Court and the Faculty of Law of the Islamic University of Kadiri (FH Uniska). The inauguration was held in conjunction with a national seminar on "The Resolution of Election Results Disputes to Realize Electoral Justice." Saivol Firdaus, the Director of Uniska's Center for Democracy and Constitution, and Purnomo Satriyo Pringgogidgo, the Coordinator of the Law and Information Data Division of East Java Bawaslu, were the speakers at the seminar.

WORKSHOP ON ELECTION RESULTS DISPUTE RESOLUTION FOR PKS CADRES



On Monday, May 8, 2023, Chief Justice Anwar Usman opened a workshop at the Pancasila and Constitution Education Center (Pusdik) in Bogor, West Java Province. The workshop focused on the procedural law for the 2024 General Election Results Dispute Resolution (PHPU) for the Prosperous Justice Party (PKS).

FROM SILLATURRAHMI TO OFFICIAL VISIT

Following Ramadan in 1444 H, the Constitutional Court resumed its institutional activities. They held a gathering event called Halalbihalal Idul Fitri 1444 H with the extended family of the Constitutional Court. Additionally, they have plans for an official visit to the United States as part of the Recharging Program in 2023.

Halalbihalal with the Constitutional Court Family



On Thursday, May 4, 2023, the Constitutional Court (MK) hosted a Halalbihalal event to celebrate Eid al-Fitr 1444 AH at its main hall. The event was attended by prominent figures such as Chief Justice Anwar Usman, Deputy Chief Justice Saldi Isra, and other constitutional justices. The First Chief Justice, Jimly Asshiddiqie, and the Fourth Chief Justice, Hamdan Zoelva, were also present. The gathering theme was "The Beauty of Silaturahmi: Uniting Hearts in Forgiveness." During his speech, Chief Justice Anwar Usman expressed that the attendees did not gather by chance but by fate.

Preparation of PKMK to Optimize 2024 Election Results Dispute Resolution



On May 4, 2023, in Tangerang, Banten, the meeting for drafting new chief justice regulations (PKMKs) for resolving disputes over the 2024 presidential and legislative elections was officially opened by Chief Justice of the Constitutional Court Anwar Usman, along with Acting Secretary-General Heru Setiawan and Chief Registrar Muhidin.



PKMK Meeting Discusses 2024 Election Results Dispute Resolution



On Friday, May 5, 2023, in Tangerang, Banten Province, a meeting was held to draft new regulations for resolving disputes over the results of the 2024 presidential and legislative election (PHPU). The meeting was chaired by Deputy Chief Justice of the Constitutional Court Saldi Isra, alongside Acting Secretary-General Heru Setiawan and Chief Registrar Muhidin.

Leiden University Delegation Aims to Strengthen Cooperation



On Monday morning, May 15, 2023, a group of representatives from the University of Leiden visited the Constitutional Court and had a meeting with Deputy Chief Justice Saldi Isra. The delegation included Joanne van der Leun, who serves as both the Dean and Professor of Criminology at the university, as well as Adrian Bedner, another professor, and two other representatives. During the meeting, they expressed their desire to exchange ideas with the aim of strengthening the relationship between the university and state institutions in Indonesia.

Preparation for Participants of the “Recharging Program 2023” to the United States



Eight staff members of the Constitutional Court were congratulated by Deputy Chief Justice Saldi Isra on Tuesday, May 16, 2023, at the Court's main building. These staff members have successfully passed a series of selection processes. They will participate in the Recharging Program 2023 at the National Center for State Courts (NCSC) in Arlington and William and Mary Law School in Williamsburg. The program will last for seven weeks, from June 5 until July 21. Prior to their departure, participants attended pre-departure sessions, which provided them with relevant information on “Restructuring Constitutional Democracy.”

SCIENTIFIC CHAIN OF CONSTITUTIONAL LAW IN INDONESIA (Continuation)

BISARIYADI

Asisten Ahli Hakim Konstitusi

In the previous edition, the story ended with *Rechtshoogeschool* in Batavia dissolving as a result of the Japanese invasion. This narrative now continues with the Japanese occupation period in Indonesia.

Although the Japanese entry did not significantly affect legal education in Indonesia due to its short duration, the Japanese government's "anti-Dutch" policies had an impact on language development. These policies restricted the publication of Dutch-language materials. They limited the use of the Dutch language, resulting in a restriction of initial knowledge about the law, which was primarily presented in Dutch.

Nonetheless, during the Japanese occupation, the

development of constitutional law in Indonesia was significant. The establishment of two organizations, the "Investigating Committee for Preparatory Work for Independence" (BPUPK) and the "Preparatory Committee for Indonesian Independence" (PPKI), had a profound influence. Legal scholars who graduated from *rechtshoogeschool* and universities in the Netherlands played a major role in shaping the agendas of both organizations, with approximately one-fourth of the 67 members of BPUPK being legal scholars. An article on hukumonline.com titled "*Kenali Pejuang Kemerdekaan Berlatar Belakang Hukum*" (Recognizing Independence Fighters with Legal Backgrounds) lists the legal scholars who were members of

BPUPK.

This article tries to primarily focus on their academic backgrounds. While many legal scholars were involved in practical politics during that era, particularly in the field of constitutional law, only a few pursued a consistent path in education. Notably absent from the list of legal scholars who became members of BPUPK and PPKI is Djokosoetono, a prominent graduate of the *rechtshoogeschool*.

Djokosoetono

His name is written in three variations: Djokosoetono, Djokosutono (as written in his book "*Sejarah Politik Hukum Adat*"), and Jokosutono (as written in A.H. Nasution's memoir "*Memenuhi Panggilan Tugas*"). However, his

family and descendants use the first spelling, Djokosoetono.

For the purpose of this article, we will use this spelling. Currently, Djokosoetono's name is easily found on internet search engines due to one of his grandchildren marrying a celebrity, and the family has continued to use the name "Djokosoetono" as a tribute and homage to uphold the family's legacy.

In the past, the name was associated with a car

rental company (taxi) founded by Djokosoetono's wife after his passing. However, despite being known among students at the Faculty of Law at the University of Indonesia (FHUI), who see him immortalized in statue form in the front yard of the faculty building on the Depok campus, Djokosoetono is not widely recognized. A similar statue can also be found in the yard of the Police College of Higher Education (PTIK), but the difference lies in their attire, with the statue at PTIK wearing a toga

and the one at FHUI donning a suit without a tie and wearing a *songkok* (traditional headgear).

Logemann, Djokosoetono's supervisor, previously commented on his style of attire (see previous edition). In addition to Logemann, Mardjono Reksodiputro, like other students at the Salemba Campus, also remembers Djokosoetono for his choice of attire in his writing "Professor Djokosoetono I Know" from the book collection "Reflections on the Journey of Legal Reform"



(2013).

Reksodiputro's writing reveals a different side of Djokosoetono. Despite being renowned for his intelligence, Djokosoetono often became anxious during exams. One day, Logemann took Djokosoetono on a tour around Batavia, during which Logemann conducted an oral exam to help alleviate Djokosoetono's nervousness which was unbeknown to him.

Djokosoetono was loyal to the education world. After Indonesia's Independence Proclamation, Indonesia established the "*Balai Perguruan Tinggi Republik Indonesia*," where the Faculty of Law was one of its components. When the war of independence broke out, some of Balai's activities were moved to Yogyakarta, where Gadjah Mada University was established. Djokosoetono also moved to Yogyakarta and later returned to Jakarta in the 1950s after Indonesia gained sovereignty from the Netherlands.

Djokosoetono played a crucial role in setting up the Military Law Academy (AHM) and the Police College of Higher Education (PTIK) in Jakarta. During his tenure as the dean of FHUI, the lectures at AHM and PTIK were often combined with lectures at

FHUI. This led to his interaction with members of the military and police. Djokosoetono's relationship with Abdul Haris Nasution was particularly significant as it resulted in fruitful exchanges of ideas.

In his 1985 memoir "*Memenuhi Panggilan Tugas*," Nasution frequently mentions Djokosoetono from 1952. Djokosoetono was connected to Nasution through his academy students, Basarudin Nasution and Sucipto. Nasution credits Djokosoetono with inspiring his concept of the "middle ground" for the military's role in the nation. This idea suggests that the military is not merely an instrument of civilians like in Western democracies, nor does it create a military regime like in Latin America. The "middle ground" means that the military and the people support each other without dominating or being dominated.

The concept of the "middle ground" is based on the organicism theory, which also serves as the philosophical foundation for the view of state administration under customary law as proposed by van Vollenhoven. Two noteworthy dissertations

by Australian students have explored the relationship between the organicism theory and Indonesian constitutional practice. David Bouchier's "Lineages of Organicist Thought in Indonesia" (1996), based on his doctoral research at Monash University and later published as "Illiberal Democracy in Indonesia: the Idea of the Family State" and Barry Turner's "Nasution: Total People's Resistance and Organicist Thinking in Indonesia" (2005), which was part of his doctoral studies at Swinburne University of Technology. These dissertations demonstrate the influence of Djokosoetono, who had extensive insights, particularly in state administration, on the thinking and concepts presented by Nasution.

Apart from the two scholars already mentioned, there is a noteworthy foreign scholar named Daniel S. Lev who had direct interactions with Djokosoetono. Lev documented these interactions in his dissertation, which was subsequently published in a book called "The Transition to Guided Democracy: Indonesian Politics, 1957-1959."

In his memoir, Nasution highlighted an important moment

where Djokosoetono played a significant role in shaping Nasution's ideas about state administration that were later made public. Soekarno had entrusted Nasution, along with others, to create the Presidential Decree of 1959. During this process, Nasution sought Djokosoetono's perspective and advice. At the time, the military's stance was to return to the 1945 Constitution, which Djokosoetono agreed with.

During a lecture in front of the members of the Constituent Assembly, Djokosoetono expressed caution about the existence and position of "representatives of interest groups." The organicism theory perspective included elements of interest groups in society that were not involved in political parties. However, involving "interest group representatives" could create a space for the emergence of fascism. The representatives of interest groups were appointed, not elected, and the "rulers" had an interest in ensuring that those representing the interest groups were individuals aligned with their own factions. Djokosoetono emphasized this point to the audience.

Another moment was when Nasution was honored with a Doctorate in Political Science from Andalas University in 1962. During the doctoral conferment ceremony, Nasution gave a speech that was partly composed by Djokosoetono, according to Nasution himself. In the speech, Nasution referenced Logemann's definition and classification of democracy, who was a teacher of Djokosoetono.

The organicism theory perspective emphasizes the unity between institutions and their members, as well as the relationship between the state and its citizens. This theory prioritizes collective values over individualism, as seen in the everyday life of rural communities. In a lecture recorded by Harun Alrasid, Djokosoetono compared the structure of the state to that of an organized village. Djokosoetono explained that Bung Karno is like the Village Chief (*Lurah*), Bung Hatta is the Deputy Chief (*kamituwa*), A.K. Pringgogido is the Secretary of State (*Carik*), the community elders (*kaum/modin*) are like the Ministers of Religious Affairs, *the kebayan* are like the Ministers of Communication, *ulu-ulu* are like the Ministers of

Irrigation or Public Works, and *jagabaya* are responsible for security, meaning the police.

It is unfortunate that Djokosoetono did not write much despite his vast knowledge. He co-wrote only one book with Supomo, "*Sejarah Politik Hukum Adat*" (The History of Customary Law Politics). Additionally, his writing can be found in a publication from the National Council titled "*Persoalan Jang Mengenai Perwakilan Fungsional Dan Pergeseran Kekuasaan di Indonesia*" (Issues Regarding Functional Representation and Power Shift in Indonesia) from 1957, but it is difficult to locate. Harun Alrasid compiled two books consisting of lecture notes from Djokosoetono's courses on "*Ilmu Negara*" (Political Science) and "*Hukum Tata Negara*" (Constitutional Law). Although these are considered lecture notes and not complete books, they provide insight into the extensive knowledge Djokosoetono shared in the classroom.

It is intriguing that the origin of Djokosoetono's knowledge, which he shared in lecture halls, remains unknown. During the period from the 1940s to the 1960s, access to information was

not as vast as it is today. It is probable that libraries in Indonesia during Djokosoetono's lifetime were scarce, and their collections may have been incomplete.

As a result, the writer is uncertain how Djokosoetono gained access to and acquired original textbooks directly from the authors to enhance his knowledge. After reviewing Harun Alrasid's compilation of Djokosoetono's lecture notes, the writer assumes that Djokosoetono must have studied the original textbooks directly from the authors. Djokosoetono's knowledge was not solely derived from classroom knowledge or conversations with

his teachers. His proficiency in foreign languages further confirms this, as it helped him comprehend texts in their original languages.

Unfortunately, in legal education, the practice of acquiring knowledge through the direct study of sources has decreased over time, particularly since the 1950s. Instead, students tend to rely solely on lecture notes, commonly referred to as "diktat." Unfortunately, this "diktat tradition" has become the prevalent culture among students, without any corresponding effort to read textbooks. In his article titled "The Voice of the Law in Transition: Indonesian Jurists

and Their Language 1915–2000" (2008), Ab Massier provides ample information about the development of this tradition and its impact on legal education. This issue will be discussed in more detail in a future column.

The story of Djokosoetono continues with the mention of his successor, Harun Alrasid, who also didn't write much. However, one notable student from the University of Indonesia was Padmo Wahjono, who was highly productive in writing. Padmo Wahjono's presence marks a new era during the New Order regime.

It's important to note that this article doesn't solely focus



on one law education institution, namely the University of Indonesia. The post-independence period and the establishment of other universities and law faculties have led to a dispersed and non-linear progression of legal education, especially in constitutional law. It also affects the knowledge of the transmission of legal education.

Spread of Legal Education

If the previous section discussed a prominent figure, this section should focus on the progress of legal education in institutions after Japan's occupation ended.

Once independence was declared, the government founded *Balai Perguruan Tinggi Republik Indonesia*, which was intended to become a university. The terminology used during that era may seem unusual if used today. The phrase "*Balai Perguruan Tinggi*" was utilized to denote "University." This can be explained by the fact that the Indonesian language was still developing at the time.

After gaining independence, the Dutch tried to maintain their presence in Indonesia by creating the Netherlands Indies Civil Administration (NICA). They claimed that NICA was established to help disarm Japanese forces, but it also functioned as an "emergency government." One

of NICA's initiatives was the establishment of the *Nood-Universiteit van Indonesië*, which aimed to provide education. The university had a legal program that produced notable alumni such as Oei Tjoe Tat, who was a loyal assistant to Sukarno. The majority of the students at *Nood-Universiteit van Indonesië* were not only Dutch but also predominantly of Chinese ethnicity.

In 1950, *Balai Perguruan Tinggi Republik Indonesia* joined forces with *Nood-Universiteit van Indonesië* to become Universitas Indonesia. In the 1950s, legal education institutions began to emerge in universities. University law faculties still retained the influence of graduates from the University of Leiden and *Rechtshoogeschool*, which led to the continuation of ideas about customary law.

The University of Andalas in West Sumatra has a Faculty of Law that has its roots in the *Balai Perguruan Tinggi Hukum Pancasila*. The campus where the Balai was located is now known as the Pancasila Campus. Even today, the Faculty of Law continues to hold postgraduate programs at the Pancasila Campus, which is separate from the newer Andalas University complex at the Limau Manis Campus. At that time, the University of Andalas had a renowned constitutional law educator named Muhammad

Nasroen. He authored well-known books such as "*Asal Mula Negara*" (The Origin of the State) and "*Falsafah Indonesia*" (Indonesian Philosophy). Nasroen graduated from the University of Leiden in 1938, but no records of his dissertation or its association with van Vollenhoven are available. Nasroen was close friends with Djokosoetono, and he wrote about Djokosoetono in an article titled "*Seseorang dalam dan Dengan Pergaulan Hidup*" (Someone In and With Social Life). This article was published in the book "*Cinerama Hukum di Indonesia: Beberapa Karangan di Beberapa Bidang Hukum in Memoriam Prof. R. Djokosoetono*" (Cinerama Law in Indonesia: Some Writings in Several Legal Fields in Memoriam of Prof. R. Djokosoetono). Herman Sihombing, an early graduate of the Faculty of Law at the University of Andalas in 1958, succeeded Nasroen in the field of constitutional law at the university.

During the early days of the University of Gadjah Mada, there were no lecturers who specialized in constitutional law. Nevertheless, it is crucial to explore the works of M. M. Djodjodigono to understand the development of customary law.

During its early days, Airlangga University served as a "branch" of Gadjah Mada University and had an instructor who specialized in constitutional

law, namely Koentjoro Poerbopranoto. In an effort to uncover more information about Poerbopranoto's life, the author consulted a biography written by Nyak Wali AT in 1985. This biography was part of a program established by the Department of Education and Culture to document notable figures in Indonesia. Interested readers can find this biography on the repositori.kemdikbud.go.id page. Poerbopranoto obtained his degree from *Rechtshoogeschool* in 1933 with a well-researched paper titled "*Hukum Tata Negara, Hukum Tata Pemerintahan dan Ekonomi*" (Constitutional Law, Government Law, and Economics). The most intriguing aspect of Nyak Wali AT's writing is the information about Poerbopranoto's own written works. Based on a brief overview, it appears that Poerbopranoto was a dedicated writer of short articles and papers with a strong emphasis on human rights. Unfortunately, accessing his written works can be difficult. One of his books, "*Hak-Hak Dasar Manusia dan Pancasila Negara RI*" (Basic Human Rights and Pancasila of the Republic of Indonesia), published in 1953, is particularly difficult to obtain.

Additionally, his inaugural speech as a Professor, which was included in the book "*Dasar-Dasar Hubungan Warga Negara dengan Pemerintah*" (Basics of Citizen Relations with the Government), is also challenging to locate. It is worth noting that one of Poerbopranoto's students at the University of Andalas was Peter Mahmud Marzuki, which is significant in scientific sanad.

In addition to scholars from universities, there were also intellectuals in constitutional law who initially pursued careers as practitioners but later became scholars. One such example is Sri Soemantri Martosoewignjo. Sri Soemantri began his career as a politician and was a member of the Indonesian National Party (PNI), which led him to become a member of the Constituent (Constituent Assembly). During this time, Sri Soemantri met Usep Ranawidjaja, who invited him to teach at the University of Padjadjaran. The formation of the Constituent created opportunities for intellectuals with a political background to emerge. At the same time, it allowed constitutional law scholars to apply their knowledge in the political field.

A New Chapter in Legal Education

In the early days, when legal education institutions were thriving, the Dutch teaching style and customary law thinking had a significant influence. The adoption of the "organicist state" theory, which aligned with customary law thinking in state administration, provided political legitimacy for the rulers. This theory served as a justification for the implementation of the "Guided Democracy" concept in the 1960s.

In the past, customary law was prominent, and Dutch-style legal education was popular. However, with the rise of the New Order regime, there was a shift towards American-style legal education, and customary law became less important. During the early years of the New Order, legal education focused on preparing students with practical skills for the workforce. However, constitutional law education prioritized legal knowledge over legal skills, taking an academic approach rather than a professional one. Is this really the case? We will continue this story in the next edition.

HIJACKING POPULAR SOVEREIGNTY

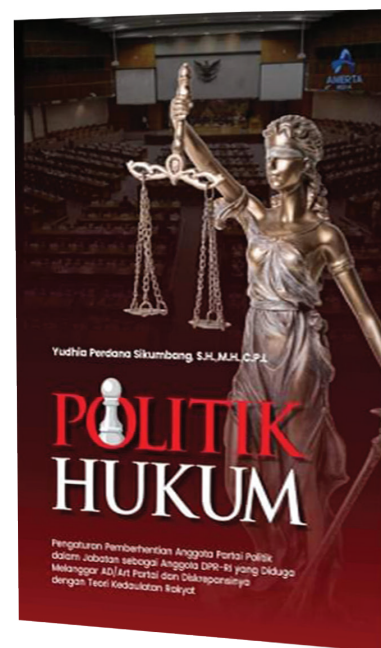
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“The legislative cannot transfer the power of making laws to any other hands: for it being but a delegated power from the people, they who have it cannot pass it over to others.”

(John Locke)

Indonesia’s expansive territory and large population require a representative system to maintain democratic principles. Political parties are the foundation of the political infrastructure, serving as a means to accommodate the people’s aspirations in the parliamentary space through elected legislators. These legislators act as conveyors of the people’s aspirations, while political parties function as



**TITLE: POLITIK HUKUM PENGATURAN
PEMBERHENTIAN ANGGOTA PARTAI POLITIK DALAM
JABATAN SEBAGAI ANGGOTA DPR-RI YANG DIDUGA
MELANGGAR AD/ART PARTAI DAN DISKREPANSINYA
DENGAN TEORI KEDAULATAN RAKYAT**

AUTHOR: YUDHIA PERDANA SIKUMBANG

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vehicles to bring their members into the parliamentary chamber.

The strong relationship between a legislator and their constituents is reconciled with the Political Party Law's Article 16 Paragraph (1) letter d regulates the potential dismissal of party members if they violate the Party's statutes or bylaws (AD/ART). This regulation also applies to current legislators, which means they could be dismissed from parliament. Some argue that this provision goes against the principle of popular sovereignty, which is the basis for electing legislators. They also see the AD/ART as a potential threat to party members. Yudhia Perdana Sikumbang's work *"Politik Hukum Pengaturan Pemberhentian Anggota Partai Politik dalam Jabatan sebagai Anggota DPR-RI yang Diduga Melangart AD/ART Partai dan Diskrepsinya dengan Teori Kedaulatan Rakyat"* explores this discourse, focusing on the legal regulation of the dismissal of political party members from office as members of the DPR-RI suspected of violating the Party's statute/bylaws and its

discrepancy with the theory of popular sovereignty.

Discrepancy and Reformulation

While the title of the book suggests that it centers around a specific phrase in a law, Yudhia still takes into account other legal regulations pertaining to the termination of political party officials, such as the mechanism of Interim Replacement (PAW) and the judicial processes leading to the dismissal. The book provides a comprehensive study of the changing idea of popular sovereignty to party sovereignty, which happens under the guise of the constitutional legitimacy of popular sovereignty.

During the discussions on the Political Party Law, the erosion of popular sovereignty as a forced guarantee in the parliamentary space not only impacts the conception but also disrupts it profoundly. When the dismissal mechanism is carried out independently by and on behalf of the organization's elite interests, the conception of popular sovereignty is overturned. Furthermore, these dismissals

often violate the Party's statutes or bylaws (AD/ART) with loose justifications. This conclusion is drawn from the cases presented as samples, indicating that the dismissal of a legislator for violating the Party's regulations often carries conspiratorial nuances and is interpreted based on the interests of the organization's leaders. Even though the violation is a one-sided interpretation when the concerned cadre is fulfilling their primary function of oversight.

It's important to investigate this phenomenon because even though legislators are driven by their political party, they also experience a shift in their role when elected by the people. However, the behavior of the political party organization strongly influences them and they may not be able to resist it. Therefore, the legal umbrella to dismiss party members serving as legislators for violating party statutes or bylaws (AD/ART) must be reconsidered.

Legislators often struggle to balance their duties to parliament with their loyalty to their party, leading to a constant tug-of-war. This can create uncertainty for

the people, as popular sovereignty remains fragile and vulnerable to disruption.

Some Notes

This book can be reviewed from various aspects, but as this writing provides a critique, the perspective used focuses on the quality of presenting the subject matter. Yudhia, as a first-time author, demonstrated bravery in publishing an academic study for readers. However, the book lacks refinement due to the editor's shortcomings before it was printed for commercial purposes. For example, there are multiple typographical errors throughout the chapters, the incorrect numbering of paragraphs in almost all cited articles, misplaced italics in footnotes, lengthy sentences without commas that make it difficult for readers to comprehend the author's intentions, and repetition of the same paragraph on pages 10 and 11.

Other mistakes that are fairly principal for the editor's work are found on the first page, especially considering that this book comes from a scientific

work. One issue is that there is no list of tables provided, despite the fact that there are 14 tables included to support the author's study, which is quite significant for a book that is only 124 pages long. Another problem is the lack of a proper list of abbreviations, considering that the book contains numerous abbreviations, such as parliamentary factions. Additionally, the bibliography needs to be better organized.

Another mistake is found in Chapter 1, which only serves as an introduction. This chapter was supposed to include the scope of the study, a brief section on the research methodology, the legal sources used, and the study's originality. However, the editor mistakenly inserted the legal sources in the first sub-chapter of Chapter 2 (pages 15–17). Chapter 1 should have established the groundwork for the study, determining the book's structure, while Chapter 2 should contain theoretical studies to strengthen the analysis.

It is made worse by a stack of errors. The book's title is lengthy and difficult to remember,

consisting of 23 words. The phrase "Politics of the Legal Regulation on the Dismissal of Political Party Members from Office as Members of the DPR-RI Suspected of Violating the Party's AD/ART and its Discrepancy with the Theory of Popular Sovereignty" is displayed prominently, but there is no adequate theoretical analysis of the author's understanding of the politics of law related to the laws being studied. Furthermore, the main problem being talked about mostly relates to deviations in the concept of popular sovereignty when put into practice. However, there's not a lot of discussion on the politics of law, even though there are 20 pages (pages 53–73) that talk about the history of Article 16 Paragraph (1) Letter d of the Political Party Law. Normatively, the limited discussion on the politics of law can be attributed to the loose configuration in the parliamentary space, but such a phenomenon should be accompanied by the author's analysis.

THE UNCHANGING PREAMBLE OF THE 1945 CONSTITUTION

LUTHFI WIDAGDO EDDYONO

Researcher at Constitutional Court

The Preamble of the 1945 Constitution is highly significant and considered sacred. Originally created as a manuscript for the Proclamation of Independence, it is now the foundation of state administration and embodies the nation's ideology, Pancasila.

A discussion on the Preamble's existence took place during the First Plenary Session of the Third Session of the People's Consultative Assembly (PAH III BP MPR RI) on October 7, 1999, which discussed the First Amendment of the 1945 Constitution. This session was chaired by Harun Kamil, and its purpose was to present party faction opinions on the amendments to the 1945 Constitution.

As revealed in the *Comprehensive Manuscript of the Amendments to the 1945 Constitution of the Republic of Indonesia, Background, Process, and Results of the Discussions from 1999-2002, Book II Fundamentals of the State* (Jakarta: Sekretariat General and Registrar of the Constitutional Court; First Edition, July 2010), although the meeting did not specifically address the issue of the Preamble of the 1945 constitution, some factions raised concerns about it.

One of them was the Golkar Party Faction (F-PG), represented by spokesperson Andi Mattalatta, who expressed the following opinion:

"The Golkar Party Faction proposes that perhaps we should agree that the Preamble, as it contains the basic philosophy of the state, the state's objectives, the state's foundation, and the proclamation statement, should remain unchanged while allowing amendments to be made to the body. Additionally, the faction proposes that significant points from the Explanation, particularly those with normative characteristics, should be integrated into the body."

The Crescent Star Party Faction (F-PBB), represented by Hamdan Zoelva, expressed its opinion that the Preamble should not be amended as follows:

"To begin with, we, the members of the Crescent Star Party, fully agree with our colleagues from the Golkar Party who emphasized that the amendments we propose are not related to the Preamble or the Opening. Instead, we only intend to review the body and the Explanation. Specifically, we have no intention of altering the article pertaining to the state's

form, which is the Unitary State of the Republic of Indonesia. We firmly believe that this aspect is already finalized. However, other articles may still be subject to review [excluding the Preamble]."

The KKI Faction (F-KKI), as conveyed by Antonius Rahail, strongly agrees that the Preamble should be kept without amending it, stating:

"As mentioned in the factions' general views yesterday, specifically, we agree that the constitution should be amended. Therefore, we believe that the Preamble should not be amended, but only in regards to the body and explanation. Of course, when it comes to the substance of the material, there are several things in the body that we do not need to amend, but we will convey them when we discuss the material."

In addition, Gregorius Seto Harianto, a member of the Democratic Party of Kasih Bangsa (F-PDKB), stated that the Preamble should not be amended, as follows:

"The F-PDKB faction agrees that we will not amend the Preamble. Secondly, the amendment to the Constitution is made in the form of an addendum. It means that any changes or additions to the Constitution will

be added as an addendum without removing the original articles. Meanwhile, Hendi Tjaswadi, the spokesperson for the F-TNI/Polri faction, suggests that amendments should be made to the body of the Constitution and its explanations. Here are his statements: We believe amendments are important and necessary. For this reason, we agree to amend the body and its explanations.”

Valina Singka Subekti, a member of the Utusan Golongan Faction (F-UG), emphasized that the amendment’s focus is not on the Preamble but on the body and its explanations. Her statement also sheds light on the principle of constitutional democracy, making it all the more intriguing. Below is her complete viewpoint:

“... it seems that all factions agree that the 1945 Constitution needs to be amended, and all have agreed that the amendment’s focus should not be on the Opening or Preamble, but rather on the body of the constitution and its explanations. Therefore, the Faction of Utusan Golongan has proposed a one-week period to come to an agreement on the substance of what will be amended. For the Faction of Utusan Golongan, their top priority

is to adhere to the principles of the constitution within a constitutional democracy, which mandates that the constitution must limit power to prevent arbitrary use of authority.”

During the deliberations, the chairperson of the meeting, Harun Kamil, highlighted several agreements that were reached based on various inputs regarding the formulation of the Preamble of the 1945 Constitution presented by the different factions, among others: “... based on the deliberations, an agreement has been reached among all factions. The first point of agreement is to amend the 1945 Constitution, while the second point is to exclude the Preamble from the amendments.”

The meeting chairperson, Harun Kamil, confirmed this agreement and provided a preliminary conclusion of the discussions as follows.

“So the temporary conclusion of the result of the discussion on the amendment of the 1945 Constitution at the PAH III Meeting of the 1st MPR Working Committee, Thursday, 7 October 1999, is as follows: First (I), Amendments to the 1945 Constitution. All factions agree to amend or change the

1945 Constitution. Second (II), Scope, Preamble of the 1945 Constitution was not amended. The part that is amended is the body and explanations of the 1945 Constitution. Third, if there are normative matters in the Explanation of the 1945 Constitution, they should be incorporated into the body of the 1945 Constitution. For example, regarding the concept of the rule of law, which is not explicitly mentioned in the articles, it should be included in the articles. Third (III), Priority, all factions agree that MPR Working Committee should prioritize amendments to the 1945 Constitution according to urgent matters agreed upon by all factions.”

It has been determined that the Preamble of the 1945 Constitution holds a unique position as an unamendable article. Though it was previously agreed upon that the Preamble would not be amended, Article 37 paragraph (1) of the 1945 Constitution specifically states that only the articles within the 1945 Constitution can be amended, and the Preamble is not included in this category.

DIVISION OF CLASSES DURING THE COLONIAL ERA AND ITS INFLUENCE ON INHERITANCE LAW TODAY

LUTHFI WIDAGDO EDDYONO

Researcher at Constitutional Court

W*et op de Staatsinrichting van Nederlands-Indië*, also known as the *Indische Staatsregeling* (IS; Stbld 1925-415 jo 577), was the fundamental law that governed the state and government of the Dutch East Indies. It took effect on January 1, 1926, replacing the Government Regulation of 1854 (Stbld 1855-1 jo 2).

One of the norms that remains controversial even to this day is Article 163, which divides people into three groups: the First Group (European group), the Second Group (oriental or Eastern Foreign group), and the Third Group (native indigenous group/Bumiputera). This article regulates the classification of people or the division of classes before the law. The definition of the European group is outlined in paragraph 2. According to this paragraph, before the law, individuals who fall under this group include Dutch individuals, non-Dutch individuals of European

origin, Japanese individuals, and legitimate children of the European group recognized by the law.

This definition takes into account the principles of nationality, which encompass both Dutch and Japanese individuals. The reason why Japanese individuals are included in this group is because of the trade agreement between the Dutch and Japanese governments in 1896. One of the provisions of this agreement stated that all Japanese individuals would receive equal treatment with Europeans. In addition, lineage is also a factor that determines a person's inclusion in this group.

In paragraph 3, the definition of the native indigenous group is explained. This group includes native Indonesians who are indigenous people, as well as other groups who adopt the traditional Indonesian way of life. The latter refers to people who are not of Indonesian descent but choose to live by the native customs and abandon their original legal systems. Women from other groups

who marry native Indonesian men are also considered part of the native indigenous group.

There is a group referred to as the Eastern Foreign group. However, it is formulated in a negative way, as stated in paragraph 4. This group comprises people who do not belong to the European or Indonesian groups. This formulation ensures that no community is left out from the classification.

Despite gaining independence, colonial-era regulations still have a significant normative impact on inheritance law in Indonesia. Professor Dr. Eman Suparman, M.H., from the Faculty of Law at the University of Padjadjaran, explains that Indonesia's inheritance law system remains diverse, with each region and traditional community having its own set of laws. This was discussed in a One Hour's discussion on "Inheritance Law" and quoted on the unpad.ac.id website.

Indonesia's inheritance laws have diverse roots that can be traced back

to its historical background, especially during the Dutch colonial rule of 350 years. According to a Professor of Civil Procedure Law, the Dutch East Indies' constitutional system refers to the Indische Staatsregeling (IS) during the Dutch colonial period. Legal pluralism in the field of civil law, particularly inheritance law, was born due to the enactment of Article 131 and Article 163 of the IS. The Dutch regulated the population classification in the Dutch East Indies under Article 163 of the IS. At that time, Indonesia, or the Dutch East Indies, was still a Dutch colony and not a sovereign nation. Therefore, the concept of citizenship was not yet known.

Accordingly, according to Prof. Eman, there were three population groups. The first group included white individuals and those who were considered equivalent to Europeans. The second group comprised Eastern foreigners, such as Chinese and other foreign Easterners. The third group consisted of the indigenous people of the archipelago, also known as

Bumiputra or *pribumi*. The division of the population into these groups was also followed by the application of legal norms according to each group. Therefore, the provisions of inheritance law also follow the rules of law based on population groups.

During colonial times, the European group and those who were considered equivalent enjoyed exclusive treatment from the government. Their inheritance laws were based on the *Burgerlijk Wetboek* (BW), also known as the Civil Code. This same code applied to the Eastern foreign group, which included the Chinese and others. Additionally, this group was allowed to follow their respective customary laws, such as Chinese customary law or Indian customary law.

Inheritance law in Indonesia is influenced by colonial-era inheritance rules, which still have a lasting impact today. According to Prof. Eman, three systems are still followed today: inheritance law based on the BW, inheritance law based on customary

law as local wisdom, and inheritance law based on Islamic principles. He further highlights that Islamic law was not widely discussed during the colonial era, but it was quietly practiced by the Muslim community in the Dutch East Indies. This group believed that Islamic inheritance law was a religious duty that must be followed.

In essence, Professor Eman explains that although Indonesia's inheritance law is diverse, it is difficult to standardize or unify it. It is also impractical to systematically codify or compile all related legal materials into a single comprehensive law book.

Source:

<https://www.unpad.ac.id/2021/07/beragam-sistem-hukum-waris-di-indonesia-sulit-disatukan/>

https://id.wikipedia.org/wiki/Indische_Staatsregeling



REVIEW

PERSONAL DATA PROTECTION FOR THE PURPOSE OF NATIONAL DEFENSE AND SECURITY INTERESTS

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

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From the moment of birth, every individual possesses personal data in the form of their identity. This includes basic information or data that pertains to an individual's personal characteristics, such as name, gender, religion or belief, blood type, place and date of birth, as well as other data that may accumulate over time. According to Article 1, Number 22 of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 on Population Administration (UU 24/2013), personal data refers to specific personal information that is stored, maintained, and protected for its accuracy and confidentiality. Personal data that requires protection, as stipulated in Article 84, paragraph (1) of UU 24/2013, include (a) information about physical and/or mental disabilities; (b) fingerprints; (c) iris scans; (d) signatures; and (e) other data elements that could be considered sensitive information about an individual.

Personal data protection is a basic human right that is essential

to safeguarding an individual's privacy. Its purpose is to uphold citizens' rights to personal security, promote public awareness, and ensure that personal data protection is recognized and respected, as mandated by the Constitution. Personal data, which includes information about identified or identifiable individuals or in combination with other information either directly or indirectly through electronic or non-electronic systems, requires such protection.

The protection of personal data aims to ensure that the constitutional rights of individuals are upheld during the processing of their personal information. Personal data can be divided into two categories: specific personal data and general personal data: Specific personal data is information that could result in discrimination or harm to an individual if mishandled. This includes data related to health, biometrics, genetics, criminal records, children, personal finance, and other data as required by laws and regulations. On the

other hand, general personal data includes basic information such as full name, gender, nationality, religion, marital status, and combined data used for identification purposes.

The purpose of protecting personal data is to safeguard citizens' basic rights related to personal protection and ensure they receive services from corporations, public bodies, international organizations, and the government. It also promotes the growth of the digital economy and information and communication technology industry and supports the enhancement of domestic industry competitiveness.

Despite efforts to protect personal data, there may be instances where individuals' data is compromised in terms of confidentiality, integrity, and availability. This can occur due to intentional or unintentional security breaches, resulting in destruction, loss, alteration, unauthorized disclosure, or access to personal data that has been sent, stored, or processed.

It is important for the State to keep and protect the confidentiality of personal data. As such, anyone found sharing personal information without authorization may face a maximum imprisonment of 2 (two) years and/or a fine of up to IDR 25,000,000.00 (twenty-five million Indonesian rupiahs) in accordance with Article 95A of UU 24/2013.

When it comes to defense and security, safeguarding personal data is important. Law enforcement and intelligence agencies may have certain exceptions that allow them to record personal communications, access personal data (including profiling), and even access someone's financial accounts. However, when it comes to protecting personal data in the interest of national defense and security, the state is obligated to provide protection as outlined in relevant laws, including (1) Law Number 8 of 1981 on Criminal Procedure, states that an investigator, by virtue of his authority, shall be competent to fingerprint and photograph a person; (2) Law Number 21 of 2007 on the Eradication of the Criminal Act of Trafficking in Persons, and Law Number 18 of 2011 on the Judicial Commission, stipulates that anyone who discloses the identity of witnesses or victims despite being informed that their identities must be

kept confidential shall be subject to imprisonment and a fine; (3) Law Number 9 of 2013 on the Prevention and Eradication of the Criminal Acts of Financing Terrorism, states that the Chief of the National Police is obliged to include the identity of the person or corporation to be included in the list of suspected terrorists and terrorist organizations; (4) Law Number 5 of 2018 on the Criminal Acts of Terrorism, states that investigators, public prosecutors, judges, and correctional officers, along with their families, are protected by the state regarding confidentiality of their identities from potential threats to their lives, safety, and/or property, both before, during, and after the process of examining terrorism cases.

Regarding protecting personal data for the sake of national defense and security interests, relevant legislation has stipulated the obligation to safeguard confidentiality. However, investigators or officers may access personal data upon orders in certain cases. The matter of personal data protection for national defense and security purposes has been submitted for judicial review to the Constitutional Court. It has been ruled on by the Constitutional Court through Decision Number 110/PUU-XX/2022, pronounced in a public plenary session on April 14, 2023.

Constitutional Court Decision Number 110/PUU-XX/2022

The Constitutional Court made a decision in case number 110/PUU-XX/2022. They argued that the norm of Article 15 paragraph (1) letter a of Law 27/2022 goes against Article 28D paragraph (1) and Article 28G paragraph (1) of the 1945 Constitution. These articles protect the right to personal data protection. The decision was made after Dian Leonardo Benny, S.H. submitted his case as an individual Indonesian citizen who has suffered or may suffer from harm caused by the enactment of the norms of the a quo article. This article is a regulation regarding exceptions to the rights of personal data subjects in the context of personal data processing. However, the law did not clearly define or explain the term "national defense and security interests." This could lead to unilateral processing of personal data without the knowledge of the data subjects, potentially violating their rights. The use of "national defense and security interests" may violate the Petitioner's constitutional right to personal protection, including the protection of personal data as a fundamental human right. The Constitutional Court observed a causal relationship between the harm the Petitioner claims to have suffered regarding their

constitutional rights and the enactment of the norms of law being challenged. Therefore, if the Petitioner's request is granted, this harm can be prevented or reduced. Thus, the Court acknowledged the Petitioner's legal standing to act as Petitioner in the a quo petition.

In its legal considerations, the Constitutional Court explained that the General Explanation of UU 27/2022 highlights one of the reasons for its necessity, which is the rapid development of information and communication technology, which could lead to the potential risk of misuse of personal data and violate citizens' constitutional rights. The enactment of the a quo law is based on the need to protect all citizens' constitutional right to personal privacy, as regulated in Article 28G paragraph (1) of the 1945 Constitution. Thus, UU 27/2022 is a crucial step the state takes to safeguard society against the potential misuse of personal data. Furthermore, the General Explanation of the a quo law also emphasizes that the regulation aims to create a balance between individual rights and the rights of the community, whose interests are represented by the state. This regulation on Personal Data Protection is crucial to promoting order and progress in the information society. In addition, Law 27/2022 has established clear guidelines for personal data owners, controllers, and processors to balance their

rights and obligations, thereby minimizing potential injustices for the public as personal data owners, personal data controllers, and personal data processors. However, if any disputes arise during implementation that could potentially harm one of the parties, such as the personal data subject, UU 27/2022 offers dispute resolution options through arbitration, court proceedings, or alternative dispute resolution institutions.

In its petition, the petitioner argues that Article 15 paragraph (1) letter a of Law 27/2022 is not explicitly and clearly defined regarding the exact meaning of "national defense and security interests," which may lead to multiple interpretations and potential problems in the future. This provision may be used to justify exempting the personal data subject's rights. Additionally, the petitioner states that the exemption of personal data subject rights in Article 15 paragraph (1) may be a loophole and opportunity for personal data controllers to exclude these rights under the guise of national defense and security interests. Hence, the petitioner contends that the said provision is contrary to the 1945 Constitution, or at the very least, the content of Article 15 paragraph (1) letter a should be conditionally declared unconstitutional. This means that it is contrary to the 1945 Constitution and does not have legally binding power unless

it is interpreted as "the term 'national defense and security interests' refers to interests related to efforts to maintain and protect the state's sovereignty, territorial integrity of the Unitary State of the Republic of Indonesia, and the safety of the entire nation from all forms of threats."

After examining the petitioner's argument about exemptions to the granted rights outlined in Article 15, paragraph (1), it is apparent that these exemptions are not limited solely to national defense and security interests, as stated in letter a. They also encompass the law enforcement process, public interest in the course of state administration, supervision of the financial service sector, monetary and payment systems, as well as the maintenance of financial system stability carried out in the context of state administration and for statistical and scientific research purposes. According to the Constitutional Court, the five exemptions stipulated in Article 15 paragraph (1) of Law 27/2022 are closely related and inseparable and complement each other in the application or implementation of Law 27/2022. The concept of "public interest in the course of state administration" can be viewed as a foundation that is supported by other elements. Thus, universally, the idea of "public interest in the course of state administration" is unlimited as long as it protects all citizens'

interests. Therefore, in the context of serving the public interest, particularly the national interest, it cannot be separated and is an embodiment of the principle of the public interest, which is one of the principles within the implementation of Law 27/2022 and is also part of the principles regulated in Article 3 of the a quo law.

The Court has stated that the principle of public interest serves a fundamental function in the implementation of Personal Data Protection. It is important to take into account the broader interests of the public or society. The Explanation of Article 3 letter c of Law 27/2022 states that the “term ‘principle of public interest’ means that in the Protection of Personal Data, the public or society’s broader interests must be considered. This includes interests related to state administration and national defense and security.”

The Court has stated that although the terminology of “national defense and security interests” is not explicitly limited, upon examining its relevance and coherence as an integral norm of national defense and security interests, it ultimately aims to protect the interests of all citizens. This is already included under the notion of public interest in state administration. Additionally, if the issue at hand is associated with the principle of public interest, then the petitioner’s concerns

have already been addressed by the relevance and coherence of this principle. This is because the petitioner’s alternative plea to restrict the definition of national defense and security interests rigidly would not only narrow the meaning of national defense and security interests but also limit the concept of public interest in state administration and its function as a principle or foundation of Law 27/2022. Consequently, if the petitioner’s request to declare Article 15 paragraph (1) letter a of Law 27/2022 unconstitutional is granted, it will create a legal vacuum. This legal vacuum will particularly affect the regulation of exceptions to the rights of personal data subjects to object, even when it is necessary for public interests such as national defense and security. The a quo law already provides a balanced approach between the rights and obligations of personal data owners, controllers, and processors, which helps to minimize the possibility of injustice.

Article 15 paragraph (2) of Law 27/2022 states that the exceptions, as referred to in paragraph (1), are implemented only in the context of implementing the provisions of the Law. Furthermore, Personal Data Subjects are entitled to obtain information about the clarity of identity, the basis of legal interests, the purpose of the request and use of Personal Data, and the accountability of

the party requesting Personal Data as regulated in Article 5 of Law 27/2022. This shows that the exclusion of Personal Data use fully respects the human rights of citizens or the relevant Personal Data Subjects. Therefore, the exceptions as mandated in Article 15 paragraph (1) of Law 27/2022 are necessary. Upon examination, the types of exceptions provided in the a quo norms are actually a form of implementation and elaboration of the principle of public interest.

Therefore, according to the Constitutional Court, the exceptions, as stipulated in Article 15 paragraph (1) letter a of Law 27/2022, concerning the purpose or processing of personal data for national defense and security interests, are consistent with the principle of public interest. The state only utilizes personal data processing to protect the public interest and society as a whole in accordance with the laws and regulations. Furthermore, it’s essential to note that these limitations or exceptions are acceptable as long as they are balanced with guarantees of recognition and respect for the rights and freedoms of others and in the effort to fulfill fair demands that conform to moral considerations, religious values, public safety, and public order in a democratic society, as stipulated in Article 28J paragraph (2) of the 1945 Constitution.

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