

E-MAGAZINE **KONSTITUSI**



**5<sup>TH</sup> CONGRESS  
OF THE WORLD CONFERENCE  
ON CONSTITUTIONAL JUSTICE (WCCJ)**

**"CONSTITUTIONAL JUSTICE AND PEACE"**  
4-7 OCTOBER 2022, BALI - INDONESIA



**THE ROLE  
OF THE CONSTITUTIONAL COURT  
IN  
WORLD PEACE**

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THE HISTORY...!!!



# CONSTITUTIONAL HISTORY CENTER

Floors 5 and 6 of the Constitutional Court Building  
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# Editor's Foreword

The Constitutional Court of the Republic of Indonesia (MKRI) hosted the 5th Congress of The World Conference on Constitutional Justice (WCCJ) on 5 – 6 October 2022 in Nusa Dua, Bali. The congress brings the theme "Constitutional Justice and Peace."

The Constitutional Court of the Republic of Indonesia (MKRI) was elected as the host of the WCCJ congress, which is an important milestone for the MKRI on the international stage. This congress is undoubtedly a very strategic momentum for the MKRI in particular and for Indonesia in general as a country that upholds the values of justice and world peace as stated in the Preamble of the 1945 Constitution.

The congress is a place for sharing and exchanging experiences in order to bring justice and peace in their respective countries. Constitutional justice can play a role in resolving conflicts and easing political tensions. This is where the Constitutional Court plays a major role as a mediator for the conflict. Therefore, the Constitutional Court must be able to maintain its independence and integrity in its role of realizing justice and peace.

The full coverage of the WCCJ Congress is a special coverage in the Headline News. In addition to the Headline News, various interesting information is presented through the special rubrics of Konstitusi Magazine, including Opinion, News Flash, Minutes of Amendment, Milestones of Constitution, and others.

We hope that the October 2022 Edition of Konstitusi Magazine can provide new knowledge for the readers. Long Live the Constitution!

## KONSTITUSI

Number 188 • October 2022

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# THE ROLE OF THE CONSTITUTIONAL COURT IN WORLD PEACE

“Subsequent thereto, to form a government of the state of Indonesia which protects all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the nation and to participate toward the establishment of a world order based on freedom, perpetual peace and social justice, therefore the independence of Indonesia is formulated into a constitution of the Republic of Indonesia.”

(The Preamble of the 1945 Constitution)



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## WORLD PEACE

Indonesia has a clear and firm history, attitudes, and traditions as a driving force for world peace on the issue of world peace. Constitutionally, this is in accordance with the constitutional mandate, the 1945 Constitution—to improve public welfare, educate the nation's life, and participate in establishing a world order based on freedom, perpetual peace and social justice.

This constitutional foundation that encourages and strengthens Indonesia's role in international relations, both in a regional and global context, continues to be intensively carried out now and then. Whoever the country's leader, the constitutional mandate remains the same: Indonesia plays an active role in creating world peace. In other words, Indonesia is the axis of a new world order that is filled with peace.

We all know, together with a number of countries, Indonesia became the pioneer in organizing the Asian-African Conference in Bandung in 1955. Leaders from twenty-nine countries in Asia and Africa attended the Congress. This conference was held to discuss and agree upon economic alliances and cultural exchange, fight colonialism and neo-colonialism, and create world peace.

After the Asian-African Conference, Indonesia's tradition of being active in creating world peace continues with the same commitment even more vital to help find solutions for world peace. Indonesia continues to strive to forge friendships and work together with other countries to create stability and world peace. Amid the world situation that is full of rivalries, Indonesia is even more active in building cooperation and friendship with other countries. Indonesia will not stop to continue to build friendships for the sake of stability and peace and the world's prosperity.

Indonesia's free and active foreign policy allows Indonesia to be friends with any country and to take

part in finding solutions to maintaining world order. For this reason, Indonesia does not hesitate to play the role of a true friend. In a sense, Indonesia doesn't always give praise, but rather, Indonesia doesn't hesitate to remind their good friends for the better good.

In various forums, Indonesia urges all countries to take a significant role in seriously fighting intolerance, conflict, terrorism, potential practices of violence, political crises, and war. Peace in diversity, the guarantee of women's rights, protection, and fulfillment of minority groups all must be upheld. At this point, the issue of peace and humanity must continue to be a priority.

Indeed, the current situation is complicated; crises in various fields have occurred and are occurring. Russo-Ukrainian war, food crisis, energy crisis, and the financial crisis have occurred at certain levels. For that reason, all governments, and all countries, need to reaffirm that in every situation, a peace settlement, which puts all parties' compromises ahead, is always essential. Rooms for discussion must continue to be created, continuously strived for, and expanded.

With an active and free foreign policy, Indonesia is obligated and ready to participate in the establishment of a world order based on freedom, perpetual peace and social justice. Indonesia has confirmed its commitment to opening and bridging peace dialogues. Within this framework, the role of the Constitutional Court with its constitutional authority is indeed limited. In a sense, not everything can be done freely. However, it does not mean that the Constitutional Court cannot contribute. In fact, small but meaningful steps aimed at building awareness by working together to spread the 'virus' of world peace is one of the constitutional mandates that the Constitutional Court must and is most likely to carry out. Long Live Constitution!





Window

# PLEDGE

I D.G.Palguna

“So, to all Indonesian young men and women, don’t inherit the ashes of the Youth Pledge. Don’t inherit the ashes, but inherit the spirit from this Youth Pledge.”

**President Sukarno.**



**T**hat day, exactly on October 28, 1928—94 years ago. I don’t know what’s on Sie Kong Liang’s mind (some say Sie Kok Liang), the owner of a boarding house on Jalan Kramat Raya 106, Central Jakarta. There are no signs or not to mention records indicating that he wanted to be written into this country’s history books, let alone to be remembered as a hero—even to be simply recorded as a good man. Nothing. He was just a merchant in the area now known as “Segitiga Senen” and a “businessman” of a number of boarding houses. The only “important” thing found that might be able to open Kong Liang’s “head” related to the house on Jalan Kramat Raya 106

is a message to his heirs not to sell the house—without mentioning the reason at all. It also only came from his son’s confession, which Sie Kong Liang’s grandson told. As we all know, it was from the house in the Kramat Raya area that a “sacred” event was born, which became one of the important milestones in the journey of this Nation, the Youth Pledge on October 28, 1928.

The thing that Kong Liang couldn’t possibly have realized, let alone not know, was the risk that he would become a target for the Dutch East Indies police. They would arrest him because his house was not just a boarding house but had been turned into the *Indonesische Clubhuis* or *Indonesische Clubgebouw* building or the meeting hall for youth activists. It means that he consciously let the house become a “nest,” a place for young activists from various regions in the Dutch East Indies to gather. Young men who have “hanged out” there include Muhammad Yamin, A.K. Gani, Assat, Abu Hanifah, Amir Syarifuddin, and others—who later became important figures in the history of this nation and country. It was also at that house that the youths held a celebration which they called—as

history later recorded—the Second Youth Congress with the culmination of a pledge, an oath confirming that a nation had been born: the Indonesian Nation, complete with its motherland and its unified language, as well as the accompaniment of the “national anthem candidate” *Indonesia Raya*, even though it’s just the sound of a violin without the lyrics of Wage Rudolf Supratman. After being given the lyrics and sung by the composer, the song became very popular thanks to the help of a Chinese as well, Yo Kim Tjan, who helped Supratman record it on a gramophone and then distribute it. Despite Remy Sylado’s “accusation” that through the song *Indonesia Raya*, Supratman plagiarized a song from the Netherlands named *Pinda Pinda Lekka Lekka*, apparently the word “Merdeka Merdeka” in the lyrics of the song *Indonesia Raya* sounds very intimidating in the ears of the Dutch colonial regime. This was evident from the Dutch East Indies Government’s decision to ban the distribution of the song. Thus, W.R. Supratman, the songwriter, was also the target of arrest by the *Politieke Inlichtingen Dienst*, which in popular language is called the “secret police” of the Dutch East Indies.

Now, after 94 years, what is the spirit that was ignited at Jalan Kramat Raya 106, Jakarta, almost a century ago, that must not be forgotten from our collective memory as a nation? I mentioned it once in the Window rubric last June. Among other things, because the Youth Pledge 28 on October 1928 that the “claim” in the first sentence of the manuscript of the August 17, 1945 Proclamation of Independence was justified. “We, the people of Indonesia, hereby declare the independence of Indonesia.” Doesn’t this statement implicitly contain the claim that the Indonesian nation existed before the birth of the Unitary State of the Republic of Indonesia? Based on what arguments the “claim” is legitimately said without even the slightest doubt? One—but not the only—is the 1928 Youth Pledge. This pledge explicitly indicates that the Indonesian nation was born before the birth of the State of Indonesia. Through this pledge, we can also say that Elisabeth Pisani’s statement, as I cited it in the Window

rubric of the August 2021 edition, is not completely true. I repeat Pisani’s statement, which she wrote in her book *Indonesia etc. Exploring the Improbable Nation*, “When Sukarno, the flamboyant nationalist leader, proclaimed Indonesian independence, at that time he actually liberated a nation that didn’t really exist by imposing an imaginary unity over the jumble group of islands which only has a thin layer of shared history and few cultural similarities.” This statement is not (completely) true, not solely because there was a “formal statement” in the Youth Pledge—seventeen years before the Proclamation of Independence—that the Indonesian Nation had existed (complete with its homeland and unified language), but also because of the fact that until now, Indonesia—regardless all the dynamics that accompanied its journey—remains intact as a nation and as a state. It means the Youth Pledge is not just nonsense, not just a statement that shows (borrowing Ernest Renan’s term) “there is a will to

unite” (*le desir d’être ensemble*), but there really is a feeling of unity as one nation. There is a feeling of one heart in the pledge, which is the “Indonesian heart.” Otherwise, Indonesia has far more and greater reasons and potential than (the former) Yugoslavia to divide and break up. The country formerly known as the Socialist Federal Republic of Yugoslavia, prior to its breakup, consisted of six different republics distinguished based on ethnic background: Serbia, Croatia, Bosnia-Herzegovina, Montenegro, Slovenia, and Macedonia. The country’s leader and President and founder of Yugoslavia, Josip Broz Tito, was eager to turn these ethnically diverse republics into one nation, the Yugoslavs.

It is no exaggeration to say that the history of Yugoslavia is a repeated history of formation and division. It was founded at the end of World War I when the nations (and territories) of Croatia, Slovenia, and Bosnia, which had previously been part of



the Austro-Hungarian Empire, were “absorbed” by the Kingdom of Serbia.

However, this country did not last long after Hitler occupied it during World War II, and Croatia stood as an independent state by forming an alliance with Nazi Germany under Hitler. At the end of World War II, Croatia was recaptured by forces led by Josip Broz Tito to be reunited, this time into the Socialist Federal Republic of Yugoslavia. Even though he had once proclaimed a great and respected nation, among them (or especially), Tito’s leadership, along with President Sukarno, became the driving force behind the birth of the Non-Aligned Movement, Tito’s efforts to make all people in the countries that were members of the Yugoslav Federation as the Yugoslav Nation, which genuinely had a Yugoslav heart, never happened until he died in 1980.

After Tito’s death, the federation continued to engage in conflicts, starting from conflicts that were triggered by inter-ethnic religious backgrounds issues, memories that continue to be remembered about atrocities that happened between them during the outbreak of World War II, until various major political events had broken Yugoslavia apart. A number of provisions in the 1974 Constitution gave delegation of real powers from the central government to the republics that established the Yugoslav Federation and to the provinces of Serbia through the establishment of a joint presidency representing the eight provinces, as well as the federal

government with power that is not significant enough to determine and control political, economic, and even cultural policies have backfired on the country’s existence in the Balkans. The collapse of Communist influence in Eastern European countries also made it worse. What we saw later—particularly after Slobodan Milosevic, with his ultra-nationalist Serbian “ideology,” managed to occupy the presidency in 1989—was Yugoslavia plunged into a terrible civil war that literally left the country completely devastated. In fact, people from several of its breakaway republics still hold feelings of grudge and hostility—although the United Nations in 1993 had established ICTY ((International Criminal Tribunal for the former Yugoslavia), an ad hoc court that is tasked with specifically adjudicating the perpetrators of war crimes and crimes against humanity that occur there.

Back to the “Indonesian heart” and “Yugoslav heart” above, I remembered the tragic joke made by a journalist who covered the civil war in Yugoslavia. Unfortunately, I forgot his name. He said that Yugoslavia was broken because only one person had “the heart of Yugoslavia,” Josip Broz Tito, and that person was dead. Although his death was marked by a week of mourning and tears of thousands of people who were even willing to wait in the rain and accompany his funeral ceremony on Dedinje Hill, on the outskirts of Belgrade (Beograd), the former capital of Yugoslavia, it was apparently just a sign of respect and

love for their great leaders from the people—not a sign of the ingrained “Yugoslavian heart,” as Tito’s dream. The Internationale song—the song of adherents of socialist movements around the world—which endlessly accompanied the burial procession of one of President Sukarno’s close friends, was not able to become an inspiration, let alone a unifying factor for the people he left behind to get out of that terrible civil war that is said to have cost the lives of 130,000 people.

How about Indonesia? What caused Indonesia not to break up like Yugoslavia? The answer is that people who have “Indonesian hearts” are not only the sole proclaimators of Independence, Sukarno-Hatta but all Indonesian independence fighters and all Indonesian people. In this “matter,” Indonesian as the language of unity really has a significant role and contribution. It is the Indonesian language that constantly preserved and nourished the “Indonesian heart” and that started at Jalan Kramat Raya 106 on October 28, 1928, ninety-four years ago.

Now, the house on Jalan Kramat Raya 106 has become the Youth Pledge Museum. There is absolutely no trace of Sie Kong Liang in the place where the youths “instill the Indonesian heart.” Sie Kong Liang’s heirs have handed over the house to the state without compensation, even a penny, except for one request, it is not forced, “If possible, put a photo of my grandfather in one of the rooms,” said Sie Kong Liang’s grandson, Doctor Yanti Silman.

# Catalog

**PUBLISHER**  
**KONSTITUSI PRESS (KONPRESS)**



Gedung Mahkamah Konstitusi RI

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## CONCERNING THE INSULT ARTICLE TO THE PRESIDENT

**T**he Draft of the Criminal Code (RKUHP), which is predicted to be a breath of fresh air as an attempt to reform criminal law in Indonesia to this day, has received many criticisms. Starting from the latest draft of the Criminal Code, whose preparation seemed rushed, and the contents of the regulations, which were considered not up to expectations. One of them is the inclusion of an article on the insult to the President and/or Vice President.

An insult to the President is formulated in Article 217 to Article 220 of the RKUHP, which regulates the prohibition of everyone attacking the honor, dignity, and values of the President or Vice President. In addition, it is also regulated that anyone is prohibited from broadcasting, showing, or publicly posting insulting writings or paintings to the President/Vice President to make the contents of the insult known or better known to the public, playing the recording so that it can be heard by the public, or disseminate it by means of technology information containing attacks on the honor or dignity of the President and/or Vice President with the intention of making its contents known to the public. Further, The Draft of the Criminal Code (RKUHP) also stipulates that this complaint is a complaint offense that the President and/or Vice President shall complain directly.

### Colonial Legacy

The criminal law that Indonesia uses to this day comes from the *Nederlands Werboek van Strafrecht* (WvS Nederlands 1881) or Criminal Code during the Dutch East Indies Colonial Period. The principle of concordance adopted by the Netherlands at that time required it to adjust *WvS* to *Wetboek van Strafrecht voor Nederlandsch-Indie (WvSNI)*, which was enforced in the Dutch East Indies in 1918. However, WvSNI was no longer used in Indonesia because of the transfer of power from the Dutch East Indies government to the Japanese in Indonesia on March 8, 1942. At the time of the Japanese colonization, the criminal code that was used was *Gunzei Keizi Rei*. *Gunzei Keizi Rei* was in effect for only three years because since August 17, 1945, through Presidential Decree No. 2 of 1945, Indonesia enacted a common criminal law between WvSNI and *Gunzei Keizi Rei*, in Presidential Decree No. 2 of 1945; this was then replaced by Law No. 1 of 1946, which enacted the WvSNI-based criminal code only.

Concerning the insulting article to the President, WvSNI regulates deliberate insults against the king and queen with a maximum imprisonment of 5 years in prison or a maximum fine of 300 guildens. After Indonesian independence, this article was later adapted by Article 134 of the Criminal Code by simply replacing the phrase “king

and queen” with the words “President and Vice President.” This is the basis for the enactment of regulations that regulate the insult to the President of Indonesia.

This arrangement is wrong because the concept of a king or a queen cannot be equated with the head of state in the republic system. In a monarchy, the king or queen is a symbol of the state whose position is passed down for generations, while in a republic, the President is elected directly by the people through a structured mechanism and is not a symbol of the state. So, the adoption of the article on insulting the king or the queen in the Indonesian Criminal Code, which is a republic state, was a mistake by lawmakers.

### **Unconstitutional Issues and the President’s Distinction as an Institution or a Person?**

The article on insult to the President is basically a “disease” in the Indonesian criminal code that has been “treated” through the Constitutional Court Decision Number 013-022/PUU-IV/2006. This decision reviews the constitutionality of the offense on the insult to the President or Vice President based on the Indonesian legal system contained in the Criminal Code. The Constitutional Court’s decision has stated that Article 134, Article 136 bis, and Article 137 of the Criminal Code contradict the 1945 Constitution and are not legally binding.

By looking at the Constitutional Court’s decision, the government, as the party proposing the Draft of the Criminal Code, should not reinstate the article on the insult to the President. The inclusion of the article on the insult to the President in the Draft of the Criminal Code is inappropriate because the enactment of the article means that it hinders the progress of Indonesian democracy. Although there is not a single article in positive law in Indonesia prohibiting norms that have been annulled to be rearranged in law, the government’s attempt to reinstate the article on the insult

to the President into the RKUHP is a moral and ethical problem in the establishment of statutory regulations.

Meanwhile, there are two inherent values of the President. First, it is the only state institution attached to a person, unlike other state institutions, such as the People’s Consultative Assembly, the House of Representatives, and other state institutions, which consist of several individuals. The President as an institution has no moral value such as *subjectum juris* or emotions because an institution is a *subjectum norm*.

There is no need for a special arrangement for banning insults to the President if the article on the insult to the President is viewed from the President’s point of view as a person. If the President gets offended as an individual, the article used is an ordinary insult article because the person who feels personally attacked is a person, not a state institution.

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Any form of humiliation, whether in any form or directed at anyone, is unjustifiable. However, the article on the insult to the President would jeopardize the public’s right to express criticism to the President. This article will eliminate people’s freedom to express their aspirations because of all kinds of criticism; if it is deemed not to fit the President’s purpose, it may be regarded as an insult.

The annulment of the Article on Insults to the President in 2006 represents a step forward for Indonesian democracy and is consistent with the country’s reform mandate. However, by reintroducing the article on insults to the President in the Draft of the Criminal Code, it is not an exaggeration to say that the Draft of the Criminal Code is the result of backward reforms.



# THE ROLE OF COURTS IN PEACE AND JUSTICE IN PEACE

“Subsequent thereto, to form a government of the state of Indonesia, to take all the independence and the land that has been struggled for by the Indonesian people and to participate toward the establishment of a world of peace and justice, therefore the independence of Indonesia shall be formed...  
The Preamble to the 1945 Constitution of the Republic of Indonesia

President Jokowi and the leaders of the delegations participating in the 5th WCCJ Congress take a photo before the opening ceremony on Wednesday (5/10). Photo: Public relations/Ifa



# CONSTITUTIONAL PEACEKEEPING

Indonesia which shall protect all the people of Indonesia and  
for, and to improve public welfare, to educate the life of the  
d order based on freedom, perpetual peace, and social justice,  
ulated into a constitution of the Republic of Indonesia”

the Constitution



The goals of Indonesia in maintaining world peace and world order as stated in the Preamble to the 1945 Constitution are the key basis for the Constitutional Court of the Republic of Indonesia (MKRI) to actively participate in the international arena. In 2022, the MKRI finally realized this role by hosting the 5th Congress of The World Conference on Constitutional Justice (WCCJ) on 5 – 6 October 2022 in Nusa Dua, Bali. The MKRI was chosen as the host. As the host, the MKRI also aligned the implementation of the congress with the objective of improving the quality of decisions, performance, and services for justice seekers.

The theme of the congress, which was attended by 94 state delegates and equivalent institutions, was “Constitutional Justice and Peace.” 573 participants in the congress reaffirmed their commitment to the fundamental principles of democracy, the rule of law, and human rights. Furthermore, the participants are constitutional courts and equal institutions in their respective countries fighting for democracy and the rule of law.

### Crisis Handling

In the opening ceremony which took place on October 5, 2022, President Joko Widodo (Jokowi) was directly present, calling for

the need to establish peace in dealing with global crises and upholding constitutional justice. He hopes that the 5th Congress of the WCCJ can serve as a forum for exchanging ideas and sharing experiences. “I hope there will be cross-country collaboration in upholding constitutional justice and dealing with crises,” he said.

Furthermore, Jokowi said the MKRI and constitutional justice bodies as well as similar institutions, are the main pillars in upholding constitutional justice, which is a critical component of democracy that protects human rights and legal certainty.

“However, the Constitutional Justices’ and our own duties are



President Jokowi officially opened the 5th WCCJ Congress on Wednesday (5/10/2022) at the Bali Nusa Dua Convention Center (BNDCC), Bali. Photo: Public relations/lfa



President Emeritus Venice Commission, Gianni Buiquicchio, delivered his remarks at the Opening of the 5th WCCJ Congress at BNDCC, Bali, on Wednesday (5/10). Photo: Public relations/Ifa

becoming increasingly difficult. Every nation around the world is dealing with a variety of crises. The pandemic is still ongoing, the global economy has not fully recovered, and the world has been shocked by the war between Russia and Ukraine, which has disrupted global trade supply chains” Jokowi stated.

Furthermore, Jokowi stated that energy and financial crises are unavoidable. He believes that the countries represented at congress are all facing a crisis at the same time. Furthermore, he emphasized that a continuous war will continue to produce a continuous crisis.

“Of course, we want wars to end and peace to reign. We must fight together to end wars and build

peace, but we must also be prepared to mitigate and manage crises as effectively as possible. “In addition to fighting for constitutional justice, each country must find bright spots in the midst of the crisis,” Jokowi said.

### **Contribution to the World**

Meanwhile, Chief Justice of the Constitutional Court Anwar Usman stated that the 5th WCCJ Congress was a momentum for various nations around the world to make the best contribution for all humanity. He stated that the theme was very relevant to be discussed as a form of collaborative contribution to the realization of peace and justice for the nations of the world.

“In fact, constitutional peace and justice are the true desires of all human beings, without exception.” And, of course, the constitution regulates this so that peace and justice can be realized,” Anwar explained.

Anwar also stated that the establishment of the Constitutional Court or judicial institution with the authority to oversee the constitution aims to protect and realize the values contained in the constitution.

“If the constitutional norms that have become the basic norms of the state are not obeyed and implemented, they will only be beautiful on paper. And, if constitutional norms are not followed and implemented, then there has



been a denial of constitutional values,” Anwar stated.

Then Anwar explained that each country’s constitution has its own characteristics, nature, and uniqueness. However, there are universal values that can be found in each country’s constitution. “The theme of this Congress, ‘Constitutional Peace and Justice,’ is a value shared by all of us who have gathered here today. In other words, the theme of the congress this time is our collective obligation to care for one another and make it happen “Anwar stated.

Meanwhile, President Emeritus of the Venice Commission, Gianni Buiquicchio, thanked the MKRI for holding the WCCJ’s 5th Congress properly and extraordinarily.

“Looking back from the meeting in Cape Town, we did not expect that the WCCJ organization, which had only 60 countries in 2009, would now have 119 countries that will join the WCCJ in 2022,” Gianni said. Gianni also stated that the 5th Congress of the WCCJ aims to share the experience of each Constitutional Court in maintaining global peace. He hoped that all participating

countries will work together to keep the peace and uphold constitutional justice.

### Bali Communique

The congress was divided into five sessions over the course of two days. The first day was divided into three sessions, one for each theme: “Source and Jurisdiction”; “Application”; and “Limitation of the Role of Constitutional Courts in Peacekeeping.” On the second day, two sessions were held, one on “Fundamental Principles:



Anwar Usman, Chief Justice of the Constitutional Court, delivered remarks at the opening of the 5th WCCJ Congress on Wednesday (5/10), at the BNDCC in Bali. Photographer: Public relations/lfa



## Bali Communiqué



## Bali Communiqué



The Protection of Human Rights, Democracy, and the Rule of Law as a Pre-Condition to Peace” and the other on the Venice Commission Database Presentation, which was attended only by WCCJ member countries.

On the final day of the congress, 94 state delegates and 583 participants reached an agreement on a number of key points outlined in the Bali Communiqué. The participants agreed on one of them: the greater the constitutional court’s authority, the greater its contribution to world peace. Reviewing the

constitutionality of norms through reviewing laws, resolving disputes between state institutions, and ensuring the regularity of the electoral process are all relevant powers related to maintaining peace.

The WCCJ’s 5th Congress also agreed that human rights protection is the primary prerequisite for conflict resolution and peace. The Constitutional Court plays a direct role in resolving social conflicts and maintaining peace by limiting political power, preserving society’s diversity, and protecting fundamental rights and freedoms. Furthermore, as part

of the legal protection guarantee, the Constitutional Court can also increase public confidence in the law and the courts by increasing access to justice.

The Bali Communiqué also mentioned the MKRI’s initiative to form the Constitutional Supremacy Index (ISK/CSI). ISK aims to measure progress and progress toward constitutional compliance, in line with the principles of constitutionalism. ■

LULU ANJARSARI P.

# THE DYNAMICS OF THE PROGRESS OF WORLD CONSTITUTIONAL COURTS

In the five sessions of the 5th Congress of the WCCJ which took place on 5 – 6 October 2022, 94 countries and 583 participants exchanged experiences in overcoming conflicts to maintain world peace as constitutional courts.



Session A of the 5th WCCJ Congress on Wednesday (5/10/2022) at BNDCC, Nusa Dua, Bali. Photo: PR



The first day consisted of three sessions with each theme, including “Source and Jurisdiction”; “Application”; and “Limitation of the Role of Constitutional Courts in Peacekeeping”. Session A of the 5th WCCJ Congress was opened by three speakers, including the Chief Justice of the Constitutional Court of the Republic of Indonesia (MKRI) Anwar Usman, the President of the Algerian Constitutional Court, Omar Belhadj, and the Constitutional Court of Romania, Judge Simina Tanasescu. The three discussed the theme “Sources and Jurisdiction”.

The Chief Justice of the MKRI, Anwar Uswar, revealed in his material as a keynote speaker that through his authority to conduct a judicial review, the MKRI has provided protection for citizens’ constitutional rights, which is an important part of it, to be fulfilled. Because it will be impossible to live a just life unless citizens’ constitutional rights are fulfilled and protected. According to him, without a just life for every citizen, peace cannot be realized, both for the continuity of a country’s life and for the life of peace for the nations of the world.

Anwar expressed his hope that the congress would serve as a

forum for sharing and exchanging ideas on the agreed-upon theme of peace and justice. The sub-theme of the day specifically discussed the sources of law and the authority of the Constitutional Court, which is an important part of achieving justice and peace.

“As a result, this forum is critical for us to share information about the constitutional validity in each country, as well as the role and jurisdiction of the judiciary in achieving peace and justice for all nations around the world,” Anwar said.



The Justices of the Constitutional Court of the Republic of Indonesia were listening to a session at the 5th WCCJ Congress on Wednesday (5/10/2022) at the BNDCC, Nusa Dua, Bali. Photo: PR



The Judge of the Constitutional Court of Romania, Simina Tanasescu, (second from right) was the discussant in Session A of the 5th Congress of the WCCJ on Wednesday (5/10/2022). Photo: PR

## Playing a Role in Peacekeeping

Meanwhile, the President of the Algerian Constitutional Court, Omar Belhadj, stated that the Algerian Constitutional Court serves to mediate conflicts between individuals and institutions. As a result, the Constitutional Court must remain neutral, and its independence must be preserved. “This is not a traditional concept of international law in resolving a conflict, nor is it part of maintaining international peace,” Omar explained.

Then, Omar explained how constitutional justice can help to resolve conflicts and reduce political tensions. According to him, this congress can reach an agreement on issues to keep the peace by sharing their experiences. “Also, to determine the legal mechanisms for dealing with conflicts experienced by each country,” he said.

On the same occasion, the Justice of the Constitutional Court of Romania, Simina Tanasescu, said

that in interpreting the constitution, the constitutional court must adhere to principles to resolve a conflict. She referred to the report submitted by the Constitutional Court of Lithuania which stated that the interpretation of the constitution must refer to the legal corridor without any distance.

“Constitutional interpretation must prioritize the balance of legal mechanisms without any gaps or internal contradictions. The Constitutional Court of Lithuania stated that interpretation of the constitution may not reduce or reject the values contained in the constitution,” Simina said.

## Constitutional Justice and Peace

Then, the Chief Justice of the Constitutional Court of Turkey, Zühtü Arslan, and the President of the Constitutional Court of Latvia, Aldis Lavins, were present as speakers with the sub-theme “Implementation” in the main theme “Constitutional Justice and Peace”.

In his material, Zühtü said that the Constitutional Court of Turkey has a role to mediate conflicts, particularly religious conflicts, for example, Turkey’s prohibition on wearing a headscarf.

According to Zühtü, the use of the headscarf in Turkey has become a social conflict. In its decision, the Constitutional Court of Turkey based its decision on individual rights and human rights. “In 2020, the Constitutional Court of Germany decided to ban the use of the headscarf in accordance with the constitution.

Meanwhile, in France, wearing a headscarf has long been fraught with controversy. Likewise, the headscarf has been the subject of heated debate in Turkey. The headscarf ban on campus was overturned by the Constitutional Court in 2008 because it violated constitutional rights. “The Constitutional Court of Turkey has chosen a more individualistic and rights-based path,” he said.



Meanwhile, President of the Constitutional Court of Latvia Aldis Lavins stated that the Constitutional Court of Latvia has the authority to assess whether the state has fulfilled its obligations and met the people's demands. As a result, he stated that the Constitutional Court of Latvia considered the European context because finding the right balance is easier if there is jurisprudence.

"According to the law governing the Constitutional Court's procedural law, our decision is binding and not just the cooperative part, and our interpretation is binding for legislators," said Aldis.

Meanwhile, in the last session, Chief Justice of the Constitutional Court of Kyrgyzstan, Emil Oskonbaev, was present as the keynote speaker, revealing that the constitutional judiciary is not immune to attacks, including those from the media, which have a direct impact on public trust. At the same time, the constitutional judiciary tolerates criticism, as criticism is essential to a democratic regime.

"Aside from the phenomena that occur as a result of the application of constitutional law, public trust in constitutional justice institutions will continue to grow, and their activities will be viewed positively by civil society," Emil said during a session moderated by the Supreme Court Chief of Egypt, Adel Omar Sherif.

### Important Role

On the second day, two sessions were held, one on "Fundamental Principles: The Protection of Human Rights, Democracy, and the Rule of Law as a Pre-Condition to Peace" and the other on the Venice Commission Database Presentation, which was attended only by WCCJ member countries.

In session D of the 5th WCCJ Congress, the President of the Constitutional Court of South Korea, Nam-seok Yoo, said that the constitutional judiciary has an important role in resolving conflicts ultimately, maintaining peace through its authority. "The constitutional court and the

constitutional judiciary not only settle disputes, but also keep the peace. Despite the differences, the Constitutional Court's role in protecting human rights and ensuring democracy and the supremacy of the constitution remains the same," Namseok explained on Thursday (6/10/2022) morning.

Nam-seok also stated that the role of the constitutional judiciary in realizing constitutional values and maintaining peace was discussed during this session. He stated that peace was formed by the fundamental principles of each country's constitution. "And most countries today link peace with their constitutional values," he said in front of 95 WCCJ member countries and four organizations.

According to Nam-seok, each country must take active steps to prioritize peace in conflict resolution. "Countries with a high number of legal cases can introduce constitutional courts to play a role in keeping social peace," Namseok said during a session presided over by the



Chief Justice Zühtü Arslan served as the keynote speaker for Session B of the 5th WCCJ Congress, which was moderated by Chief Justice of the Constitutional Court of Kazakhstan, Kairat Mami. Photo: PR



President of Constitutional Court of South Korea, Yoo Nam-seok, was the keynote speaker at Session D of the 5th Congress of the WCCJ on Thursday (6/10/2022). Photo: PR

President of the Constitutional Court of Dominica, Milton Ray Guevara.

### Protect human rights

Furthermore, Nam-seok explained that the constitutional court, through its authority to interpret the constitution, can play a role in protecting human rights. This role, he believes, demonstrates that the constitutional court can be trusted to protect human rights.

Nam-seok added that the constitutional judiciary plays an important role in creating networks for peace by encouraging three powers at once (legislative, executive, and judicial) to participate in guaranteeing human rights in accordance with the constitution.

“If someone believes they have been violated, they can seek judicial review or file a constitutional complaint. This demonstrates that citizens can participate in resolving disputes while also maintaining peace,” Nam-seok said.

### State Official Violations

Lucia da Luz Ribeiro, President of the Constitutional Council of

Mozambique, was also present as a discussant in session D, which was moderated by Milton Ray Guevara, President of the Constitutional Court of the Dominican Republic. She shared her experiences with the Constitutional Council of Mozambique in exercising its powers. One of them is the Mozambique Constitutional Council, which will rule on the violation of a state official. The president eventually

used the decision as justification to fire the official.

“The president removed the governor of one of the provinces from his post after hearing the considerations of the Constitutional Council. The Constitutional Council investigates and adjudicates on the violations committed by these officials in advance. This established a precedent in society. However, if a similar incident occurs, Mozambique already has a mechanism in place to deal with it,” Lucia explained.

Lucia also emphasized that this could be evidence that Mozambique’s constitutional judiciary can contribute to political issues. Furthermore, with the passage of Law 21/2018, the Constitutional Council now has the authority to adjudicate related violations in political office. “Such issues are forwarded to the Constitutional Council so that they can contribute to political issues. Constitutional justice is also essential in the removal of regional leaders at various levels of government. Furthermore, the Constitutional Council can evaluate laws and act as the ‘national arbiter’ in these matters.” ■

LULU ANJARSARI P.





# The journey of MKRI to be the Host WCCJ 2022

Strasbourg, October 2016 – The Chief Justice of the Constitutional Court of the Republic of Indonesia discussed with the President of the Venice Commission about Indonesia’s commitment to participate in upholding constitutional law, democracy and human rights at the global level

Solo, August 2017 – AACC (Asian Association of Constitutional Courts) signed an MoU with CCJA (African Association of Constitutional Court)

Vilnius, September 2017 – The Chairman of the the Constitutional Council of Algeria proposed a bilateral meeting with the Chief Justice of the Constitutional Court to discuss the Constitutional Court’s request for solidarity with the Constitutional Council of Algeria

Venice, March 2018 – At the WCCJ Bureau Meeting, the Chief Justice of the Constitutional Council of the Republic of Indonesia again stated the MKRI’s readiness to host the next WCCJ congress, namely the 6th congress in 2023

August 2019 – The Secretary General of the WCCJ stated that because of unfavorable domestic conditions, Algeria would postpone the 5th WCCJ congress which was originally held in 2020 to 2021

March 2020 – The Secretary General of the WCCJ conveyed that the Constitutional Council of Algeria declared its inability to convene the 5th congress of the WCCJ and proposed Indonesia as a substitute host

September 2020 – Indonesia was elected by a majority to host the 2022 WCCJ

Seoul, March 2016 – The Chief Justice of the Constitutional Court of the Republic of Indonesia (MKRI) held a discussion with the Constitutional Court of Korea regarding the experiences of the Constitutional Court of Korea hosting the second WCCJ congress in 2014

Venice, March 2017 – at the WCCJ Bureau meeting, Indonesia declared as the host for the 5th WCCJ congress in 2020

Jakarta, September 2017 – The Algerian Ambassador to Indonesia submitted an audience with the Chief Justice of the Constitutional Court of the Republic of Indonesia to deliver a letter from the Chief Justice of the Constitutional Council of Algeria expecting the Constitutional Court of the Republic of Indonesia’s solidarity and support for Algeria’s proposal to host the 5th WCCJ congress in 2020

Vilnius, September 2017 – At the WCCJ Bureau Meeting, the Chief Justice of the Constitutional Council of the Republic of Indonesia withdrew the MKRI’s candidacy to host the 5th Congress of the WCCJ in 2020 and supported Algeria as the organizer

Santo Domingo, February 2019 – The Constitutional Council of the Republic of Indonesia Delegation (Led by the Justice of the Constitutional Court, Enny Nurbaningsih) confirmed the MKRI’s commitment to submitting itself as the host of the 6th WCCJ congress in 2023 (Indonesia is competing with the Supreme Court of Canada which has also officially declared its readiness)

August – December 2019 – The Chief Justice, Deputy Chief Justice, and Justices of the Constitutional Court of the Republic of Indonesia actively conveyed Indonesia’s readiness to host the 6th WCCJ congress and received support from several foreign Constitutional Courts

August 2020 – At the fourth AACC Congress, all AACC members declared support for Indonesia as the host of the 2022 WCCJ

# AACC AND CCJA STRENGTHEN COOPERATION

The signing of a cooperation memorandum on August 9, 2017 in Surakarta, Central Java, became the impetus for holding a joint conference between the Association of Asian Constitutional Courts and Equivalent Institutions

(AACC) and the Conference of Constitutional Jurisdictions of Africa (CCJA) on Tuesday (04/10/2022). The AACC and CCJA agreed in their memorandum of understanding to share their experiences in implementing their respective authorities in every constitutional

court and similar institutions in the context of upholding democracy and constitutional law in both Asia and Africa. A total of 39 countries participated directly at the Bali Nusa Dua Convention Center in the activity titled "Promoting Asian-African Cooperation for The





Protection of People's Fundamental Rights" (Expanding Asian-African Cooperation in Protecting Human Rights) (BNDCC).

Anwar Usman, the Chief Justice of the Constitutional Court of the Republic of Indonesia (MKRI), stated in his opening remarks at the start of this joint conference that the organization's first conference was inspired by historical factors, especially because there is an emotional resemblance between Asian and African countries. This

organization was known as the Asian-African Conference (Konferensi Asia-Afrik/KAA), and it was founded in 1955 in Bandung. However, Anwar believes that when the KAA was formed, the challenges faced by the two continents were very different, both internally (national) and externally (international). One of them is the difficulty in turning the constitutional wheel in applying the principles of the rule of law in the life of the nation and state.

Regarding citizens' constitutional rights, Anwar stated

that citizens' constitutional rights must be guaranteed by each country's constitution and fulfilled by the state, whereas human rights must be fulfilled by all countries around the world. This is because human rights, which were declared by the United Nations (UN) in 1948 through the Universal Declaration of Human Rights, have become a common standard for the world's nations. But, as he pointed out, along with the evolution of the global situation and the rapid development of technology and industry, the fulfillment of human rights is dependent not only on the role of the state but also on multinational corporations that allow human rights to be ignored.

### **Protection of human rights in Asia and Africa**

A discussion on the theme "Constitutional Jurisdictions and Protection of Fundamental Rights: Crossed Looks from Africa and Asia" was held at the joint conference, which was also divided into several sub-themes that were relevant to the case examples carried out by the Constitutional Court of each representative country. The Justice of the Constitutional Court of the Republic of Indonesia, Arief Hidayat, the Justice of the Constitutional Court of Algeria, Abdelouahab Kherief, the President of the Constitutional Court of Turkey, Zühtü Arslan, and the President of the Supreme Court and President of the Constitutional Council of the Republic of Ethiopia, Meaza Ashenafi Mengistu, were among those who spoke.

According to the Justice of the Constitutional Court, Arief Hidayat,





the challenges to protecting and upholding human rights in Asian and African countries differ significantly from those in Western or other developed countries. In developed countries, challenges may include current events. Meanwhile, in Asian and African countries, the impact of internal state political conflicts, violence, intolerance, freedom of expression, discriminatory treatment, and the like continues to have an impact on human rights enforcement. Because of the differences between Asian and African countries with Western countries, Arief continued, it is necessary to approach human rights protection and upholding through approaches and values that differ between individualist Western countries and communalist Asian and African countries. As a result, he continued, the joint forum at the conference between the AACC and the CCJA could be a new way for collaborative cooperation of constitutional justice bodies, particularly to participate

in potential solutions to overcome various challenges in the nation's life. More specifically, he stated that the Constitutional Court of the Republic of Indonesia had participated in the history of the Asian-African Conference (KAA) in 1955 by preparing to continue Asian and African countries' togetherness and solidarity.

### Implementation of human rights in Algeria

Meanwhile, the Justice of the Constitutional Court of Algeria, Abdelouahab Kherief, a member of the CCJA, explained the protection of Human Rights in Algeria in his presentation. According to him, human rights in his country have characteristics that cannot be compared to human rights implementation in other countries around the world. This is because religion and culture serve as differentiators in the country's implementation of collective and

individual human rights. According to Abdelouahab, the Algeria is going through many phases as it was previously colony, which has sparked interest in establishing a new constitution. According to Abdelouahab Kherief, since the formation of the Constitutional Court of Algeria in upholding human rights and the constitution in November 2021, it has been able to issue 41 decisions, including 6 election decisions, 32 constitutional revisions from a law review, and two decisions regarding the internal system in the Constitutional Court.

"To some extent, the Constitutional Court of Algeria is a new experience in Algeria; it is rather unique because our Constitutional Court consists of 11 members, half of whom are professors and representatives from the judiciary, and all of whom cannot be members of political parties or legislative elements. This is to ensure our institution's independence," said Abdelouahab Kherie.



### No Country Is More Equal

Next, in the same discussion with the sub-theme “Actuating the Bandung Principles on Equality of All People, Races, and Nations in Asia and Africa,” President of the Constitutional Court of Turkey, Zühtü Arslan, revealed information about equality implementation in his country. In his opinion, all national equality is unquestionably necessary for upholding just politics. The Asian-African Conference (KAA) equality principle refers to the equality of all people and races around the world. As a result, the UN provision that only grants the five countries veto power must be reconsidered. “Because no country is more equal than another,” Arslan explained.

In relation to equal rights protection in Turkey, human rights is applied to everyone with the same existence before the law, regardless of belief, religion, sect, or the like. Furthermore, the authorities,

legislative, and judicial, are obligated to apply the principle of equality. Arslan cites one of the articles in Turkish Law that states in the Turkish Constitutional Court’s decision that the Constitutional Court requests the annulment of violations or crimes committed by health professionals, as well as discrimination against female lawyers who wear headscarves in a forum.

Meanwhile, Meaza Ashenafi Mengistu, President of the Supreme Court and President of the Constitutional Council of the Republic of Ethiopia, stated that relations between Asia and Africa have existed for a long time and are flourishing due to the two continents’ long history. According to Meaza, this relationship has actually aided decolonization in Africa, including within the United Nations. Only Ethiopia, Egypt, and Sudan were African representatives at the 1955 Asian-African Conference, which was attended by 24 countries, while

other African countries were still under colonial rule. Meaza recognizes the importance of maintaining human rights, peace, and democracy because democracy is required to resolve disagreements in various state issues. One method is to use the Constitutional Court and other independent bodies to prevent national-level violence. “In Africa, the Constitutional Court is dedicated to interpreting laws and is mandated to consider the highest court, one of which is the interpretation of the constitution and complaints related to the constitution,” Meaza, who attended the conference online, explained.

### Agreement to Establish Cooperation

Prior to the reading of the organization’s cooperation agreement, Laurinda Prazeres Monteiro Cardoso, President of the CCJA, stated that the Bandung Declaration established signatory countries’ commitment to support peace and the basic principles of human rights specified





in the United Nations Charter, as well as the defense of the Universal Declaration of Rights. Human Rights are important. Laurinda agrees with the forum in this activity that human rights issues must respect the principles and socio-cultural realities of each community. “We believe through the exchange of information, ideas, and experiences between members of two large continents that have great cultural diversity but share a colonial past,” Laurinda said.

When reading the Joint Statement of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) and the Conference of Constitutional Jurisdictions of Africa (CCJA), the Justice of the Constitutional Court, Saldi Isra said that 39 members realized the importance of advancing cooperation between Asian and African countries.

This cooperative relationship is founded on respect for Human Rights (HAM) as stated in the United Nations Charter, as well as the equality of all races and nations, both large and small, as stated in the Bandung Declaration of 1955. As a result, according to Saldi, The AACC and CCJA assist citizens in Asia and Africa seeking constitutional justice through the Constitutional Court or equivalent.

“Reiterating the importance of enhancing cooperation and building a common understanding between the two organizations in the spirit of promoting democracy and the rule of law, protecting people’s fundamental rights, and ensuring constitutional compliance; and appreciating the goodwill of both organizations’ members and secretariats for the implementation of the Memorandum of Understanding through active organization and participation in the First AACC-CCJA Joint Conference,” said Saldi.

## Unanimity

AACC President Chinbat Namjil in closing the activities of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) and the Conference of Constitutional Jurisdictions of Africa (CCJA) stated that an association always represents the unanimity of its members. As a result, he believes that the discussion of the “Constitutional Supremacy Index” can be a means for openness of ideas, allowing the CCJA to find the same position as an association as the AACC. “I hope that everyone can make today’s meeting a success on behalf of the President of the AACC,” said Namjil, who also serves as Chief Justice of the Constitutional Court of Mongolia. ■

(SRI PUJANTI/LULU ANJARSARI P)





# ROLE OF THE CONSTITUTIONAL COURT CONSTITUTIONAL CONFLICT RESOLUTION

The discussion on the role of the Constitutional Court in various constitutional conflicts was discussed by presenting several cases from various perspectives from each country through The 5th Indonesian Constitutional Court International Symposium (ICCIS)



Justice of the Constitutional Court, Suhartoyo, officially opened the 5th Indonesian Constitutional Court International Symposium (ICCIS) on Wednesday (5/10/2022) at the Bali Nusa Dua Convention Center, Bali.

On Wednesday (5/10/2022), Justice of the Constitutional Court, Suhartoyo, officially opened the 5th Indonesian Constitutional Court International Symposium (ICCIS) at the Bali Nusa Dua Convention Center in Bali. Representatives from ten countries, including

the United States, Australia, the Netherlands, and South Korea, Scotland, Canada, Hungary, India, Turkey, and Indonesia, attended an international symposium on the theme “Constitutional Court and Conflict Resolution.”

This symposium was attended by 27 offline speakers and responders and approximately 300 online

participants. Suhartoyo stated at the start of the symposium that all of the speakers, who were experts, academic practitioners, and legal researchers, were chosen through a rigorous and high-standard selection process.

“I hope that the discussion at this international symposium goes well and that the results of the



Justice of the Constitutional Court, Saldi Isra, in his keynote speech said that the International Symposium had the theme “Constitutional Court and Conflict Resolution” on Wednesday (5/10). Photo: PR

discussion help each participant understand issues relevant to the theme of this activity, as well as useful for brainstorming experiences and building effective efforts in solving problems related to the roles and implementation of the Constitutional Court’s authority and conflict resolution in society. After two full days of discussion, the 5th ICCIS series of activities will conclude with a Cultural Program so that participants can enjoy the panorama and natural beauty of Bali, Indonesia.” Suhartoyo stated in his opening remarks, which were also attended by keynote speaker Justice Sal of the Constitutional Court, Saldi Isra and Justice of the Constitutional Court, for the 2015-2020 period, I Dewa Gede Palguna.

### **Constitutional Court and State Conflict Resolution**

Furthermore, in his keynote speech, Justice of the Constitutional

Court, Saldi Isra, stated that the International Symposium with the theme “Constitutional Court and Conflict Resolution” aims to delve deeper into the role of the Constitutional Court or similar judicial institutions in resolving various conflicts in various countries. This role is related to the Constitutional Court’s authority to interpret the constitution in order to contribute to peace and reconciliation. Aside from that, another issue that requires serious consideration at this International Symposium is the extent to which the Constitutional Court can protect human rights and democracy, particularly in terms of upholding the principles of free and fair general elections when the Constitutional Court acts as a mediator in the resolution of armed, civil, and military conflicts.

Saldi mentioned the Constitutional Court’s existence in resolving various conflicts through

its constitutional authority, including review the constitutionality of laws, deciding authority disputes between state institutions, deciding on the dissolution of political parties, deciding disputes over election results, and impeachment of the president and/or vice president. according to Saldi, the Constitutional Court has used this authority to resolve significant or potential conflicts.

As an overview of the Constitutional Court’s authority, Saldi took an example of the issue of regional head elections in Indonesia to demonstrate the Constitutional Court’s authority. When it comes to this question, the Constitutional Court frequently makes legal breakthroughs by prioritizing the fulfillment of substantive justice over the fulfillment of procedural justice. Even though Saldi admitted that not all violations in regional elections could result in the results being annulled, the Constitutional Court



could generally annul election results if there were structured, systematic, and massive violations.

“Even if it is proven that there was an election violation, the Constitutional Court will not automatically make the petitioner the winner because in the interests of the wider community and with great care, the Court will order a recount of votes or re-election to be held in the place concerned or in trouble,” said Saldi.

Therefore, based on the MKRI’s experience in resolving these conflicts, Saldi hopes that the International Symposium discussion can become an academic discussion forum to discuss various dynamics of the judiciary’s role in resolving various conflicts not only in Indonesia, but also in other countries around the world.

### Turkish Experience

Meanwhile, at the first session of the ICCIS, Justice of the Constitutional Court, Engin Yildirim, presented a paper titled “The Turkish Constitutional Court in the State of Emergency Period (2016-2018).” Yildirim explained the Constitutional Court of Turkey’s existence during Turkey’s state of emergency from 2016 to 2018. He revealed at the time that the Constitutional Court of Turkey’s main responsibility was to act as a balancing body for the government in overcoming threats to the constitutional system and protecting people’s basic rights during an emergency time. The Constitutional Court of Turkey, which is tasked with realizing constitutional supremacy and maintaining constitutional order, has a complicated and critical role to play in carrying out this function.



Justice of the Constitutional Court, Engin Yildirim, at the first session of the ICCIS presented a paper entitled “The Turkish Constitutional Court in the State of Emergency Period (2016-2018)”. Photo: PR

“At the time, The Constitutional Court of Turkey served not only to protect citizens’ rights but also as a bulwark of the freedom expected of government policies. During a state of emergency, the courts have limited authority, particularly when it comes to reviewing the actions and activities of the executive branch. This is actually beyond the courts’ jurisdiction, but once again, the judiciary must ensure that state authorities continue to act within constitutional and statutory limits” Yildirim, who was present with Woo-Young Rhee of Seoul National University School of Law, Korea, and Luthfi Widagdo Eddyono of MKRI, said.

### International Law and Amnesty

Furthermore, Michail Vagias of the Hague University in the

Netherlands spoke about “Amnesties and Peace Building - a Deaf Dialogue Between Constitutional and International Courts?” He described the Constitutional Court’s role in providing an interpretation of amnesty based on several criteria on a case-by-case basis. In this case, Michail brought up El Salvador’s civil war and the peace treaties that were made to end the war and pave the way for peace. A commission was established in a clause of the agreement to investigate serious acts of violence that occurred since 1980 and their impact on society. This commission’s task was to find the names of those who were held responsible for the civil war.

“However, because President Salvador and the parties in that country adopted a law that provides comprehensive amnesty to all parties



who are considered to have been involved in serious acts of violence in the 1980s, this legal issue could not be continued. At the time, the government’s adoption of the amnesty law was considered to have failed to comply with El Salvador’s international obligations as stipulated in the Peace Agreement and the American Convention on Human Rights,” explained Michail in his presentation, which was moderated by Muchamad Ali Safa’at from Brawijaya University and featured two responders, Ann Black from the University of Queensland, Australia, and Ananthia Ayu Devitasari from the the Constitutional Court of the Republic of Indonesia.

### Resolving Past Political Problems

The last speaker on the first day of the symposium, Andy Omara, from Gadjah Mada University explained “The Unintended Consequences of the Indonesian Constitutional

Court Ruling on the Truth and Reconciliation Commission Law”. Omara stated that one of the roles of the Constitutional Court of the Republic of Indonesia was to review the constitution’s constitutionality. Omara discussed the review of the Truth and Reconciliation Commission Law 27/2004 (TRC Law) proposed and decided by the Constitutional Court of the Republic of Indonesia in his paper.

In essence, the law was intended to resolve past political events, specifically the G30/S PKI in 1965. Omara summarized the impact of this incident on several Indonesians who were suspected of having direct or indirect ties with the PKI and were subjected to discrimination. As a result, they have limited access to politics and employment opportunities. In connection with this, hearings were held in 2004 and 2006, in which the Petitioners argued that several provisions of the TRC Law were

unconstitutional. As a result, they requested that the Constitutional Court of the Republic of Indonesia repeal this provision.

In this regard, Omara continued, the Constitutional Court of the Republic of Indonesia took steps to repeal the TRC Law entirely. According to Omara, the Constitutional Court’s decision demonstrates good faith in achieving a fair and just settlement of human rights violations by strengthening requests that demonstrate several provisions that cause legal uncertainty and injustice. Omara, on the other hand, saw the Constitutional Court’s decision to annul the TRC Law in its entirety as unlikely to establish fair and non-discriminatory treatment.

“In this case, the judiciary not only carry out judicial review and the final result of what it decides but it is also necessary for us to pay attention to the limitations of the institution’s authority (in this case, the Court), which then limits it to carrying out normative examinations,” explained the judge. Omara responded to responses from Miriam Cohen of Université de Montréal, Canada, and Rima Yuwana Yustikaningrum of the Constitutional Court of the Republic of Indonesia in his presentation.

### Constitutional Fundamentals

Christie S. Warren from William and Mary Law School in the United States, Roy Andrew Partain from the University of Aberdeen in Scotland, and Mohamad Mova Al Afghani from Ibn Khaldun University in Bogor, Indonesia, spoke on the second day of the ICCIS event. Mohamad Mova Al Afghani from Ibn Khaldun Bogor University discussed the “Strengths and Limitations of the Constitutional Court’s ‘6 Basic Principles’ as Normative Guidance



Andy Omara from Gadjah Mada University presented “The Unintended Consequences of the Indonesian Constitutional Court Ruling on the Truth and Reconciliation Commission Law” on Wednesday (5/10). Photo: PR



in Resolving Water Conflicts.” In his presentation, Mova explained the water problems faced by many regions in Indonesia. He mentioned that according to the World Bank, 67% of Indonesia’s GDP will be found in areas with high water problems such as water quality conflicts between rice farming and aquaculture and decreased water quality due to aquaculture or floating net cages in dams.

In fact, through the existence of the Water Resources Law, which contains six principles that later become normative guidelines in the implementation of water resources regulations, this water resources conflict or problem and its decision has been submitted to the Constitutional Court (MK). It is hoped that these norms will be used in the future to resolve water conflicts by stakeholders. However, according to Mova, these principles are ambiguous in many ways because several notes are later difficult to implement fairly and equally for all people, particularly those who are directly affected by or experience water difficulties and problems.

“Because the six principles cannot really provide guidelines for conflicts arising from use of water, they provide little guidance for resolving water conflicts arising from water quality or flooding, among other things. Because this principle disregards economic productivity and value considerations, it inadvertently prohibits the reallocation of water from smallholder farmers to industry,” explained Mova in his presentation, to which Max Steuer from O.P. Jindal Global University, India, and Titis Anindyajati from the Constitutional Court of the Republic of Indonesia responded.



Christie S. Warren presented a paper entitled “Comparative Constitutional Review” on Wednesday (5/10). Photo: PR

Mova recommended that the Constitutional Court reinterpret these fundamental principles teleologically to improve people’s welfare. Water relocation from low-value uses to higher-value uses is therefore permissible if it maximizes welfare. Furthermore, state stakeholders must broaden their interpretation of the six basic principles in water management as a whole, rather than just commercialization because non-commercial water use must still consider environmental issues that are also related to human rights.

#### **Constitutional Norms Comparison**

Christie S. Warren described a comparison of constitutional norms in several countries, including Japan, America, India, and others, in a paper titled “Comparative Constitutional Review.” Christie looked at conflict areas in her study, and after the conflict, it was discovered that there were several problems with the constitutionality

of the laws made by the government. However, she did not fully see the problems faced by the people directly.

Even when several countries attempt to strike a balance between legislative supremacy, the Constitutional Court’s existence must be optimized to protect its citizens’ constitutional rights. In South Africa, for example, national laws or South African Constitutional Court rules allow citizens to present a case directly or appeal to the Constitutional Court in the interests of justice, according to Christie. Christie received comments on the topic of her study from Yance Arizona from Gadjah Mada University and Helmi Kasim from the Constitutional Court of the Republic of Indonesia during the second session of ICCIS.

#### **Judges’ and Justices’ Obligations**

Following that, Roy Andrew Partain presented an article titled “Creating Rights, Terminating Rights, Overcoming Legal Conflicts,” to which

Bisariyadi from the Constitutional Court of the Republic of Indonesia responded. In essence, Roy stated that when resolving disputes over fragmented rights, judges must ensure the protection of these rights and uphold justice for them. According to Roy, problems in the enforcement of special rights frequently arise in court when multiple parties claim rights to certain acts, properties, or legal privileges, but these claims then overlap. Constitutional justices play an important role in determining which parties have rights in these cases.

“In this case, the function and dysfunction of rights, as well as the role of judges, particularly judges of the constitutional court, can be seen in regulating and modifying designs and allocating rights to ensure people’s lives run smoothly and harmoniously. Therefore, judges can play a central role in resolving this problem for the community and ensuring that conflicts in society can be resolved, rights are protected, and justice is upheld,” Roy explained during a discussion moderated by Dhiana Puspitawati from Gadjah Mada University.

The discussion was then led by I Dewa Gede Palguna, Justice of the Constitutional Court for the 2003-2008 and 2015-2020 periods, who was joined by three speakers: Woo Young Rhee from School of Law of Seoul National University; Ann Black from the University of Queensland; and Bayu Dwi Anggono, Rian Adhivira Prabowo, and Nando Yussele Mardika from the University of Jember.

In a presentation titled “Exporting a Constitutional Court to Brunei?: An Analysis of Benefits and Prospects”, Ann Black explained the concept of the Sultan as the head of the state, kingdom, and the state advisory board and the absence (yet) of a constitutional court to guard citizens’ constitutional rights. As a result, according to Ann, Brunei is one of the few countries that still uses the concept of absolute monarchy in its government. Despite this power, the Sultan appears to be above the law and becomes the state legislator because he can amend the constitution.

Furthermore, the judicial review has been prohibited in Brunei since 2004. As a result, despite being a wealthy and prosperous country, the people of Brunei lack freedom in a variety of areas, including freedom of expression, press, association, and religion. According to Ann, the Brunei Constitution contains a provision for an emergency government that delegated all powers to the Sultan without an effective check and balance mechanism. The law is still in effect, and the legal mechanism for enforcing it has not been determined. As a result, the Constitutional Court will be tasked with advocating for constitutional stipulations on the existing legitimacy as its first task.

“This path will lead to the restoration of Brunei as a constitutional monarchy rather than an absolute monarchy.” This will also give its citizens a voice, which will have an impact on their lives,” Ann stated in her presentation, to which Engin Yldrm from the Constitutional Court of Turkey and Abdul Ghoffar of the Constitutional Court of the Republic of Indonesia responded.



The atmosphere of the ICCIS discussion at BNDCC, Bali. Photo: PR



### Individual Constitutional Disputes

Woo-Young Rhee from School of Law of Seoul National University presented “Constitutional Adjudication on Constitutional Complaint as an Institution for Fundamental Rights Protection: The Case of the Republic of Korea,” with Bertus De Villiers of the State Administrative Tribunal and Curtin University Law School Australia and Mohammad Mahrus Ali from the Constitutional Court of the Republic of Indonesia as the respondents.

According to Woo-Young Rhee, the 1987 constitutional revision was a watershed moment in Korea’s democratization and increased protection of constitutional rights. Since its inception in 1988, the Constitutional Court of South Korea has played a role in advancing the ideals of democratization and respect for the basic rights of every individual in the country through amendments to the constitution accompanied by decisions produced by the Constitutional Court of South Korea. The emergence of constitutional adjudication of constitutional complaints was altered by the existence of constitutional reform.

This institution, Woo-Young Rhee continued, operates in accordance with the provisions of the Constitution and the Law on the Constitutional Court through the Constitutional Court of Korea, limiting citizens’ opportunities to file constitutional complaints if the government or other public authorities directly violate citizens’ basic rights. The number of constitutional complaints then increased, gradually strengthening the objective nature of constitutional adjudication based on constitutional complaints, even for individual complaints.

Bayu Dwi Anggono, Rian Adhivira Prabowo, and Nando Yussele

Mardika from the University of Jember gave a presentation titled “Constitutional Court and Conflict Resolution: Modality and Trajectory in Indonesia Post-Authoritarian Regime. This time, Zsolt Szabó from Károli Gáspár University of the Reformed Church of Hungary and Intan Permata Putri from the Constitutional Court of the Republic of Indonesia served as responders, providing notes on a paper presented by a team of two young writers accompanied by Bayu Dwi Anggono, the Dean of the Faculty of Law at the University of Jember.

Meanwhile, on Thursday (6/10/2022), Justice of the Constitutional Court, Daniel Yusmic P. Foekh, officially closed ICCIS activities. Daniel stated that all of the speakers had participated in an international discussion forum titled “Constitutional Court and Conflict Resolution.” All participants in international symposiums provided comments, feedback, and critical questions. As a result, the two-day discussion may

benefit the role of the judiciary, both the Constitutional Court and the Supreme Court, in resolving socio-political conflicts and human rights violations in various countries.

Daniel acknowledged that although this international forum was not intended to provide solutions to all challenges related to the Constitutional Court in resolving conflicts faced by every country, it has opened up discourse on issues that may receive less attention in comparative studies of constitutional law. “Through this symposium, I or maybe we all agree with what was conveyed by Professor Roy Andrew Partain that the Constitutional Court has more power to resolve conflicts that arise from various legal and cultural regulations. Judges of the Constitutional Court have a big role in ensuring conflicts over fragmented rights can be corrected and basic human rights can be protected,” said Daniel. ■

SRI PUJIANTI



Hakim Konstitusi Daniel Yusmic P. Foekh menutup ICCIS pada Kamis (6/10). Foto: Humas



## WHAT THEY SAID



## Rudolf Snurtz Durr

*(Secretary General of the Venice Commission)*

We thank the the Constitutional Court of the Republic of Indonesia (MKRI) for its ability to properly organize such a big event. Learning from previous congresses, the MKRI was able to be an excellent host for many international participants and this is the reason we trust MKRI as the organizer of the 5th WCCJ congress.



## Gianni Buquicchio

*(President Emeritus of the Venice Commission)*

I have come to Indonesia four times for different events and I fully understand that the Constitutional Court of the Republic of Indonesia is capable of being an excellent host in holding the 5th Congress of the WCCJ. The focus of this congress is on world peace. Moreover, the participants (the world's constitutional courts) who attended were law enforcers in their respective countries. Furthermore, they also have an important role in upholding the law and protecting human rights as well as guarding the constitution and democracy.



## Zühtü Arslan

*(Chief Justice of the Constitutional Court of Turkey)*

I appreciate the Constitutional Court of the Republic of Indonesia as an extraordinary congress organizer. This congress was very useful and thought provoking. I hope that in the future there will be more congresses like this.



## Villu Kõve

*(President of the Supreme Court of Estonia)*

This congress is highly interesting because participants can obtain other views regarding the implementation of the powers of constitutional courts outside Europe. I hope that in the future congresses of this kind can be held again so that every country can learn and find answers to problems in the field of law from other countries' perspectives.



## EXCHANGE OF THOUGHTS BETWEEN AACC



Justice of the Constitutional Court, Manahan MP. Sitompul delivered the material “Elections in Diverse Communities: Challenges and Opportunities” in a series of short course activities for the Association of Asian Constitutional Courts and Equivalent Institutions (AACC), on Thursday (6/10/2022) at the Bali Nusa Dua Convention Center (BNDCC), Bali.

The International Short Course is an annual official event hosted by the Constitutional Court of the Republic of Indonesia (MKRI), which serves as the Permanent Secretariat of AACC Planning and Coordination. This short course, which began in 2015, covers a wide range of topics concerning the work of the Constitutional Court and equivalent institutions, as well as the promotion of constitutional rights, with speakers

including judges and former judges of the Constitutional Court of the Republic of Indonesia, academics, researchers, and legal practitioners.

Participants in the short course included substitute clerks, reporting judges, researchers, AACC legal staff members, and academics from leading Indonesian universities. The diverse backgrounds of the speakers and participants of the short course encourage fruitful discussions

from various perspectives and the exchange of experiences based on their respective expertise.

At the opening of the International Short Course from the Association of Asian Constitutional Courts and Equivalent Institutions (AACC), Justice of the Constitutional Court, Wahiduddin Adams, stated that the concept of democracy or people’s sovereignty in all its variations has been accepted by the international community and



On Thursday (6/10/2022), Justice of the Constitutional Court, Enny Nurbaningsih spoke at the fourth session of the International Association of Asian Constitutional Courts and Equivalent Institutions (AACC) Short Course with material on “Maintaining Public Trust in the Constitutional Court” at the Bali Nusa Dua Convention Center (BNDCC), Bali.

has become a major framework in the structure of government. The holding of general elections to elect representatives of the people as well as the country’s leader is a form of democratic manifestation.

He stated that elections would be held in each province to elect governors, regents, and mayors. “You can imagine how busy and complex Indonesia’s election issues will be in the next two years leading up to 2024. Furthermore, this election is the first time Indonesia has attempted to test such an organizing mechanism. There has never been a record in Indonesian history that mentions holding elections like this.” he said before the speakers and the participants.

According to Wahiduddin, some practices show a tendency that holding elections can also be a triggering factor behind the big idea of democracy that is realized through holding elections. Some practices show a tendency that holding elections can also be a triggering factor for conflict in society. Social conflicts, for example, can range from dividing society as a result of actions supporting candidates or parties to conflicts that end in violence and even bloodshed. If there is unrest in society during every general election, a stigma develops that the transfer of power through elections can never be peaceful.

## Manifestation of Peace

Wahiduddin also emphasized that every nation’s ideal is peace. Many countries have inscribed the ideals of achieving peace as an ideal goal to be achieved in each of their Constitutions’ Preambles. The 1945 Constitution of Indonesia contains peace as a basic principle, and it is the goal of the Indonesian nation’s participation in maintaining world order. According to the Preamble of the 1945 Constitution, “... to form a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order based on freedom, perpetual peace and social justice, therefore the independence of Indonesia shall be formulated into a constitution of the Republic of Indonesia.”

## Principles of Justice and Elections

The International Short Course is broken down into sessions. Each session features a diverse range of speakers, including Justices of the Constitutional Court, Former Justices of the Constitutional Court, Members of the Administrative Court of the State of Western Australia, and others.

In the first session of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) International Short Course, Justices of the Constitutional Court for the 2003-2008 period and 2015-2020 period, I Dewa



Gede Palguna and Bertus de Villers, Members of the State Administrative Court Western Australia, participated.

Palguna stated at that occasion that he was interested in forming an Indonesian state government that protects the entire Indonesian nation and all Indonesia's citizens, as well as promoting public welfare, educating the nation's life, and participating in the maintenance of world order based on freedom, eternal peace, and social justice.

As a result, Indonesia's independence is enshrined in the Constitution of the Republic of Indonesia, which was drafted in the form of the Unitary State of the Republic of Indonesia, with people's sovereignty based on belief in One Supreme God, justice, and civilized humanity; Indonesian unity and democracy guided by wisdom in the assembly/representative, and by realizing social justice for all Indonesian

people.

According to Palguna, Pancasila is the foundation of Indonesia. The term refers to the five fundamental principles that serve as the foundation, as stated explicitly in the Preamble to the country's Constitution mentioned above. There is no universally accepted definition or scope of social justice. Although there is no universally accepted definition or understanding of social justice, experts and activists agree on the fundamental principles that should be associated with it.

The majority of experts and social activists agree that the problem of social justice can be traced back to the early 19th century industrial revolution, which "created" social stratification in society between the rich and the poor. When working for social justice, many people believe that taking a human rights approach is critical. Until recently, social justice was mostly associated

with economic and social rights. Experts believe it will be even more powerful if it includes all human rights.

From a legal standpoint, if a law does not fulfill one of these social justice principles, those with a constitutional interest, including citizens, can directly bring the law to the Constitutional Court and request that the Court review the law's constitutionality. If the Constitutional Court finds that the petitioners' arguments are well-founded, the Constitutional Court will declare the law unconstitutional, and the law will lose its legally binding force.

The problem, according to Palguna, was that in many cases, violations of constitutional rights in general, and the principle of social justice in particular, occurred not as a result of unconstitutional laws, but as a result of public officials' actions or omissions that violated citizens' constitutional rights based on this principle. In



Jeffrey A. Apperson, Vice President of International Relations National Center for State Courts (NSCS) shared his country's judicial experience in the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) Short Course, on Thursday (6/10/2022) at the Bali Nusa Dua Convention Center (BNDCC), Bali



some countries, these cases can be filed with the constitutional court as a constitutional complaint. Unfortunately, the Constitutional Court of the Republic of Indonesia lacks the necessary jurisdiction to hear these cases.

### Process of Transformation

Meanwhile, Bertus de Villers, a Member of the Administrative Court of the State of Western Australia, explained that the court can play a crucial role in a country's transformation. According to him, the judiciary can bring the text of the constitution to life.

According to Bertus, the court is responsible for pronouncing the law on the land for which he is responsible based on the facts and submissions before it. The courts cannot create the constitution, but they can make it a reality. Justice has the ability to give life to long-established, young, and emerging democracies.

Furthermore, according to Bertus, dynamics influence the outcomes of the judiciary's reasoning that are very complex, diverse, and influenced by current social issues. "In the *Marbury v. Madison* decision, the United States Supreme Court established what is now known as constitutionalism (*Marbury* 1803). In *Brown the Education Board of Topeka*, the United States Supreme Court overturned the 'separate but equal' dogma and set the United States (and, by extension, many other countries) on a civil rights path and equality (*Brown Case*, 1954). "These decisions, which arose from the oldest written constitutions, are prime examples of transformative constitutionalism," Bertus said.

### Court's Transformative Capability

Furthermore, Bertus stated that constitutional provisions should be used by courts to actively address essential issues that cause inequality in certain societies, such as socioeconomic recognition; minority rights and indigenous peoples; and environmental rights.

According to Bertus, the Supreme Court of Kenya defined transformative justice as follows, but in doing so, the court emphasized values associated with traditional liberalism (e.g., social justice, equality, devolution, human rights, rule of law, freedom and democracy).

Bertus then stated that describing transformative constitutionalism is simpler than defining it. While the definition of transformative constitutionalism is unclear, it has been argued that the fundamental difference between transformative constitutionalism and traditional liberalism is that the latter seeks formal equality, whereas the former seeks substantial equality.

Not surprisingly, transformative constitutionalism has 'received significant criticism' for wanting the courts to be more involved in policy priorities and even budget allocations. Pursuing one's own agenda can put the courts at odds with other branches of government, while being bound by constitutional texts can undermine public trust and court legitimacy. Every case study under the highest court managed to maintain the constitutional umbilical cord that connects it with the nation, upholding

and respecting the separation of powers, and this needs to be obeyed by the constitution where it serves, but it succeeded in changing the nation's direction.

In comparison to the age of the constitution in which the courts operate, the courts' role and transformative capabilities are deeper and multi-layered. The transformative role of justice can emerge from the democratization process, such as ending civil wars, eliminating socioeconomic inequality, recognizing ethnic minorities and indigenous peoples' rights, accommodating societal plurality, ensuring equal treatment of all individuals, defining the contours of federal-state intergovernmental relations, upholding constitutional values such as the separation of powers, or recognizing the importance of environmental issues.

While transformative constitutionalism is frequently mentioned in the literature in the context of socioeconomic rights, the true test of transformative constitutionalism is whether courts address issues relevant to a specific society and whether such judgments result in practical changes in society.

### Election

On the same occasion, Professor Topo Santoso from the University of Indonesia delivered material on elections for the welfare of the people during the second session. Topo stated that the election was one of the benchmarks for achieving citizen welfare. "Elected leaders will bring about changes that will bring about prosperity," he stated.

Topo went on to say that some



theories contend that competitive elections can create incentives for politicians to provide broad-based public goods. While quantitative research found that democracy increased spending, it had little or no impact on educational and health outcomes after the appropriate controls were applied. Case studies show, however, that democratic politics produces weak or negative incentives for politicians to promote reform. When they do it, it is almost never due to election pressure. The impact of democracy on social services is far more complex, dependent, and nuanced than recent theories suggest.

Topo also stated that the holding of elections by the KPU and all of its staff was one of the most important factors in ensuring the honest and fair implementation of elections. Then, monitoring and enforcement of election law, as well as the resolution of election disputes (Election Justice) by Bawaslu, law enforcement, and the Constitutional Court, community supervision, particularly through various non-governmental institutions, monitoring, and reporting to Bawaslu.

Furthermore, voter education encourages voters to select the best candidate with the credibility and ability to create prosperity, not select candidates who cheat or deviate from the rules (such as doing money politics, etc.). It also encourages voters to monitor/evaluate the executive leaders and people's representatives in the legislative body after they were elected to ensure that they fulfilled their promises during the election campaign and brought

them prosperity, and imposing negative consequences (not voting) on the executive leaders and people's representatives in the legislative body on this basis. If they disrupt/ignore their promise during the election, they will lose the next election.

### **Elections in various communities: opportunities and challenges**

The Justice of the Constitutional Court, Manahan MP. Sitompul, and Justice of the Constitutional Court, Enny Nurbaningsih, presented in the third session on October 6, 2022. According to Manahan, the Constitutional Court (MK), as the constitutional and democratic bodyguards, has made fundamental changes in the constitutional system, including to realize constitutional democracy.

Manahan stated that at the age of 19, the Constitutional Court attempted to organize the Indonesian democratic system toward constitutional democracy. Election dispute resolution, regional head elections, and a review of the constitutionality of the law are all important authorities in changing Indonesia's democratic system.

The Constitutional Court's presence not only upholds procedural justice but also substantive justice as reflected in the decisions. The constitutional rights of citizens guaranteed by the constitution have been protected in every decision taken by the Constitutional Court.

According to Manahan, efforts to protect and guarantee

human rights (HAM) in Indonesia continue and are making progress. The fundamental effort to protect and enforce human rights was carried out by amending the 1945 Constitution from 1999 to 2002.

Even though all human rights are constitutional rights of citizens, not all constitutional rights are human rights. Constitutional rights are those guaranteed by the 1945 Indonesian Constitution. This demonstrates that all of the citizens' rights governed by the 1945 Constitution are included in the category of constitutional rights that must be guaranteed and protected without exception.

Manahan explained how the Constitutional Court protects citizens' constitutional rights by having the authority to review the law. Furthermore, the Constitutional Court has the authority to resolve disputes over the results of general elections, including presidential and vice-presidential elections, legislative elections, or regional head elections.

Based on this authority, the Constitutional Court upholds democracy by protecting citizens' right to vote and/or be elected in general elections so that they can be conducted in accordance with democratic principles and rules. The 1945 Constitution guarantees a general election. The Constitutional Court ensures that the right to vote and/or the right to be elected as citizens is protected from manipulation and all forms of fraud that are not only contrary to democracy, but also harm citizens.

If the general election results are proven to have been obtained



All participants of the International Association of Asian Constitutional Courts and Equivalent Institutions (AACC) Short Course took a group photo after the event, on Thursday (16/10/2022) at the Bali Nusa Dua Convention Center (BNDCC), Bali

by manipulating the right to vote and/or to be elected, as well as by violating democratic principles, the Constitutional Court may annul the results.

### **The Importance in Maintaining Public Trust by the Constitutional Court**

Meanwhile, Justice of the Constitutional Court, Enny Nurbaningsih, delivered a presentation on “Maintaining Public Trust in the Constitutional Court” at the fourth session of the International Association of Asian Constitutional Courts and Equivalent Institutions (AACC) Short Course.

On this occasion, Enny stated that the Constitutional Court (MK) must carry out its duties while adhering to ethical standards for effective internal oversight

and good judicial governance to maintain public trust in the judiciary.

According to Enny, the formation of the Indonesian Constitutional Court was prompted by a variety of factors. In general, it starts with a political transition from authoritarian rule to constitutional democracy. State administration reform in Indonesia began in 1998 with a regime change from an authoritarian to a democratic state, and one of the outcomes of the constitutional reform was the formation of a new constitutional court.

Based on its power and authority, the Constitutional Court primarily serves as a defender of the constitution, democracy, and constitutional rights. Whenever a law represses and revokes constitutional rights,

the Constitutional Court of the Republic of Indonesia, at the request of the people, can play a role in protecting, advancing, and rehabilitating citizens’ constitutional rights from such oppression.

The Constitutional Court must build and maintain public trust through its primary responsibility of resolving constitutional disputes. The constitutional court, guided by the principle of procedural justice, must increase public trust by treating all parties with dignity and respect, including petitioners, state institutions, experts, witnesses, and other parties.

Furthermore, judges of the constitutional court and their support staff must help build and sustain public trust by fostering an organizational culture that promotes integrity, transparency,



and accountability in all judicial proceedings. Transparency in court procedures, public information on court processes and hearing schedules, easy access to courts, and services to access public documents such as decisions, regulations, e-journals, and research reports all contribute to increased public trust in the courts.

In response to explanation of the Justice of the Constitutional Court, Enny Nurbaningsih, Anak Agung Dian Onita emphasized the importance of public access to justice, particularly to the Constitutional Court. She claimed that the Constitutional Court established systems that were simple to use and transparent. There is a guide designed specifically for judges. The problem is whether this is enough to carry out the principles. Because the Chief Justice of the Constitutional Court had a bad experience dealing with a corruption case involving bribery in 2017 and was arrested by the Commission of Corruption Eradication (KPK). “As a judge, I’d like to ask you how you maintain your independence and impartiality in this case?”

In response to this, Enny emphasized that maintaining public trust is easy to say but sometimes difficult to do. As a result, as a constitutional judge, the requirements of a statesman are also crucial in gaining public trust. So, how do constitutional judges make their decisions?

### **Sharing Experiences in Facing Challenges in the Judiciary**

In the fifth session of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) Short Course, members shared their experiences in

each country’s judiciary of each country. Jeffrey A. Apperson, Vice President of International Relations at the National Center for State Courts (NSCS) shared one of his experiences.

Apperson stated in this session that the world is currently shifting away from the traditional justice system and toward technology-based justice. He revealed that he has been monitoring a number of countries in transition, including the United States, Serbia, Trinidad and Tobago, Mexico, and Nigeria. According to him, this transition period must be handled carefully to facilitate the improvement of the judiciary’s performance.

Electronic data can be used effectively to evaluate performance, increase public access and trust, transparency, judicial effectiveness, budget management, and planning in general. Perhaps most importantly, if technology tools are designed and implemented correctly, they can save time for everyone involved, or to put it another way, to boost productivity.

Apperson proposed maximizing the use of technology in the justice system to achieve this goal. The use of technology can be used to productively reengineer court business processes in order to increase court efficiency while adhering to social and constitutional values.

### **Voting Rights and Being Elected in the Electoral System in Mongolia**

Meanwhile, Dulamsuren Dashdondog, Mongolia’s representative, discussed the right to vote and be elected in Mongolia’s electoral system.

Mongolia, he said, adopted a new, democratic constitution in 1992. The constitution governs human rights and freedoms, the structure of the state, the separation of powers, and the authority of the highest executive organ that wields those powers. Furthermore, the constitution establishes democracy as the fundamental form of government. The right of citizens to vote and be elected, on the other hand, is a fundamental democratic value and the legal foundation of Mongolian elections.

According to Dulamsuren, the Mongolian Constitution states that “all governmental power in Mongolia shall rest with the people.” The Mongolian people will participate directly in state affairs, as well as through a representative body of state power elected by the people.” As a result, elections are the primary means for Mongolians to exercise their right to state and local self-government. Elections or voting have been used to form organizations in Mongolia since ancient times.

The Mongolian electoral system evolved into its current form between the late 18th and early 19th centuries, and it is now widely used in countries all over the world. Elections are universal and eligible citizens have the right to participate without discrimination based on ethnicity, language, race, gender, social origin, status, wealth, occupation, position, religion, opinion or education. ■

UTAMI ARGAWATI

## JUDICIAL REVIEW DECISIONS IN OCTOBER 2022

No.	Case Number	Case Subject	Petitioners	Decision	Date	Decision Link
1	70-PS/PUU-XX/2022	Material Review of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia	H. Irnensif, S.H., M.H., Dr. Zulhadi Savitri Noor, S.H., M.M., Wilmar Ambarita, S.H., M.Si., Dra. Renny Ariyani, S.H., M.H., LLM., dan Dra. Indrayati H S., S.H., M.H.	Before making the Final Decision: Granted the Petitioners' provisional petition; Declare to postpone the entry into force of Article 40A of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2020 Number 298, Supplement to State Gazette of the Republic of Indonesia Number 6755) comes into effect as of the date this decision was pronounced.	October 11, 2022	Click Decision

2	90/PUU-XX/2022	Review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution of the Republic of Indonesia	Cahaya (Petitioner I) and M. Syarief Usemahu (Petitioner II)	Withdrawn	October 31, 2022	Click Decision
3	92/PUU-XX/2022	Formal Review of Law Number 14 of 2022 concerning the Establishment of the Province of South Papua, Law Number 15 of 2022 concerning the Establishment of the Central Papua Province, and Law Number 16 of 2022 concerning the Establishment of the Papua Pegunungan Province against the Constitution of the Republic of Indonesia of 1945	E. Ramos. Petege	Withdrawn	October 31, 2022	Click Decision

## LIST OF VERDICTS

4	94/PUU-XX/2022	Review of Law Number 12 of 1980 concerning Financial/ Administrative Rights of Leaders and Members of the Highest/ High State Institutions and Former Leaders of the Highest/ High State Institutions and Former Members of State Higher Institutions against the 1945 Constitution of the Republic of Indonesia	Ahmad Agus Rianto	Withdrawn	October 31, 2022	Click Decision
5	99/PUU-XX/2022	Review of Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua against the 1945 Constitution of the Republic of Indonesia	Roberth Numberi	Withdrawn	October 31, 2022	Click Decision

6	27/PUU-XIX/2021	Review of Law Number 23 of 2019 concerning Management of National Resources for National Defense against the 1945 Constitution of the Republic of Indonesia	<p>1. The community of "Inisiatif Masyarakat Partisipatif untuk Transisi Berkeadilan" (IMPARSIAL), represented by Gufron, S.H.I., as Chair of the Governing Body;</p> <p>2. The Community of "Komisi untuk Orang Hilang dan Korban Tindak Kekerasan" (KontraS), represented by Indria Fernida Alpha Sonny, S.H., M.Phil., as Chair of the Governing Body;</p> <p>3. Kebajikan Publik Jakarta Foundation, represented by Usman Hamid, S.H., M.Phil., as Chair of the Governing Body;</p> <p>4. Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia, represented by, Totok Yuliyanto, S.H., as Chair of the Governing Body</p>	Denied	October 31, 2022	Click Decision
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## LIST OF VERDICTS

7	28/PUU-XX/2022	Review of Law Number 8 of 1981 concerning Criminal Procedure Law against the 1945 Constitution of the Republic of Indonesia	Umar Husni	Partly accepted	October 31, 2022	Click Decision
8	32/PUU-XX/2022	Review of Law Number 21 of 2008 concerning Sharia Banking against the 1945 Constitution of the Republic of Indonesia	PT Bank Pembiayaan Rakyat Syariah Harta Insan Karimah Parahyangan, represented by Martadinata, S.E., MAB., Ak as the Main Director	Denied	October 31, 2022	Click Decision
9	51/PUU-XX/2022	Review of Law Number 7 of 2014 concerning Trade against the 1945 Constitution of the Republic of Indonesia	Muhammad Hasan Basri	Denied	October 31, 2022	Click Decision
10	62/PUU-XX/2022	Review of Law Number 20 of 2011 concerning Flats against the 1945 Constitution of the Republic of Indonesia	Rini Wulandari, S.E., M.BA., Herman Saleh, Ir. Budiman Widyatmoko, and Kristyawan Dwibhakti	Denied	October 31, 2022	Click Decision

11	68/PUU-XX/2022	Review of Law Number 7 of 2017 concerning General Elections against the 1945 Constitution of the Republic of Indonesia	Garda Perubahan Indonesia Party (Garuda Party), represented by Ahmad Ridha Sabana, as General Chair and Yohanna Murtika as General Secretary	Partly accepted	October 31, 2022	Click Decision
12	69/PUU-XX/2022	Formal Review of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations against the 1945 Constitution of the Republic of Indonesia	The Labor Party, represented by Ir. H. Said Iqbal, ME as President and Ferri Nuzarli as Secretary General, et al	Denied	October 31, 2022	Click Decision
13	88/PUU-XX/2022	Review of Law Number 14 of 2008 concerning Public Information Disclosure against the 1945 Constitution of the Republic of Indonesia	Sulistya	Denied	October 31, 2022	Click Decision
14	91/PUU-XX/2022	Review of Law Number 18 of 2003 concerning Advocates against the 1945 Constitution of the Republic of Indonesia	Zico Leonard Djagardo Simanjuntak	Partly accepted	October 31, 2022	Click Decision



## ACCESS TO DIVORCE SETTLEMENT DATA IS HAMPERED BY THE UU KIP

**SULISTYA** Tirtoutomo petitioned the Constitutional Court for a review of Law No. 14 of 2008 on Public Information Disclosure (UU KIP). The hearing for case No. 88/PUU-XX/2022 was held on Wednesday (21/9/2022) in the Plenary Session Room of the Constitutional Court, presided over by Justice of the Constitutional Court, Manahan M.P. Sitompul, who was joined by Justices of the Constitutional Court, Wahiduddin Adams and Suhartoyo.

Sulistya Tirtoutomo (Petitioner), represented by I Wayan Suka Wirawan, contended that Article 6 paragraph (3) letter c, Article 17 letter g, Article 17 letter h number 3, Article 20 paragraph (1), Article 38 paragraph (2), Article 45 paragraph (1) and paragraph (2), Article 2 paragraph (4), and Article 52 UU KIP are in conflict with the 1945 Constitution. In one specific case, the Petitioner and Soeprawiro Ing Widjojo were divorced on the basis of Surabaya District Court Decision Number 82/Pdt.G/2002 /PN.Sby dated April 23, 2002. The Petitioner contested the land and house in Mansion Park Block MP I Kav. No. 10 Citraland City, Jeruk Village, Lakarsantri District, Surabaya

City, Indonesia, which was purchased by Soeprawiro Ing Widjojo (former husband of the Petitioner) which is (supposedly) a joint asset.

The Petitioner's ex-husband refused to share the joint assets, according to the decision. Regarding this matter, the Petitioner filed a civil lawsuit against the distribution of the joint assets. As a result, the Petitioner requires a copy of the certificate as well as the land *warkah* for the house. The certificate or a copy, however, could not be obtained because the Petitioner was not involved in the process of preparing the Sale Purchase Deed (AJB) and transferring the name of the house in any way. This impediment prompted the Petitioner to approach the Land Office institution in order to disclose information about the land sector. However, the request was denied because it contained prohibited information. The Petitioner then made a request to the East Java Province Information Commission for the resolution of public information disputes (KIP East Java).

Again, the Petitioner ran into issues because the dispute resolution process took up to 225 days from the time they filed the petition. Concerning the series of problems encountered, the Petitioner believe that the application of Article 2 paragraph (4) of the UU KIP has constitutionally harmed the rights, particularly Article 28D paragraph (1) of

the 1945 Constitution. This is due to the fact that the classification of public information as exempt information is based on expediency rather than justice.

The Petitioner was advised by Justice of the Constitutional Court, Wahiduddin Adams, to complete the portion of the Constitutional Court's authority. The Petitioner must then include in the legal position section the losses incurred as a result of the Petitioner's rights being violated by the Law under consideration. Examples of cases encountered by the Petitioner can be used as a starting point for this case application, but reasons must be provided against the norms under consideration.

Following that, Justice of the Constitutional Court, Suhartoyo provided advice in the form of a description of the legal standing that was too lengthy to summarize as the elements contained in Article 51 of the Constitutional Court Law concerning the Petitioner's constitutional disadvantage. In this request, Suhartoyo continued, the narration of the concrete case that occurred on August 22, 2022 can explain the case's continuation. Furthermore, the reasons for the application for the events experienced by the Petitioner at the level of implementation, rather than in the realm of norms, must be considered.

Meanwhile, Justice of the Constitutional Court, Manahan MP Sitompul, asked the Petitioner to summarize the theories outlined in the petition so that they were easier to understand and could be used to question the norms deemed harmful to the Petitioner. As a result, the Petitioner's legal position regarding the concrete event is becoming increasingly clear because the norm being reviewed is related to the loss suffered by the Petitioner. Furthermore, Manahan suggested that the Petitioner review Constitutional Court Decisions Numbers 3/PUU-XIV/2016, 45/PUU-XIV/2019, and 64/PUU-XIV/2016 to study cases that reviewed similar norms, even though the verdict was *Niet Ontvankelijke Verklaard* (NO). (Nur R./Sri Pujianti)



## THE PROBLEM ON THREE TERMS OF OFFICE OF THE GENERAL CHAIR OF THE ADVOCATE ORGANIZATION

**THE PROBLEM** of three terms as chairman of the advocate organization ended up at the Constitutional Court (MK). Zico Leonard Djagardo Simajuntak, an advocate, reviewed the provisions in Article 28 paragraph (3) of Law Number 18 of 2003 concerning Advocates regarding concurrent positions of leadership of an advocate organization (Advocate Law). The first hearing of Case Number 91/PUU-XX/2022 was held virtually on Tuesday (27/9/2022) in the MK's Plenary Session Room.

Zico argued in his application that there were both actual and potential losses. In fact, the Petitioners believe that there is no legal certainty regarding tenure and leadership succession in the heads of advocacy organizations.

Senior advocates, such as Hotman Paris Hutapea, have expressed concern about the three terms of office for the heads of advocate organizations, such as the three-term leadership of PERADI Otto Hasibuan. Furthermore, the Petitioner questioned the PERADI advocate organization led by Otto Hasibuan, which changed the AD/ART only to provide legitimacy for the three-term leadership.

In this regard, Saut Hamonangan Turnip stated that the absence of a check and balance mechanism in Article 28 of the Advocate Law could lead to arbitrariness within advocate organizations' internal management. As a result, he continued, it is critical to limit the term of office of an advocate organization's leadership or general chairman within a certain period of time and the maximum term limit as a form of check and balance mechanism as well as a form of prevention against potential abuse of power.

Responding to petition, the Panel of Judges provided a number of

suggestions for improvement to the Petitioners. Justice of the Constitutional Court, Suhartoyo, requested that the Petitioner improves the petition's system. He claims that the Petitioner's petition was not proportionate. Then, Suhartoyo requested that the Petitioner be careful to distinguish between issues of constitutional norms and issues of implementation of norms. He reminded everyone that PERADI was divided into camps.

Meanwhile, Saldi Isra, the Chairperson of the Panel of Judges, explained that in the *posita* of the petition, the Petitioner disputed the constitutionality of Article 28 paragraph (3) of the Advocate Law, but in the *petitum*, the Petitioner requested the annulment of Article 28 paragraph (2) of the Advocate Law. Saldi cautioned that this could make the Petitioner's petition unclear. Then he requested that the Petitioner reconstructs the norms that would be included in the *petitum*. (Lulu Anjarsari P./Nur R.)



## ONLINE MOTORCYCLE TAXI DRIVERS REVIEW STATE OFFICIALS' PENSION RULES

**THE CONSTITUTIONAL** Court (MK) held a preliminary review session on Wednesday (27/9/2022) on the petition for review of Law Number 12 of 1980 concerning Financial/Administrative Rights of Leaders and Members of the Highest/High State Institutions, as well as Former Leaders and Members of the Highest/High State Institutions and Former Members of the State Higher Institutions (UU 12/1980). Ahmad Agus Rianto, who works as an online motorcycle taxi driver and resides in Selopuro District, Blitar, filed this application, which was registered by the Constitutional Court with case number 94/PUU-XX/2022.

The Petitioner questioned the norms of Article 12 paragraphs (1) and (2); Article 13 paragraph (1), (2) and (3); Article 14 paragraph (1) and (2); Article 15; Article 16 paragraph (1), (2) and (3); Article 17 paragraph (1), (2), (3), (4) and (5); Article 18 paragraph (1) and (2); Article 19 paragraph (1),

(2), (3) and (4); Article 20; and Article 21 of Law 12/1980.

Essentially, all of the regulations in question govern pension matters for leaders and members of state high institutions, from the requirements to the payment mechanism. The Petitioner, represented by his attorney Muhammad Sholeh, stated during the online hearing that this petition had previously been examined and decided by the Constitutional Court in Case Number 41/PUU-XI/2013. However, the Petitioner believes that that petition is different from his.

Sholeh further explained that the application of the article governing pension funds for state officials is harmful to the Petitioner because the levies and taxes paid by the Petitioner should be used to improve basic community services and the construction of community-beneficial public infrastructure facilities, rather than pensions for members of the highest/highest state institutions.

Sholeh said that the pension funds allotted to state officials should be diverted to education and health care. This will undoubtedly be more beneficial

to the welfare of the people and in accordance with Article 23 paragraph (1) of the 1945 Constitution. Furthermore, Sholeh, the Petitioner, stated that state officials such as the President, Ministers, regional heads, and others are not positions whose length of service is only 5 (five) years and a maximum of only two terms, and thus they should not be eligible for a pension fund because the working period is too short. According to the Petitioner, this is wrong because the state's financial situation does not permit it if there is still a budget allocation for state officials' pensions. As a result, in their *petitum*, the Petitioner requested that the Court declare the *a quo* article unconstitutional by declaring that it violated the 1945 Constitution.

In response to the petition, Justice of the Constitutional Court, Wahiduddin Adams, asked the Petitioner to describe the main points of the petition by comparing it to the previous examination and pointing out the differences. Meanwhile, Justice of the Constitutional Court, Arief Hidayat, asked the Petitioner to explain why the Petitioner filed the petition (*posita*). (Lulu Anjarsari P./Utami Argawati)



## REVIEWING THE RULE THAT EX-CONVICTS CAN PARTICIPATE IN THE ELECTION FOR LEGISLATIVE CANDIDATES

**THE CONSTITUTIONAL** Court (MK) held a preliminary examination hearing on the review of Law Number 7 of 2017 concerning Elections (Election Law) on Tuesday (11/10/2022), Leonardo Siahaan, a law graduate, filed the application for case No. 87/PUU-XX/2022. The hearing was presided over by Justice of the Constitutional Court, Suhartoyo, who was joined by Justices of the Constitutional Court, Wahiduddin Adams and Enny Nurbaningsih in the Constitutional Court's Plenary Court Room. In the petition, the Petitioner review Article 240 paragraph (1) letter g of the Election Law, which is considered to be in violation of the 1945 Constitution, particularly the phrase "unless it is openly and honestly stated to the public

that the person concerned is a former convict," which indicates a form of exclusion from convicts who have been sentenced to 5 years or more who can nominate themselves as a requirement for candidates for members of DPR, DPRD of the province, and Municipal Councils. According to the Petitioner, this provision has the potential to allow former corruptors who have had their political rights revoked to run for office as members of the legislature representing the interests of society. Indeed, the Petitioner believed that candidates who lack integrity will exacerbate problems in parliament, both at the national and regional levels. This is because they will only pass on corrupt practices to other members of the legislature or will repeat corrupt practices that have already occurred.

In advising the Assembly, Justice of the Constitutional Court, Wahiduddin, provided a note regarding the Petitioner's constitutional losses that had not been measured by the application of the applicable provisions, such as the measure of fear over the enactment of the Law being reviewed.

Furthermore, the Petitioner was asked to pay attention to Law 12/2011, which has undergone amendments so that it can be perfected with the most recent law, as well as previous decisions submitted by the Constitutional Court on similar requests.

While Justice of the Constitutional Court, Enny, advised the Petitioner on his request for identity, which was still not in accordance with the provisions of the Constitutional Court's petition, the Petitioner's legal position should be strengthened by referencing the Constitutional Court Decision Number 81/PUU-XVI/2018, which form of constitutional loss which is the main entry point for the petition.

Following that, Justice of the Constitutional Court, Suhartoyo, stated that the issue of the Petitioners' constitutional losses was still quite general, so it is hoped that this petition can be described more specifically. Therefore, the constitutional losses, such as the right to vote, the right to be elected, and others, are more concrete. (Lulu Anjarsari P./Sri Pujianti)



## THE WEST SUMATRA LAW IS CONSIDERED NOT TO REPRESENT THE LOCAL WISDOM OF THE MENTAWAI PEOPLE

**THE DISTINCT** customary and cultural characteristics of the people of Mentawai Regency are not accommodated alongside 11 other districts in the West Sumatra region, which are rich in Islamic law nuances. On Wednesday (12/10/2022), this was one of the issues raised during the hearing review of Law Number 17 of 2022 concerning West Sumatra Province (West Sumatra Law) in the Constitutional Court's Panel Courtroom.

Dedi Juliasman (Petitioner I), Wahyu Setiadi (Petitioner II), Dicky Christopher (Petitioner III), and Basilius Najjiu filed the preliminary examination session for case number 97/PUU-XX/2022. The Petitioners challenged Article 5 letter c of the West Sumatra Law, which they claimed contradicted Articles 18B paragraph (2), 28D paragraph (1), 28E paragraph (2),

28I paragraph (2) and paragraph (3), and 29 paragraph (2) of the 1945 Constitution. Periati Br. Ginting, the Petitioners' attorney, explained in the online hearing that the philosophical value of "*adat basandi syara', syara' basandi Kitabullah*" adopted by the Minangkabau ethnic community as contained in the norm does not apply absolutely, nor is it a philosophy of life for the Mentawai people. In the West Sumatra region, two ethnic groups with distinct characteristics inhabit the area. Residents of the Mentawai people choose Christianity and Catholicism, use the Mentawai language as their daily language, and have a patrilineal lineage.

Periati also revealed a long-ago Minangkabau cultural hegemony over Mentawai culture. One of them occurred in the 1970s, when the name of the smallest area in Mentawai, known as '*laggai*,' was changed to '*nagari*,' as was the name of the entire region of West Sumatra. Furthermore, the Mentawai people frequently face cultural discrimination, such as the stigmatization of Mentawai women, single transmigration to the Mentawai region, and the use of headscarves for non-Muslim students in the education

sector from elementary to high school levels.

In his advice, Justice of the Constitutional Court, Manahan M.P. Sitompul, suggested that the Petitioners complete the petition with the most recent Constitutional Court Law. Then, in regard to the Petitioners' legal position, Manahan suggested that they explain the special terms that exist in Mentawai culture that are attached to the Petitioners themselves. Manahan also advised the Petitioners to separate their arguments for formal and material review from their review of the West Sumatra Law.

Meanwhile, in his advice, Justice of the Constitutional Court, Daniel Yusmic P. Foekh, provided a small note regarding the legal position of the Petitioners who are in a community that is not a legal entity, stating that the position must be clarified by the parties who may represent them inside and outside the court. If they are not incorporated, each Petitioner will explain their legal standing and constitutional disadvantages. Furthermore, the Petitioners can strengthen the sociological and legal aspects of the application of the West Sumatra Law, which has the potential to harm the Petitioners' constitutional rights.

Furthermore, Justice of the Constitutional Court, Enny Nurbaningsih, asked the Petitioners to clarify whether this review was a formal or material review, or both. This is because if a formal and material review are requested at the same time and the request is made within 45 days of the law's promulgation, the Constitutional Court will look into it further. However, if it exceeds this time limit, the Court will rule NO (*Niet Ontvankelijke Verklaard*). Meanwhile, the material judicial review application does not require a grace period and can be filed at any time. (Nur R./Sri Pujianti)

## SIMULTANEOUS REGIONAL ELECTIONS IN 2024 WILL REDUCE THE TERM OF OFFICE FOR REGIONAL HEADS

**THE CONSTITUTIONAL** Court held a hearing for judicial review of Article 201 paragraph (7) and paragraph (8) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents and Mayors (UU Pilkada) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution), on Thursday (13/10/2022) in the Constitutional Court's Panel Meeting Room. This application, which was registered with Number 95/PUU-XX/2022, was filed by Muhammad Ja'far Sukhairi Nasution, Regent of Mandailing Natal (Madina), North Sumatra Province.

During the hearing, Adi Mansar, the lawyer for Muhammad Ja'far Sukhairi Nasution (Petitioner), stated that the Petitioner is the regent of the Regional Head of Mandailing Natal Regency, North Sumatra Province, who was appointed by the Governor of North Sumatra on behalf of the Minister of Home Affairs on 22 July 2021, which coincided with several Regent Regional Heads of other Regencies in North Sumatra as a result of democratic voting on December.

Adi explained this in line with Saldi Isra's viewpoint in his book "Democratic General Election." Fortunately, the amended 1945 Constitution includes a mechanism for correcting laws that are deemed to be unconstitutional, namely judicial review to the Constitutional Court.



Furthermore, he claimed that the provisions of Article 201, particularly paragraphs (7) and (8), contradict the 1945 Constitution Article 22E paragraph (1) "General elections are held directly, publicly, freely, confidentially, honestly, and fairly every five years," as long as the phrase of the article is interpreted to apply to all regions, both provinces and regencies, and cities throughout Indonesia, totaling 514 Electoral Districts plus new divisional reorganizations. These provisions in Article 201 paragraphs (7) and (8) will not be in conflict with the 1945 Constitution if interpreted as not applying to the Petitioner and all Regencies and Cities voting in 2020.

He stated that the Petitioner believed that it would be more appropriate for the 2024 Pilkada if the 270 Regions that had not even served 5 (five) years were continued until the 5 (five) year period was completed, then to wait for the 2029 Election all regional heads whose term of office had ended were resumed by the official until 2029.

He also emphasized that the enactment of the Pilkada Law severely harmed the Petitioners' constitutional

rights, particularly Article 201 paragraphs (7) and (8) because it is clear that the Petitioner will end his tenure as Regent of Mandailing Natal Regency, North Sumatra Province, for the period 2021 to 2026, even though it is not yet in accordance with the usual service time because the Petitioner had been a Deputy Regent for 5 (five) years.

In response to the Petitioner's petition, Justice of the Constitutional Court, Wahiduddin Adams asked the applicant to strengthen the Constitutional Court's authority. When referring to the Constitutional Court's authority, the Constitutional Court Law, the Law on Judicial Power, and the Law on Legislative Formation are followed by the law number. Meanwhile, Justice of the Constitutional Court, Suhartoyo, requested that the Petitioner strengthen his legal standing. According to Suhartoyo, there is a problem in this application that needs to be clarified regarding legal standing, namely, the application is only submitted by the regent and does not include a deputy regent. (Nur R./Utami Argawati)



## Talking About Elections to Pancasila

As the year comes to a close, judges of the constitutional court continue to visit universities to share their knowledge and experience in exercising the Constitutional Court's constitutionally determined authority. Portraits of the judges of the constitutional court in the constitutional discussion room with students and advocates learning about elections, Pancasila, and justice is shown below.

### Aswanto Explained the Authority of the Constitutional Court in Settlement of Election Disputes



Deputy Chief Justice of the Constitutional Court (MK), Aswanto, was the speaker at the event entitled "Election Law Enforcement and Settlement of Election Legal Issues" organized by the Election Supervisory Body of the Republic of Indonesia, on Thursday (22/9/2022), in Jakarta.

### Constitutional Aspects of the State's Role in "Pandemic Economy Recovery"



Justice of the Constitutional Court, Manahan MP Sitompul, in a public lecture on constitutional law at the Law Faculty of Artha Wacana Christian University (UKAW), Kupang, East Nusa Tenggara (23/9/2022). This lecture was attended by new students and extension class students, taking place at the UKAW Campus Alfa Building.

## The Concept of “Efficiency-Justice” in the 1945 Constitution, a Form of Anticipating the Threat of Digital Disruption



Justice of the Constitutional Court, Wahiduddin Adams, at the Raden Fatah State Islamic University's 82nd Graduation ceremony on Saturday (24/9/2022) in Palembang, South Sumatra

## UNIMA Students Learn the Concept of Pancasila Ideology and the Rule of Law in Indonesia



Justice of the Constitutional Court, Daniel Yusmic P. Foekh, shared knowledge with students in a public lecture held by Manado State University on Saturday (24/9/2022) in the GKB Room, Manado. In the activity themed “The Position and Functions of the Constitutional Court in Guarding Pancasila as the Nation's Ideology”, Daniel invited students to first understand the meaning of Pancasila terminologically, etymologically, and historically.



## Pandemic Court: Guarantees for the Upholding of Constitutional Supremacy and Access to Justice



Justice of the Constitutional Court, Manahan MP Sitompul, opened a general lecture on constitutional law with the theme "Law on Reviewing Laws at the Constitutional Court during a Pandemic and Protection of Citizens' Constitutional Rights". This activity was held by the Faculty of Law, Widya Mandira Catholic University (Unwira), Kupang, East Nusa Tenggara on Friday (23/09/2022).

## The Constitutional Way of Dissolving Political Parties



Deputy Chief Justice of the Constitutional Court, Aswanto, delivered a key lecture online at the 2022 National Law Webinar - Constitutional Law Festival (CLFEST 2022). This activity was organized by the Legal Study and Research Forum (FKPH) of Universitas Brawijaya on Saturday (24/9/2022).

## Anwar Usman Discussed the Authority of the Constitutional Court in the KAI-Unpas Training



Chief Justice of the Constitutional Court (MK), Anwar Usman, became a speaker at the XVI Special Advocate Profession Training (DKPA) organized by the Indonesian Advocates Congress and Pasundan University (Unpas) Bandung on Saturday (24/9/2022) at the Grand Hotel Preanger Bandung, West Java.

## The Constitutional Court is Ready to Face the 2024 National Concurrent Elections



Chief Justice of the Constitutional Court (MK), Anwar Usman, gave an inaugural lecture to Students of the Faculty of Law of the As-Syafiiyah Islamic University (FH UIA) online, on Wednesday (28/9/2022).



## Students of Trunojoyo Madura University Learn the Concept of Fair and Prosperous in the Constitution



Deputy Chief Justice of the Constitutional Court, Aswanto, gave a lecture during the event "Ngaji Konstitusi" organized by the Faculty of Law, Trunojoyo Madura University (UTM) on Friday (30/9/2022). In the event themed "Constitution and State Responsibilities in Creating Just and Prosperous" which is part of UTM's 41st Anniversary event, Aswanto invited students to understand the state's responsibility in creating justice and prosperity.

## Election Law Develops Along with the Progressivity of the Constitutional Court's Decisions



Justice of the Constitutional Court, Suhartoyo, was the keynote speaker at a National Seminar with the theme "Efforts to Enforce Election Law in Handling Disputes over Indonesian Election-Electoral Results Disputes," on Friday (30/9/2022) at the Ki H. Muhammad Saleh Auditorium, Dr. Soetomo (Unitomo), Surabaya.

## Wahiduddin Adams Discussed the Position of the Constitutional Court in the Indonesian State Administration System



Justice of the Constitutional Court, Wahiduddin Adams, became the speaker at the inaugural lecture for new students of the Postgraduate Program Study of Law at the University of Kader Bangsa Palembang for the Academic Year 2022/2023, on Saturday (1/10/2022).

## Anwar Usman Discusses the Authority of the Court



Chief Justice of the Constitutional Court (MK), Anwar Usman, discussed the economy from a constitutional perspective in a discussion organized by the Bima College of Economics, West Nusa Tenggara (NTB), on Saturday (11/10/2022).



## Aswanto, Discussed the Constitutional Court's procedural law



Deputy Chief Justice of the Constitutional Court (MK), Aswanto, provided material for Special Advocate Professional Education (PKPA) Batch III of 2022 in collaboration with the Faculty of Law, University of East Indonesia (UIT) with DPN Peradi Makassar, Friday (14/10/2022) online.

## Daniel Yusmic Explained the Opportunities and Challenges of Examining the Government Regulations at the Constitutional Court



Justice of the Constitutional Court, Daniel Yusmic P. Foekh, was the speaker at a national seminar organized by the Faculty of Law, University of North Sumatra, on Saturday (15/10/2022). In the seminar which was held offline with the implementation of this health protocol, Daniel discussed the "Opportunities and Challenges of Examining the Perpu at the Constitutional Court".

## From the Traditional Assembly of the Archipelago Kingdom to University Faculty of Law Alumni Association (IKA FH) of Undip Learning Constitutional Rights

As part of citizens whose constitutional rights are guaranteed in the constitution, the Traditional Assembly of the Archipelago Kingdom and the Faculty of Law Alumni Association (IKA FH Undip) of Diponegoro University studied together at the Pancasila and Constitution Center, Bogor. The participants who had various backgrounds listened carefully to material on the constitutional rights of citizens and various problems and challenges faced by the Constitutional Court when resolving disputes over the general election results.

### PPHKWN MAKN Education



Deputy Chief Justice of the Constitutional Court (MK), Aswanto, closed the Activity to Improve Understanding of Citizens' Constitutional Rights for the Traditional Assembly of the Archipelago Kingdom (MAKN), on Thursday (22/9/2022) morning. The activity was attended by 125 participants offline at Grha Constitution 3, Pancasila Education Center.

### Building a Pancasila Narrative on Social Media



Justice of the Constitutional Court, Arief Hidayat, in his opening remarks at the opening of the Technical Guidance (Bimtek) Legal Procedure for Disputes over General Election Results (PHPU) for the Alumni Association of the Faculty of Law, Diponegoro University (IKA FH Undip) on Saturday (15/10/2022) at the Pancasila and Constitution Education Center (Pusdik MK) Cisarua, Bogor.

# UNDERSTANDING PANCASILA VALUES

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

*Substitute Registrar of the Constitutional Court of the Republic of Indonesia and Lecturer at the Faculty of Law, Tarumanegara University, Jakarta*

The book entitled “Pancasila” by the founding fathers could be used as the foundation for managing the life of society, nation, and state to create an independent, united, sovereign, just, and prosperous society. According to Bung Karno, Pancasila is a *philosofische grondslag*, fundamentals, philosophy, and deep thoughts, and is the foundation or basis for the establishment of an independent state. Apart from serving as the foundation for the establishment of the nation-state, Pancasila also serves as a guiding star or *Leitstar*, a national ideology, the nation’s outlook on life, the nation’s unifier, and the main insight of the Indonesian people in achieving national goals. State administrators and all citizens must understand, believe in, and implement the truth of Pancasila values in the life of society, nation, and state to maintain, strengthen, and socialize Pancasila values.

This book describes how Pancasila is thought to fulfill the requirements as the basis of the

state and national ideology for Indonesia’s pluralistic, broad, and large nation-state. Pancasila can accommodate the diversity that exists in the Indonesian nation-state. The first precept, **Belief in the One and Only God**, contains

the fundamental concept found in all religions and beliefs that Indonesians embrace or adhere to. The second precept, **just and civilized humanity**, contains the basic concept of respect for human dignity.



**BOOK TITLE: PANCASILA**

**AUTHOR: SOEPRAPTO**

**PAGES: 142**

**PUBLISHER: KONSTITUSI PRESS, FIRST EDITION, NOVEMBER 2013**

Humans are seated in accordance with their nature, dignity, and in a fair and civilized manner. The third precept, **Indonesian unity**, contains the concept of the nation's unity and integrity, as well as the country's territory with various pluralities. The fourth precept, **democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives**, is carried out in its implementation based on wisdom in deliberation/representation. Furthermore, the fifth precept, **social justice for the whole of the people of Indonesia**, contains the basic concept that all people in all regions of Indonesia enjoy and feel welfare equally.

Therefore, Pancasila, as the foundation of the state, national ideology, and the nation's outlook on life, is a common denominator for the Indonesian nation's pluralistic living conditions. Ir. Soekarno first presented Pancasila to the Investigating Agency for Preparatory Efforts for Independence (BPUPK) or Dokuritzu Zyumbi Tyoosakai on June 1, 1945, to answer questions from the Agency's Head regarding the basis of the state to be established. Bung Karno stated that he had long considered the idea of Pancasila. Bung Karno proposed five principles as the foundation of the state known

as Pancasila: (1) Indonesian nationality; (2) internationalism or humanity; (3) consensus or democracy; (4) social welfare; and (5) cultural divinity.

Furthermore, the author describes that in June 1945, the basic state formula was prepared by the Committee of Nine, consisting of: Ir. Soekarno (Chairman), Moh. Hatta, Muh. Yamin, Soebardjo, Maramis, Kiai Abd. Kahar Moezakir, Abikoeno Tjokrosoejoso, K.H. Wabhid Hasyim, Haji Agoes Salim, known as the 'Piagam Jakarta' or 'Jakarta Charter', the contents of which are as follows:

Godhead, with the obligation to carry out Islamic law for its adherents, according to a just and civilized humanity, Indonesian unity, and democracy led by wisdom in representative deliberations and by realizing social justice for all Indonesian people.

The above formulation was agreed upon at the Second BPUPKI Session, which took place between 10-17 July 1945, but at the Meeting of the Preparatory Committee for Indonesian Independence (PPKI) or Dokuritzu zyumbi Linkai on 18 August 1945, the formulation was changed due to the fact that the majority of the population of eastern Indonesia is Christian-Catholic, and thus they are considered discriminatory. However, in News of the Republic

of Indonesia Year II Number 7 dated 15 February 1946, the formulation of the fourth precept was changed from "deliberative-representative" to "deliberative/representative." Pancasila refers to this formulation with the MPR and MPR RI Decrees.

Furthermore, Pancasila contains the following principles: (a) the principle of belief in the One and Only God; (b) the principles of just and civilized humanity; (c) the principle of Indonesian unity; (d) populist principles led by wisdom in representative deliberations; and (e) the principle of social justice for all Indonesians. The values contained in Pancasila are abstract and universal basic values. As a result, these values must be clearly articulated so that every Indonesian citizen can easily understand, internalize, and apply them. Pancasila values serve as a benchmark, filter, and weight for all values in Indonesia, as well as for values in other countries.

According to the author, Pancasila, as the foundation of the state and the source of all sources of law and order, has only been a national agreement since 1966, with the stipulation of TAP MPRS Number XX/MPRS/1966. Pancasila, as state ideals and legal ideals, has a constitutive and regulating function in the life of the Indonesian people in the nation and state. Furthermore, Pancasila has met the requirements for

an ideology because it contains concepts, principles, and values that form a complete, unified, and fundamental value system that reflects the Indonesian people's outlook on life, philosophy of life, and ideals. Efforts to implement Pancasila can be accomplished by translating basic values into instrumental and practical values. To put this into action, three steps must be taken: understanding (articulation), internalization, and application.

Pancasila is described in this book as a way of life that discusses what Indonesians should do and what they should avoid. Pancasila, as a way of life, is an embodiment of the Indonesian nation's cultural values, which are thought to be good and true. As a result, Pancasila has the following roles and functions as a way of life:

1. Make the nation stand firm and have resilience against all threats, challenges, obstacles, and disturbances.
2. Indicate the direction of the goals to be achieved in accordance with the ideals of the nation.
3. Become a guideline and direction for resolving various problems and challenges in the fields of politics,

economics, socio-culture, and national security.

4. Encourage the development of enthusiasm and ability to build the Indonesian nation.
5. Demonstrate the thoughts on the ideal way of life.
6. Provide the ability to filter all foreign cultural ideas and influences that infiltrate modern science and technology. According to the author, Pancasila as philosophy means that Pancasila is understood as the result of deep contemplation on the life of the nation and state and is a separate system of thought or a philosophy system. Pancasila, as a philosophical system, consists primarily of a concept, principle, and value that serves as the foundation for the development of all norms, including legal norms, moral norms, national norms, state norms, and other norms in the life of the Indonesian nation and state.

As a result, Pancasila's precepts are not only a formal logical unit but also an ontological, epistemological, and axiological foundation. In the final section,

the author describes related insights and the main points of each of Pancasila's precepts, with the hope that understanding of Pancasila will be strengthened. It is possible to derive various values or guidelines and instructions for behavior and actions in the life of society, nation, and state from the main insights of each of the precepts in Pancasila. It can also be translated into various values or guidelines and instructions for the behavior and actions of individuals, families, and community groups based on profession, denomination, or other factors.

This book is highly recommended for teachers of all disciplines, particularly those who want to expand their knowledge of Pancasila, as well as students, law practitioners, and the general public as a reference.

### **Happy reading!**

**“Science will evolve in tandem with the evolution of human life. There are no impediments to self-development. It is not someone else who determines our personal style, but rather ourselves who decide which path our life will take.**

# CIDES and the Articles on Economists

LUTHFI WIDAGDO EDDYONO

A Researcher at the Constitutional Court

**M**aterial discussion on changes to the 1945 Constitution involve not only politicians, but also activists and civil society. The Center for Information and Development Studies (CIDES), which is part of the ICMI organization, is one of them.

With the theme of absorbing people's aspirations in mind, PAH I invited a number of non-governmental organizations to provide input on Article 34 at the 8th BP MPR PAH I Meeting on February 28, 2002, led by Deputy Chairperson of PAH I, Harun Kamil. Among the non-governmental organizations present are CIDES, CINAPS, CSIS, and LPTP.

According to Adi Sasono, representing CIDES, in Comprehensive Text on the Process and Results of the Amendments to the 1945 Constitution, Background, Process, and Results of the Discussion, 1999-2002, Book VII Finance, National Economy, and Social Welfare (Jakarta: Sekretariat Jenderal and Registrar of the Constitutional Court, Revised Edition, July 2010), economic articles can be amended. The economic articles are closely related to the realization of social welfare.

“In a study conducted by CIDES, I concluded that economic articles, like other understandings, cannot be placed

in a neutral and free choice spirit. The way our republic's founding fathers formulated this reflects the voter beliefs they hold. As a result, we cannot consider in the spirit of choice. The developed system is focused on related articles. Therefore, Article 23 of the Constitution is undoubtedly related to economic issues, as is Article 34 to Article 33. The title of Chapter XIV Social Welfare indicates that the economy must be placed in the service of constructing social welfare, rather than being a stand-alone function.”

Adi Sasono attempted to connect the economic system to Pancasila. This includes understanding how the nation's founding fathers perceived the economic system in terms of space and time.

“In terms of our country's fundamental principles, the economic system must be oriented toward belief in One Almighty God. This means that religious ethics and morals apply, rather than materialism, virtue is sought. As a result, Bung Hatta stated that Article 33 is an attempt to realize the image of God's loving and just kingdom on earth. What does it mean to be a just and civilized human being? I'm not familiar with blackmail. We reject exploitation *del'homme par l'homme*. It's about Indonesian unity, the principle of kinship, socio-nationalism, not the nationalism of entrepreneurs and local capitalists who talk

about protection because they can't compete with foreigners, but people's nationalism, socio-nationalism, and social democracy. Participatory democracy is more than just freedom, which in practice breeds communalism by allowing people to use feudalism to gain democratic votes from elites. Ours is a sociodemocratic democracy. That is what we read in the writings of the republic's founders, Bung Karno and Bung Hatta.

Populist, emphasizing the economic life of the general public, the people's economy is many people's lives. In addition to encouraging social emancipation and gender equality, social justice emphasizes the ability of the community rather than individuals. When considering the articles, particularly the economics article, we must understand the basis of this value. If we look at the history of economic thought, we can see that there has always been an ideological conflict between those who believe in materialism and those who see the economy as an instrument or something with a higher value objective. This material comprehension is then manifested in various theoretical ideas, which leads us into a battle. And in our understanding of the terminology of the principle of kinship, it symbolizes that battle. Those who argue that the economy must be a subsystem of a value system, of course, argue that the results of the program

must be the characteristics that make us come from a materialistic economic understanding.

Adi Sasono, the founder of CIDES, attempts to investigate how Pancasila is frequently misinterpreted, particularly from a social and economic standpoint.

“Of course, the reason that the principle of kinship is then misinterpreted is implausible is because Pancasila can be misinterpreted. This does not imply that Pancasila should be evicted. Indeed, we must reaffirm our commitment to the people and to justice because it appears that the worship of this object is dominant in decision-making considerations. We know that economic events are primarily the result of political decisions, and that political decisions are inextricably linked to economic affairs. And this is the tendency of the struggle of the great powers involved in decision-making. When this system fails, we become victims of the law of the economic jungle, *homo homini lupus*. Capital

strength will have a significant impact on power. That is, after all, why there is a formulation that emphasizes materialism’s rejection. As a result, I understand that economic article discussion is always related to education, and it is related to Article 34, which is titled “social welfare as a function of economic endeavors.”

Umar Juoro, also from CIDES, agreed with Adi Sasono and emphasized the importance of developing social security and adjusting it to economic capabilities.

“With regard to Article 34, the state develops this social security system, and we naturally expect the state to play a role. However, because this is also being debated in developed countries, such as education, we must consider that the state’s capacity is limited. Therefore, in my opinion, the country should develop a social security system that is also adapted to economic development. As a result, this does not imply that social spending

will be excessive, resulting in no investment. But, if we look at economic adjustments, that will be later in discussing the budget or the law on the state budget, not now. For example, if we look at the state budget, it actually violates our spirit, why? Because the reduction in subsidies, such as fuel, electricity, and so on, is not matched by a reduction in debt payments. It appears that this country is unconcerned about social welfare.

We don’t dare to do more aggressive debt restructuring, but we are brave enough, at least according to some, to cut our people’s welfare even if it is good for economic efficiency. If the Constitution says we are like that, then we will seriously consider the APBN Law in the future. In that case, the Minister of Finance or Commission IX need to fight for debt restructuring with national dignity so that the state or government has a more adequate budget for social welfare.”



ICMI CIDES Management Meeting with Central ICMI Expert Council Chairman Ilham Akbar Habibie (16/08/22)

## Unusual MPR Decree

**LUTHFI WIDAGDO EDDYONO**

*A Researcher at the Constitutional Court*

Prof. Sri Soemantri once stated that MPR Decree No. XI/MPR/1998 concerning State Administration that is Clean and Free of Corruption, Collusion, and Nepotism is distinct from other MPR Decree's because it specifically mentions the name HM Soeharto, implying that it is a concrete individual. "That is the only MPR Decree that mentions people's names," she said on May 19, 2006, as reported by Hukumonline.

The MPR Decree was enacted on November 13, 1998, just as Indonesia's leadership regime changed. After nearly 32 years of the New Order in power, the next order, known as the Reformation Order, became the starting point for the nation's progress.

According to the Considering Section, there has been a concentration of power, authority, and responsibility in the administration of the state in the President/Mandatory of the People's Consultative Assembly of the Republic of Indonesia, which has resulted in the non-functioning of the Highest State Institutions and other High State Institutions, as well as a lack of development of public participation in providing social control in the life of society, nation, and state.

Regarding point C, it is also explained that the demands of the people's conscience require state administrators to be able to carry out their functions and duties seriously and with

full responsibility in order for development reforms to be efficient and effective. Furthermore, it is explained in Consideration Point D that there have been business practices that are more profitable for certain groups that have fostered corruption, collusion, and nepotism, involving state officials and businessmen, thereby damaging the foundations of state administration in various aspects of national life.

As a result, the MPR, which was chaired at the time by Harmoko, emphasized the need for state administrators who could be trusted in the context of rehabilitating all aspects of national life in a just manner through efforts to examine the assets of state officials and former state officials and their families suspected of originating from corruption, collusion and corruption, and nepotism. As a result, a People's Consultative Assembly of the Republic of Indonesia Decree that regulates state administrators who are clean and free of corruption, collusion, and nepotism is required (considering points E and F).

The MPR Decree, which consists of six articles, clearly mentions the name of former President Suharto. Article 1 attempts to demonstrate the role of the People's Consultative Assembly of the Republic of Indonesia, which is committed to ensuring that the Highest State Institution, the Presidential Institution, and other institutions

function proportionally and correctly.

Other State Higher Education, in order for state administration to be carried out in accordance with the 1945 Constitution. Article 2 paragraph (1) assigns state administrators to executive, legislative, and judicial institutions to carry out their functions and duties properly and to be accountable to the community, nation, and the state, whereas paragraph (2) states that in order to carry out these functions and duties, state administrators must be honest, fair, open, and reliable, and free of corruption, collusion, and nepotism practices.

The MPR states in Article 3 paragraph (1) that in order to prevent corrupt, collusion, and nepotism practices, a person entrusted with holding a position in the administration of the state must take an oath according to his religion, announce his wealth, and be willing to have it examined before and after taking office. In paragraph (2), it is stated that the asset inspection referred to in paragraph (1) above is carried out by an institution established by the Head of State whose membership consists of the government and the public, whereas in paragraph (3), it is stated that efforts to eradicate corruption are strictly carried out by consistently enforcing the anti-corruption law.

An irregularity in an MPR Decree was discovered in Article 4. Article 4 states "Efforts to eradicate corruption, collusion,

and nepotism must be carried out strictly against anyone, including state officials, former state officials, their families and cronies, as well as private parties/conglomerates, including former President Suharto, while still taking the principle of the presumption of innocence and human rights”.

Article 5 provides for the delegation of authority so that the matters referred to in the Decree are further regulated by law. According to Article 6, the Decree went into effect on the date specified, which was November 13, 1998.

According to Prof. Sri Soemantri, as reported by Hukumonline, in doctrine, laws must be general in nature in order to be concrete individually, which means they cannot be addressed to anyone in particular, so no names are permitted. Similar provisions are included in the MPR Decree.

“MPR Decree No. XI/MPR/1998 is a one-of-a-kind decree because it specifically mentions the name HM Soeharto, indicating that it is a concrete individual. The only MPR Decree that mentioned people’s names was this one. However, it was a political decision at the time “Prof. Soemantri explained in an interview with Hukumonline.

Prof. Soemantri believes that the contents of the MPR Decree can be the substance of the Constitution or law, and thus must be transformed into the appropriate form of

statutory regulations. MPR Decree whose substance is in the Constitution will be governed by the Constitution; MPR Decree whose substance is a law will be governed by a law. I hope we can find a variety of laws that can be used to combat corruption, collusion, and nepotism. But what about former President Soeharto’s legal proceedings?

Moh. Mahfud Md., who was still a member of the DPR RI from the Kebangkitan Bangsa Party at the time and was published by Tempo, described the legal process well in his writings. According to Mahfud MD, Suharto was charged with corruption in accordance with the mandate of MPR Decree Number XI/MPR/1998 and the Criminal Procedure Code (KUHAP). However, due to his permanent illness, the Attorney General has halted his prosecution through a criminal prosecution halting decree (SKP3). “Whether you like it or not, the Attorney General’s SKP3 ended Suharto’s criminal case. Furthermore, the SKP3 was declared legally valid by the Jakarta High Court after being *pretriald* at the South Jakarta District Court. Because it is based on the provisions of the Criminal Procedure Code, SKP3 is a legal product “He elaborated. According to Mahfud MD, the Attorney General is justified in issuing SKP3 for certain reasons, including if it turns out that the case is not a criminal case, if there is insufficient evidence, if it is stopped by law (for example,

because the case expires and the person concerned dies), and if the reason is in the public interest. Although there is no mention of “permanent illness” as a reason for stopping prosecution for the sake of the law in Article 140 paragraph 1, the Attorney General’s interpretation of including “permanent illness” as a reason for SKP3 has been declared valid by the Jakarta High Court, so there is no need to question it any longer, unless later medical evidence shows that Suharto was not permanently ill.

“However, finding new evidence that Suharto is not permanently ill appears impossible, especially given his current developments.” As a result, we can no longer demand that the Suharto case be reopened in criminal court. The case was legally closed and could not be reopened. “The problem is that current efforts to politicize law frequently lead to the attitude that legal settlement means Suharto must be criminally prosecuted, even though SKP3 is also a form of legal settlement,” Mahfud MD explained in an article published on August 13, 2008.

As a result, what is currently being implemented is a civil effort. There are numerous cases that have yet to be disclosed and enforced. Of course, this is part of the effort to implement MPR Decree No. XI/MPR/1998 on the Administration of a Clean and Free State from Corruption, Collusion, and Nepotism.



# CONSTITUTIONALITY OF THE MUI'S ROLE IN DETERMINING SHARIA PRINCIPLES

● DR. WILMA SILALAH, S.H., M.H.

*Substitute Registrar of the Constitutional Court of the Republic of Indonesia and Lecturer at the Faculty of Law, Tarumanegara University, Jakarta*

**B**ecause Indonesia has the world's largest Muslim population, Islamic law, particularly sharia-based economic law, is prevalent in society. The public is very enthusiastic about Islamic economic practices, as evidenced by the establishment of Islamic Financial Institutions (LKS), such as Islamic rural banks or Islamic banking. Islamic banking is a reliable place for people to invest fairly, with a profit-sharing system based on Sharia principles. The main principle of Islamic banks is to provide benefits to the wider community while also fulfilling a sense of justice for all parties. Islamic banks implement provisions by refraining from usury and employing the profit-sharing principle as well as a buying and selling system.

On May 1, 1992, the first Islamic bank in Indonesia, PT. Bank Muamalat Indonesia (BMI), was established. This circumstance has resulted in the advancement of Indonesia's Islamic banking system, both in terms of institutional and supporting infrastructure aspects, regulatory instruments and supervisory systems, and public awareness and literacy

in Islamic financial services. In 2002, Bank Indonesia issued a Blueprint for the Development of Sharia Banking, which included policies such as the Indonesian Banking Architecture (API) and the Indonesian and International Financial System Architecture.

In accordance with Indonesia's national development goals, namely the creation of a just and prosperous society based on economic democracy, an economic system based on the values of justice, togetherness, equity, and benefits in accordance with sharia principles is being developed. The existence of an Islamic economic system in society is predicated on an understanding of Islam as a holistic or all-encompassing concept or system of life. In economic activity, Islam offers a set of systems in the form of personal coaching, interactions and systems, application principles, and space for developing the economy with all policy instruments, institutions, and legal aspects of development, control, and supervision. Of course, for these tools to deliver the quality, intensity and usability of the system it all depends on the people who develop, control and

supervise the functioning of the economic system.

When compared to conventional banking, Islamic banking is distinct. Islamic banking encompasses all aspects of Islamic banks and Islamic business units, including institutions, business activities, and methods and processes for carrying out their operations. As a result, proper legislation governing Islamic banking is required. Sharia economic rules or laws based on Islamic law demonstrate that Islamic law, like western law and customary law, is a source of national law. As stated in Article 29 paragraph (1) of the 1945 Constitution, the position of Islamic law in Indonesia is very constitutionally legal. The Indonesian Ulema Council (MUI) has authority over Sharia compliance, which is represented by the Sharia Supervisory Board. The issue of the MUI's role in determining sharia principles has already been submitted to a judicial review to the Constitutional Court, and has been decided by the Constitutional Court through Constitutional Court Decision Number 65/PUU-XIX/2021, dated

31 August 2022.

Constitutional Court Decision Number 65/PUU-XIX/2021.

In the Constitutional Court Decision No. 65/PUU-XIX/2021, dated August 31, 2022, filed by the Petitioner: Rega Felix, an individual Indonesian citizen, works as an advocate and is a customer of one of the sharia banks, applying for financing facilities through the Murabahah Contract. In order to advance his career as a lawyer, the Petitioner intends to repurpose sharia banking products that meet his needs and have a solid legal foundation. However, according to the Petitioner, sharia banking regulations are unclear because they are dispersed across various legal products and are mutually contradictory.

In its legal considerations, the Court concludes that the Petitioner has been able to specifically or specifically describe the existence of a causal relationship (*causal verband*) between the alleged loss of constitutional rights and the entry into force of Article 1 point 12 and Article 26 paragraph (1), paragraph (2), and paragraph (3) of Law 21/2008. The presumption that the alleged loss of constitutional rights is factual and potential in nature means that if the petition is granted by the Court, the alleged loss of constitutional rights will not occur again, or will not occur in the near future.

As a result, regardless of whether the Petitioner's argument about the constitutionality of norms is successful or not, the Petitioner has legal standing to act as the Petitioner in the *a quo* petition, according to the Court.

Furthermore, the Petitioner claims that the norms of Article 1 point 12 and Article 26 paragraph (1), paragraph (2), and paragraph (3) of Law 21/2008 are unconstitutional. The Petitioner presented the petition's arguments, which, if adopted by the Court, are as follows:

1. The nature of asset-backed financing, which means transactions based on real assets, distinguishes Sharia Banking from conventional banking transactions. Islamic banking is distinguished from conventional banking transactions by the nature of asset-backed financing, which refers to transactions based on real assets. As a result, the concept of property rights becomes critical in determining the legitimacy of an Islamic banking transaction.
2. The Petitioners' constitutional rights were violated because Law 21/2008 did not regulate property rights, despite the fact that property rights frequently transfer in sharia banking transactions. Law Number 5 of 1960 concerning Basic Agrarian Regulations contains provisions relating to property rights, specifically land rights. This raises concerns for the Petitioner when he plans to use Islamic bank products, particularly refinancing, because if the Petitioner bases it on the UUPA, the Applicant will be subject to high fees and a lengthy process of transferring ownership rights, whereas if it is only based on Law 21/2008, the Petitioner

considers it to be illegal;

3. According to the Petitioner, property rights arrangements should have been included in Law 21/2008, but Law 21/2008 only regulates institutional issues and instead delegates sharia principles to the MUI through a fatwa, which is then set forth in statutory regulations invited by BI/OJK. Therefore, the concept of property rights which is the substance of the law is regulated only by the MUI and BI Regulations (PBI) or OJK Regulations (POJK);
4. According to the Petitioner, the norms of Article 1 point 12 and Article 26 paragraph (1), paragraph (2), and paragraph (3) of Law 21/2008 have provided a 'blank delegation' to MUI and BI/OJK to regulate material that should be material content of the law without being given a limit of authority;
5. According to the Petitioner, the dualism of authority with the use of the words "stipulated" and "conferred" on two different institutions makes Article 26 paragraph (1), paragraph (2) and paragraph (3) multiinterpretable/ambiguous. As a result of this multi-interpretation nature, in practice OJK often chooses not to stipulate fatwas into laws and regulations but instead uses OJK Circular Letters or Sharia Banking Product Standard Books to stipulate in detail sharia principles which are often used as a reference for sharia banks in making standards. Operating Procedure (SOP)

for sharia bank products;

6. The Petitioner claims that, aside from Law 21/2008, the pattern of delegation to non-state institutions has never been followed. Giving a delegation to the MUI as a social organization in establishing sharia principles raises the question of what happens if the government revokes the MUI's license. How credible are sharia principles in sharia banking? Will a new social organization be formed to replace the MUI? According to Law 21/2008, the authority to establish sharia principles can only be exercised by the MUI, while the BI/OJK will only issue MUI fatwas. As a result, the function of establishing a rule/legal norm must be in the hands of a state institution with attribution/delegation authority from laws, so in this case, the MUI's role in determining sharia principles is limited to providing legal formation materials to BI/OJK, while the function of establishing sharia principles is with BI/OJK as a state institution.

According to the Court, Islamic banking differs or is distinct from conventional banking in a number of ways. The obligation of the banking process to comply with the Islamic sharia system is one type of specificity of Islamic banking. It is the religious authority that determines sharia standards in the banking industry, not the banking authority. According to Article 29 of the 1945 Constitution, all religious people, including Muslims, have the right to practice their religion and worship as they see

fit. In terms of Islamic banking, carrying out banking activities in accordance with religious law is unquestionably part of Muslims' economic way of life in accordance with their religion. In this regard, when legislators facilitate such needs by providing sharia banks, matters relating to the determination of sharia principles in banking administration must, of course, be left to holders of Islamic religious authority, rather than being taken over by the state through organs authorized to operate banking. This is because the intended sharia principles are related to Islamic law principles, the implementation of which can only be carried out by scholars with capacity, not by bank managers with authority, "capacity," and limited knowledge of sharia.

The construction of the norms of Article 26 paragraph (1), paragraph (2), and paragraph (3) of Law 21/2008 has two main contents: determining the substance of sharia principles, and determining the legal form of sharia principles' embodiment in laws and regulations. The MUI has authority over the substance of sharia principles, whereas the BI/OJK has authority over the incorporation of sharia principles into laws and regulations. The MUI has authority over the substance of sharia principles, whereas the BI/OJK has authority over the incorporation of sharia principles into laws and regulations. Doctrinally, the substance of statutory regulations, which are referred to as material sources of law, can come from a variety of sources, including religious laws, customary law, and others. Even though it can come from a variety of material sources, it can only be poured into the form of legislation

by an institution that is explicitly ordered by a law or regulation or formed based on authority. The problem is, when the legislators, in casu the formers of Law 21/2008 handed over the authority to determine sharia principles in sharia banking business activities to the MUI, was this a form of mistakes that can lead to legal uncertainty so that they must be declared as contrary to the 1945 Constitution.

Concerning the the aforementioned issues, essentially the principles and positions of Islamic banking, which differ from conventional banking, have been addressed. This distinction relates to the application of Sharia principles in banking administration, which involves the Islamic religious authority, namely the MUI. In fact, in order to provide legal certainty for stakeholders while also providing public confidence in using Islamic bank products and services, it regulates the type of business, sharia implementation provisions, business feasibility, fund distribution, and prohibitions for sharia banks and sharia business units that are part of the conventional bank. Meanwhile, to reassure the public who still doubt sharia principles in the operationalization of sharia banking, business activities that do not conflict with sharia principles, such as business activities that do not contain elements of *usury*, *maisir*, *gharar*, *haram*, and *unjust*, are regulated. If the MUI's involvement in sharia banking is limited to issuing fatwas related to sharia principles, which is indeed their authority as one of the religious authorities in Indonesian Islamic society; additionally, the intended

fatwa related to sharia principles will only become a regulation if BI/OJK has poured it into a BI Regulation/OJK Regulation. In this context, the MUI fatwa will become a source of material law from BI/OJK regulations relating to sharia banking. If this is to be seen from the perspective of the Indonesian legal system, then it can also be justified. Because, in the formation of statutory law, one of the sources is Islamic law. When Islamic law as outlined in the MUI fatwa is used as a material source of BI regulations/OJK regulations, then this cannot be considered as having a constitutional problem at all.

Concerning the existence of the MUI fatwa in determining sharia principles in the implementation of sharia banking business, it must be recognized as part of the national economic system that seeks to explore the potential and manifestation of community contributions in order to achieve national development goals as mandated by Pancasila and the 1945 Constitution, sharia banking requires various supporting facilities in order to provide maximum contribution to the development. The role of fatwas issued by trusted institutions in upholding sharia principles in all sharia banking activities, which will provide legal certainty guarantees for stakeholders, is one of the fundamental supporting facilities for sharia banking.

Whereas the MUI, a forum for Muslim scholars, *zu'ama*, and intellectuals, is an institution capable of answering and responding to fatwas, questions from the government, institutions, or social organizations about religious and social issues. An MUI fatwa is issued or determined at the request (*istifta*) of the fatwa

requester (*mustafti*), who can be an individual, a community organization, or the government. Fatwas in the field of Islamic finance are established collectively by an institution known as the National Sharia Council (DSN) MUI. The DSN MUI is responsible for issuing fatwas on systems, activities, products, and services in sharia economic, financial, and business institutions, as well as supervising their implementation, in order to develop businesses in sharia finance, business, and economics. In addition to being carried out collectively by the DSN MUI, the determination of fatwas in certain matters involves experts relevant to the issues under consideration. The DSN MUI is staffed by scholars, practitioners, and experts who are qualified in the fields of Fiqh, Ushul Fiqh, Fiqh Muqorin, finance, business, sharia economics, and the ability to enforce laws. The DSN MUI then determines the legal product as a MUI fatwa based on the Al-Quran, Sunnah (Al-Hadis), *Ijma*, and *Qiyas*, as well as other solid arguments (*mu'tabar*). Strictly speaking, the determination of MUI fatwas is done collectively by experts who meet the qualifications of a *mujtahid*. DSN MUI fatwas are proactive, responsive, and anticipatory. The requirements, nature, methods, and procedures for establishing fatwas are so stringent that results that benefit the general public (*maslahatul ammah*) and are in accordance with the essence of Islamic religious teachings (*maqashid al sharia*) are obtained, which are then set forth in different types of laws and regulations, namely PBI/POJK.

According to Article 8 of Law Number 21 of 2011 concerning the

Financial Services Authority and Article 23 of Law Number 23 of 1999 concerning Bank Indonesia, neither BI nor OJK have the function or authority that can be interpreted as the authority to stipulate sharia principles, particularly in sharia banking, as stipulated by the Petitioner. In the absence of authority to stipulate sharia principles as the fundamental basis for sharia banking activities, BI and OJK lack the competence and resources to assess and explain Islamic law as Islamic law experts do (*fuqaha*). If sharia principles are stipulated in the PBI or POJK by following the procedures for forming statutory regulations in general, BI/OJK will have difficulty formulating the substance of the PBI/POJK because they have limited knowledge related to substance or sharia principles. This means that handing over the stipulation of sharia principles in sharia banking to BI/OJK may be viewed as an arbitrary act by legislators, leading to chaos in determining the substance of sharia-based regulations. As a result, Muslims' religious beliefs and practices may suffer as a result.

That if a fatwa relating to Sharia principles is not regulated to be issued by an Islamic religious authority representing the majority of Indonesian Muslims, in this case the MUI, then chaos is very likely. Currently, there are approximately 60 Islamic social organizations in Indonesia that have fatwa institutions with distinct fatwa formation methods that differ from one organization to the next. Each has its own religious scientific foundation, which is likely to differ from one another. If fatwas relating to sharia principles in sharia

banking business activities are not explicitly regulated in law, they are to be determined by religious authorities representing Muslims in accordance with Law 21/2008, then this has the potential to lead to different fatwas on the same issue, including in the field of economics and sharia banking. In the end, this will only confuse people who use Islamic banking services and this will lead to legal uncertainty.

Historically, the establishment of Islamic banks was a result of the MUI National Conference in 1990. In this regard, MUI has actively issued fatwas related to Islamic banking activities long before Law 21/2008 required it. MUI plays an active role in the further development of sharia banking, providing guidance, supervision, and direction for the development of sharia banking. If the authority to stipulate sharia principles in the administration of sharia banking is transferred from the MUI to the BI or OJK, as requested by the Petitioners, a number of issues may arise, potentially leading to legal uncertainty. First, the uniqueness of implementing Islamic banking will vanish.

This is due to the fact that the specific aspect of Islamic banking regulation is the existence of other organs involved in determining sharia principles. Second, the stipulation of sharia principles will be issued directly by the state, rather than by religious authorities that protect the majority of Muslims' interests. As is well known, Indonesia is not an Islamic state, but rather a Pancasila state in which religious teachings and values of belief in

the One and Only God are regarded as a source of law. Because it is not an Islamic state, how can state authorities determine sharia principles, which are a component of determining Islamic law? Even if the state has complete authority to create laws, when it comes to religious law, such as sharia banking, the state must limit itself by delegating the determination of the legal material to religious authorities. In this case, the state adopts religious laws stipulated by religious authorities to become positive laws that are enforced in the administration of state affairs in Islamic banking management.

As a result, the substance of Sharia principles is determined by the MUI fatwa, which is one of the religious authorities recognized by Indonesian Muslims and mandated by the state. Meanwhile, the fatwa is loaded into laws and regulations by organs representing state authorities in the field of financial services or sharia banking, in the case of BI/OJK. Sharia principles stipulated through fatwas and issued by institutions with the authority to issue fatwas, in this case the DSN MUI, are in fact a form of guarantee, protection, and legal certainty for Muslims who want an economic life governed by Islamic Sharia, as stated in Article 28D paragraph (1) of the 1945 Constitution. In this case, the state ensures that the sharia principles that underpin the development of sharia banking regulations are the result of fatwas issued by scholars who are MUI members with special abilities in their respective fields and come from various organizations with diverse backgrounds. as well as contributions from a team of

experts in banking, economics, accounting, capital markets, insurance, BI, OJK, law, and the Great Courts. Thus, from various perspectives, establishing a fatwa provides legal certainty and security for stakeholders engaged in Islamic banking activities. The legislators in this case have placed something in its proper place, namely delegating the determination of sharia principles to scholars who are experts in the field of sharia and then incorporating these principles into laws and regulations (PBI/POJK) so that sharia principles resulting from these scholars' fatwas can be generally valid and binding. The stipulation of sharia principles by the DSN MUI through a fatwa, which is then stated in the PBI or POJK, is a manifestation that the state recognizes, respects, protects, and facilitates Muslims in carrying out their worship in accordance with their beliefs, as stated in Article 29 of the 1945 Constitution.

Thus, the Court concludes that: the provisions of the norms of Article 1 point 12 and Article 26 paragraph (1), paragraph (2), and paragraph (3) of Law 21/2008 have apparently not created legal uncertainty, injustice, uselessness, and obstacles for the Petitioner in access sharia banking services as guaranteed by the 1945 Constitution as argued by the Petitioner.

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



# INDONESIA, CENTER OF THE WORLD'S ATTENTION! (G20 vs WCCJ)

**Immanuel B.B. Hutasoit**  
Kepala Subbagian Kerjasama Luar Negeri

The Constitutional Court of the Republic of Indonesia (MKRI) received an information from The WCCJ Secretary General Schnutz Durr about the Algerian Constitutional Court (MK) resignation as host of the WCCJ's 5th Congress in mid-2020. Then, the possibility of hosting a prestigious event for the Constitutional Court around the world is open for The Indonesian Constitutional Court.

Before the Algerian Constitutional Court issued an official letter of resignation and supported Indonesia as the host of the WCCJ's 5th Congress, Indonesia was actually prepared to compete as the 6th congress organizer and fully supports Algeria as the host of the fifth congress. However, as the saying

goes, "destiny cannot be rushed or delayed," and the 5th Congress of the WCCJ became the MKRI's destiny.

Before declaring its willingness, one of the agenda items that was thoroughly discussed is: in what year was the MKRI ready to run this congress? According to the agenda, the WCCJ congress is scheduled to take place in 2021. However, since preparation time is limited, the MKRI intends to propose postponing the congress. One of the internal considerations was not holding the WCCJ Congress (which has the second largest membership after the United Nations) at the same time as the G20.

At the same time, the Indonesian government officially

announced that the G20 would be held in Labuhan Bajo, East Nusa Tenggara, in 2023. With this information and full confidence, the MKRI immediately stated its readiness to host the 5th WCCJ Congress in 2022 in an official letter to the WCCJ Secretariat.

An interesting fact happened when the MKRI sent a letter to WCCJ members for approval. 10 from out of 15 members of the WCCJ Bureau's voted for Indonesia; one member *obscur* (not mentioning specific support), and four members did not vote (abstained). Informal information was received that some of the abstentions were preparing to support the Supreme Court of Canada, which was also interested in hosting the congress, but no formal proposal had been

submitted until the elections were held. Then, through letter number J.Dem.396. Sc/mk dated 21 September 2020, Indonesia was officially elected as the host of the 5th Congress of the WCCJ based on the voting result.

Not long after the MKRI was chosen to host the WCCJ congress, Minister of Foreign Affairs Retno LP Marsudi announced in November 2020 that Indonesia would host the G20 Summit in 2022. Actually, the G20 Summit will be held in Indonesia in 2023. However, because Indonesia will be the ASEAN Chair in 2023, the government swapping the G20 presidency with India, resulting Indonesia serve as G20 President (host) in 2022, while India will hold the G20 Presidency (host) in 2023.

### **Multidimensional Crisis**

The COVID-19 pandemic is indeed resulting a multidimensional crisis. The G20, as a group of the world's major economies with political and economic clout, has the potential to promote its recovery. In order to maintain sustainability, Indonesia, as G20 President, carries the spirit of recovery with the theme "Recover Together, Recover Stronger." This theme was raised by Indonesia, as the world is still under pressure as a result of the COVID-19 pandemic, necessitating a collaborative and inclusive effort to find a way out or a solution for global recovery.

To achieve this goal, three priority sectors are considered

to be critical to a strong and sustainable recovery: (1) strengthening the global health architecture; (2) digital transformation; and (3) energy transition. These three sectors are given special attention because, in order to deal with a pandemic, the global world must be more responsive and capable of dealing with other health crises. Similarly, the importance of digitalization in moving the economy during a pandemic has become a new source of economic growth, while encouraging the energy transition to new and renewable energy by prioritizing security, accessibility, and affordability. Discussing about these things would be more interesting if they were actual and held not far from the pandemic, so that 2022 is indeed the most suitable time.

### **Meeting Patterns**

The G20 has two discussion pillars: the financial pillar, known as the Finance Track, and the Sherpa Track, which addresses economic issues and non-financial development. Each pillar has a working group known as Working Groups. In addition to these two elements, the G20 has Engagement Groups, which are ten community groups of various professionals that play an important role in global recovery, particularly through concrete ideas and policy recommendations that are directly relevant to G20 leaders.

The G20 meeting in Indonesia is scheduled for more than 180 series of activities, including

Engagement Groups meetings, Working Groups meetings, Deputies / Sherpa Level Meetings, Ministerial Level Meetings, to Heads of State Level Meetings (KTT). The series of activities of the Indonesian Presidency are spread across several cities in Indonesia, before the peak is held in Bali on 15-16 November 2022.

Another G20 meeting, another WCCJ. The WCCJ congress must begin with a meeting at each association because it is a large forum for several MK associations based on area/territory/language similarity. The World Court of Justice (WCCJ) is in charge of ten organizations, including The Association of Asian Constitutional Courts and Equivalent Institutions (AACC); The Association of Francophone Constitutional Courts (AFCC); Commonwealth Courts; Eurasian Association of Constitutional Review Bodies (EACRB); Conference of Constitutional Courts of Portuguese Speaking Countries (CJCPLP); Conference of Constitutional Jurisdiction of Africa (CCJA); Conference of European Constitutional Courts (CECC); Ibero – American Conference on Constitutional Justice (CIJC); Southern Africa Chief Justice Forum (SACJF); Union of Arab Constitutional Courts and Councils (UACCC).

Internally, the ten associations discussed a number of strategic issues. The association agreement was then submitted to the WCCJ Bureau Meeting by each President/Chair

of the Association, as the WCCJ “executive body” whose job it is to make several important decisions to be submitted to the General Assembly.

Whatever the Bureau Meeting produces must be reported to all WCCJ members in the General Assembly. There is also a decision-making mechanism in the General Assembly, one of which is deciding on a declaration and determining the members of the WCCJ bureau from intercontinental representatives.

### **Benefits for Indonesia**

There are numerous strategic benefits from the G20 Presidency and the WCCJ Congress in Indonesia. This potential can be measured for the G20 in terms of economic, foreign policy, and social development.

First, the G20 Presidency will have a direct impact on the economy, as over 20,000 international delegates are expected to attend the meeting, which will be held across Indonesia. Previous presidency experience in Turkey, Argentina, China, and Japan had a positive impact on the country. The number of international delegation visits exceeded 13,000, according to records. Each G20 summit is also estimated to generate more than \$100 million or IDR 1.4 trillion in revenue for the host country (data from the official website of the ministry of foreign affairs).

Second, as the G20 Chair, Indonesia has the opportunity to encourage cooperation and initiate concrete results in the three priority sectors. Indonesia has the momentum to gain the world’s confidence in its ability to lead the global recovery.

Third, in terms of long-term economic and social development. The G20 presidency provides momentum to demonstrate that ‘Indonesia is open for business.’ It is hoped that this will have a multiplier effect on the regional economy because it benefits the tourism, lodging (hospitality), transportation, and creative economy sectors, as well as local MSMEs.

Similarly, the MKRI also gained benefits, particularly from the holding of the WCCJ Congress. The MKRI, for example, has become one of the centers for judicial institutions that have been successful in upholding the constitution while also maintaining peace in a pluralistic society.

Then, information and dissemination about the MKRI and its decisions are now increasingly resounding from the Asian level to the global level. As a knowledge management to follow the development of constitutional law enforcement and its challenges in other parts of the world, and can be a separate milestone in increasing the experience and capacity of MKRI personnel.

### **Symbiosis Mutualism**

Even though it was initially not expected to take place in the same year, there were numerous benefits and positive values to holding these two activities concurrently in the same year. Simply put, the use of Bali as the main venue for the event made it easy for the MKRI as the host of the WCCJ congress to experience extra fast and comprehensive development throughout Bali, which will also be used as the location for the G20 Summit. Road construction, greening the Nusa Dua access road, renovation and construction of the Airport VIP Room, and other activities give the impression of exceptional preparedness. On the other hand, the MKRI’s trust as a host can be used by the Government of Indonesia to demonstrate that law enforcement in Indonesia is provides legal certainty and legal justice, which can improve the investment climate. In general, Indonesia’s selling point to the G20 members starting from WCCJ Congress just a few weeks before the G20 Summit.

The smooth and successful WCCJ and G20 congresses demonstrates how the judiciary and executive (along with the legislature) have a harmonious relationship and support one another in terms of law enforcement, democracy, human rights, and advancing the global economy for the realization of world peace. (\*)

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