

KONSTITUSI



**THE FOLLOW-UP ON THE
DKPP'S DECISION CAN BE
AN OBJECT OF A LAWSUIT**

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CONSTITUTIONAL HISTORY CENTER

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Editor's Foreword

The "Headline" of the May 2022 Edition of Konstitusi Magazine discusses the decision of the Constitutional Court (MK) No.32/PUU-XIX/2021 in the case of reviewing the General Election Law (Election Law).

The petition for judicial review of the constitutionality of the Election Law against the 1945 Constitution was filed by Evi Novida Ginting Manik and Arief Budiman (Indonesian Election Commissioners for the 2017-2022 Term). Evi and Arief questioned the sanctions for dismissal carried out by the Honorary Council for General Election Organizers (DKPP).

Evi was dismissed based on DKPP Decision Number 317-PKE-DKPP/X/2019 dated March 18, 2020, and was followed up with Decree of the President of the Republic of Indonesia (Keppres) Number 34/P of 2020 on the Dishonorable Discharge of KPU Members for the 2017-2022 Term dated March 23, 2020.

In its ruling, the Constitutional Court stated that Article 458 paragraph (13) of the Election Law is contrary to the 1945 Constitution and is not legally binding insofar as not interpreted that, "The decision as referred to in paragraph (10) is binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu are decisions of state administrative officials (TUN), who carry out government affairs in accordance with a statutory regulation that is individual, tangible, and final which can be the object of a lawsuit in the State Administrative Courts."

In addition to the news in the headline, various interesting information is presented through the special rubrics of Konstitusi Magazine. This is the editorial introduction. Finally, we wish you a pleasant reading experience! The entire editorial staff of the "Konstitusi" Magazine wishes you good health. Long Live the Constitution!

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THE FOLLOW UP ON THE DKPP'S DECISIONS CAN BE AN OBJECT OF A LAWSUIT IN THE STATE ADMINISTRATIVE COURT

The final and binding nature of the DKPP's (Election Organizer Ethics Council) decisions, as stated in Law Number 7 of 2017 concerning General Elections (Election Law), is reviewed once again. This time, former General Election Chairmen Arief Budiman and Evi Novida Ginting Manik filed a petition on material judicial review of Article 458 paragraph (13) of the Election Law.



24 ACTION



Constitutional Justice Daniel Yusmic P. Foekh gave a public lecture with the theme "The Opportunities and Challenges of Judicial Review of the Perppu in the Constitutional Court" at the Faculty of Law of Sam Ratulangi University on Friday (22/4/2022). The lecture took place onsite with strict adherence to health protocols.

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THE MEANING OF FINAL AND BINDING NATURE OF DKPP'S DECISIONS

The Constitutional Court (MK), through Decision Number 32/PUU-XIX/2021 dated March 29, 2022, affirmed the constitutional meaning of the provisions of Article 458 paragraph (13) of Law Number 7 of 2017 on General Elections (UU 7/2017), which reads, "The decision as referred to in paragraph (10) is final and binding." The elucidation merely states that "it's pretty clear." However, it can lead to various interpretations, which can cause legal consequences. The DKPP interprets that their decision cannot be taken by any legal means, including being challenged in the State Administrative Court. This is the essential point of the Constitutional Court's decision this time.

Evi Novida Ginting and Arief Budiman Budiman (Indonesian Election Commissioners for the 2017-2022 Term), as the petitioners, in this case, have concerns that if the DKPP's final and binding legal products are interpreted as decisions and cannot be taken by any legal means, including being challenged in the State Administrative Court, then many more people will not be acknowledged as election organizers. The petitioners feel they have become 'victims' of such an interpretation. They add that the final and binding nature of the DKPP's decision makes the DKPP as an institution feel superior to other election organizers. Is it true?

The norm had previously been reviewed and decided by the Constitutional Court (MK). At that time, it was still contained in Law No. 15 of 2011 on General elections. The Constitutional Court (MK), through the Decision Number 31/PUU-XI/2013 dated April 3, 2013, had already given legal considerations. However, the law was amended eventually and Law 7/2017 is stipulated. The norm is contained in Law 7/2017. The Constitutional Court reviewed the norm once again.

Practically, because the Court had already decided on a similar norm, then the legal considerations of the Constitutional Court's Decision Number 31/PUU-XI/2013 have been reaffirmed. Thus, in Decision Number 32/PUU-XIX/2021, the Constitutional Court linked, referred to, and reiterated the legal considerations of the previous decision. What is confirmed? The phrase "final and binding" in the norm is declared unconstitutional as long as it does not imply that "The decision as referred to is final and binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu."

The Court once again answered the question, is it final and binding referred to in the norm the same as the final and binding decision of the judiciary? The

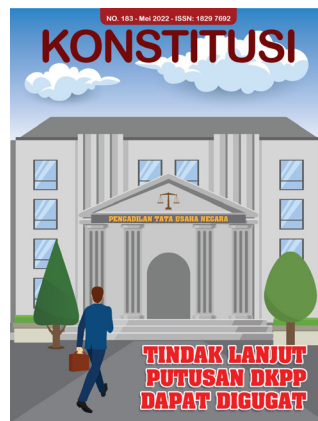
Constitutional Court asserted that the final and binding nature of the DKPP's decision could not be equated with the final and binding decision of the judiciary institutions in general. Why? Because firstly, DKPP is an internal election organizer authorized by law. Second, the final and binding nature of the DKPP's decision must be interpreted to apply to the president, the central, provincial, and regency/city KPU (General Elections Commission), and Bawaslu (Elections Supervisory Body). Third, the DKPP's decisions are decisions of state administrative officials (TUN), who carry out government affairs in accordance with a statutory regulation that is individual, tangible, and final, which can be the object of a lawsuit in the State Administrative Courts."

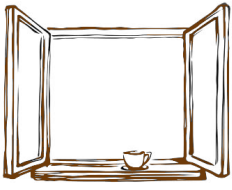
The Constitutional Court's decision is clear! The problem has actually been solved at the normative level of the law. However, why even after the Constitutional Court Decision Number 31/PUU-XI/2013 is stipulated, is there still a problem of legal uncertainty as experienced by Evi and Arief? According to the Constitutional Court, legal uncertainty at the level of norm implementation occurs due to different interpretations, especially those not in line with the Constitutional Court Decision Number 31/PUU XI/2013. Why can different interpretations occur of the Constitutional Court's Decision? This happens because there is a different perception in understanding the Constitutional Court Decision as a result of separating legal considerations and ruling. In fact, in understanding the Constitutional Court's decision, we cannot separate the

ruling and legal considerations as the ratio decidendi. Both are unified as a whole and mutually binding integrals. So, we cannot separate them so that there is no 'misguided' perception, even contrary to the essence of the decision.

Interestingly, in Decision Number 32/PUU-XIX/2021, the Constitutional Court reaffirmed its stance that DKPP is not a judicial institution. DKPP, like KPU and Bawaslu, are election organizers with equal positions. All three have equal status, and none has a superior position.

Within the framework of such a constitutional meaning, the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu must implement and follow up on DKPP decisions. They can't say no! Meanwhile, the follow-up product can be the object of a lawsuit in the State Administrative Court. Consequently, the State Administrative Court's judicial decisions that already have legal force must be obeyed and become the decisions of the judiciary that have executive power. Everything is clear, right? Don't feel superior. Live long, Constitution! ■





Window

J'ACCUSE

I D.G.Palguna

"Truth and justice, so ardently longed for! How terrible it is to see them trampled, unrecognized and ignored"

(Kebenaran dan keadilan didambakan dengan begitu bergairah. Alangkah mengerikan melihatnya diinjak-injak, tidak diakui, dan diabaikan)

Emile Zola – 19th Century French novelist, journalist, and playwright.



J'accuse (I Accuse) is the article's title in the form of an open letter written by the famous French author, Emile Zola, addressed to the President of France, Felix Faure. The full title of the open letter is J'Accuse...! (Lettre au President de la Republique). The open letter was printed on the front page of the daily newspaper L'Aurore, a liberal-socialist literary newspaper, on January 13, 1898. Journalists named Zola's writing one of the world's best-known newspaper articles. Zola, the great and influential French author who is recognized as a pioneer and the most important example of the literary school of naturalism in the theater world, through his open letter, expresses his frustration and disgust with a scandal that has made France

the world's gossip and ridicule, the Dreyfus Affair. Some refer to the Dreyfus Affair or the Dreyfus Scandal as the most humiliating scandal in the history of post-revolutionary French justice. Hannah Arendt, a German intellectual-thinker who refuses to be called a philosopher, opens her essay "From the Dreyfus Affair to France Today," citing the words of Georges Clémenceau, a newspaper publisher and friend of Zola who later became Prime Minister of France for two terms. "It's ironic how people stormed the Bastille, executed their king by guillotine, and fomented revolution only to finally discover the reality of the impossible to find someone who is truly judged by the law." Arendt, in her article published in the Journal of Jewish Social Studies (1942), concluded although, in the end, Dreyfus' reputation was cleared and his position and his rank in the French Army were restored, the Dreyfus case was never really solved because at that time France was experiencing a period of antisemitism.

What happened? In short, the Dreyfus scandal originally came from the report of a cleaning woman and French spy named Madame Marie Bastian working at the German Embassy in Paris. One day in 1894, she found a suspicious bordereau (detailed listing of documents). The bordereau had been torn into pieces and found by Madame Bastian in the

wastepaper basket of Maximilian von Schwartzkoppen, the German military attaché in France. She delivered her "important finding" to the General Staff office (General Staff). At that time, the General Staff was an institution that was very powerful and feared in France—an institution that was "never wrong" and "cannot be blamed."

Dreyfus was convicted mainly based on testimony by professional handwriting experts (graphologists). According to them, the documents were written by Alfred Dreyfus, a French army officer of Jewish descent with the rank of captain. Dreyfus was found guilty of treason in a secret military court-martial. He was denied the right to examine the evidence against him. At this time, France was experiencing a period of antisemitism or anti-Jewish sentiment at the zenith point. Dreyfus was found guilty and shipped him off to Devil's Island. This small island is part of the Salvation Archipelago (some call it the Salis Islands), located about 14 kilometers off the coast of French Guiana in the Atlantic Ocean, South America. The French government at that time used this island as a dumping ground for convicts for over a hundred years. Before shipping him off to the island, the Army stripped him of his rank in a humiliating ceremony. Not to mention that the crowd of people spat on him while shouting racist remarks on the way to the horse

carriage that transported him back to the detention house while waiting for his departure to Devil's Island. The anti-Jewish sentiment which was provoked by several right-wing newspapers has harmed Dreyfus.

Despite criticism from all over the world to the French government, very few outside Dreyfus' family defended him. For this reason, Zola wrote *J'accuse*. Therefore, it is not surprising that Anatole France, a French writer who won the 1921 Nobel Prize in Literature, named Zola the voice of the conscience of mankind. "His bold words have woke France," said France. France's statement was supported by the fact that the open letter written by Zola and printed on the front page of the daily newspaper *L'Aurore* immediately sold out with 300,000 copies in just an hour even though the number of the newspaper was printed double the usual.

Zola's letter was based on his own observations and investigations of the Dreyfus case. It is not just a complaint but also an accusation. In that article, Zola directly, without a doubt, pointed out the people, those officials who were the "sources of trouble," with their full names and ranks, as well as the violations they had committed. I read Zola's writing about 30 years ago through the book by Eberhard Hungerbühler, *Alfred Dreyfus Mencari Keadilan*, or *Alfred Dreyfus Seeking Justice* (translated by Ismet Malikan). Can you imagine how brave the author was? He was nominated twice for the Nobel Prize in Literature. I quote the following excerpt from the translated book.

"Mr. President" is the opening of his writing. "The Military Court has just ...acquitted a man named Esterhazy. This is a heavy slap to the face of every form of truth and justice! It is a dark stain for France. History will record that under the leadership of Mr. President, such social crimes occurred. Since they have courage, then I will also do the same. I will tell the truth because I have promised to say it if

the court, through the legal means that have been arranged, cannot bring justice. I must say that I don't want to be guilty. Every night I am disturbed by the ghost of the person who suffers. Someone had to suffer for something he never did. To Mr. President, I wish to present this truth with all the anger of an honest man. For your honor, Mr. President, I believe you do not know all this. To whom should I report this group of guilty people other than you as the highest state official?"

Zola stated that the sentence against Dreyfus was based on false accusations of espionage and absolutely misrepresentation of justice. In addition, Zola also mentioned one by one the names of the military officers, including the highest rank offices, with their roles and sins in fabricating the accusations against Dreyfus. Zola also questioned the testimony of three handwriting experts. The testimony of those experts was used as the basis for the accusations against Dreyfus. They submitted deceitful false reports "unless a medical examination finds them suffering from a condition that impairs their eyesight and judgment," he said. Furthermore, Zola also pointed out that the first court-martial violated the law because it had sentenced Dreyfus only based on a document that was kept secret and to the second court martial for committing the judicial crime of knowingly acquitting Major Esterhazy.

After expressing his outrage and accusation in a detailed manner, which caused a stir in France and abroad, Zola closed the open letter with the words, "In filing these complaints, I am aware that I violated Article 30 and 31 of Press issued on 29 July 1881, which regulates the violation of the defamation law. I do all this consciously. As for the people I complained about, I don't know them, I've never seen them, and I don't harbor any feelings of hurt or hatred towards them. For me, they are just individuals, the souls of the depravity of society. I am doing this now as a revolutionary means to defend truth and justice by

obtaining clarity and transparency. I just want to follow what my heart has desired: enlightenment in the name of humanity, which has patiently let everything happen and has the right to make better days in the future. My fierce protest only describes the tears of my soul. Therefore, bring this to the court, and hopefully, the investigation will be conducted before the public."

As a result of his actions, Zola was prosecuted for libel because he had addressed his open letter to the President. Two weeks after his trial, Zola was found guilty and dismissed from the Legion of Honor—the highest honor mark awarded to military and civilian circles. However, he fled to England to avoid imprisonment and remained there until the regime that punished him fell while defending Dreyfus.

For activists and intellectuals, Zola's attitude through *J'accuse* was like a sacred path that was taken without the slightest trepidation to show that truth and justice should not be buried just like that, even though almost everyone pointed the blade of the sword at him. He was also bullied by a newspaper that described him caricaturally as the king of pigs. Therefore, it is not surprising that until now, people still read *J'accuse* and consider it an important link that should not be lost if one wants to really know the history of France. In the eyes of one of his readers, Zola's defense of Dreyfus has added a "status" to Zola from a famous French writer to a renowned writer and a hero.

Four years after *J'accuse* was published, Zola died of carbon monoxide poisoning caused by a clogged chimney. People took for granted the news of Zola's death at that time. However, 45 years later, in 1953, the *Libération* newspaper published a story that included the confession of a roofer who stated that he had killed Zola by clogging his chimney. So, death feels as if it has picked up the wrong person.



Harwin Idris, S.H., M.H
(Graduate Alumni of the
Faculty of Law, Islamic University
of Indonesia)

THE PHRASE “FINAL AND BINDING” OF DKPP’S DECISION

The Constitutional Court of the Republic of Indonesia (hereinafter referred to as the Constitutional Court) decided on case Number 32/PUU-XIX/2021 concerning the Judicial Review of Law Number 7 of 2017 on General Elections (UU 7/2017) against the 1945 Constitution Republic of Indonesia (UUD 1945) on Tuesday, March 29, 2022.

The petition for judicial review of the constitutionality of the Election Law against the 1945 Constitution was filed by Dra. Evi Novida Ginting Manik, M.SP. and Arief Budiman, S.S, S.IP, MBA (Member and Chairman of the General Election Commission of the Republic of Indonesia for the 2017-2022 Term). In their petition, they questioned the provisions of Article 458 paragraph (13) of Law 7/2017 on the final and binding nature of Election Organizer Ethics Council (DKPP) decisions that “The decision as referred to in paragraph (10) is final and binding.” Paragraph (10) states, “DKPP will decide after conducting research and/or verification of the complaint, listening to the defense and testimony of witnesses, and considering other evidence.” Thus, the existence of paragraph (13) is a legal consequence of the implementation of paragraph (10).

The reason for the hearing of material judicial review was to seek justice and legal certainty after the Dishonorable Discharge of KPU Member Evi Novida Ginting Manik (hereinafter referred to as Novida) by the DKPP. In the DKPP’s decisions: permanently and dishonorably dismissed; President Joko Widodo (Jokowi): issued a

Presidential Regulation (Peppres) to follow up on the DKPP’s decisions; Jakarta State Administrative Court (PTUN): annulled the presidential decree concerning the dismissal; President Jokowi: issued a Presidential Decree in order to follow up on the decision of the State Administrative Court to reactivate Novida as KPU Member. However, the DKPP didn’t acknowledge it. The DKPP reasoned that the decision of the State Administrative Court (PTUN) only annulled the presidential decree, not the DKPP’s decision which is “final and binding.”

In my opinion, several interesting things need to be criticized: first, the institutional form of DKPP and the nature of the decision, which is “Final and Binding.” The second is to address the addresat institution’s compliance with the Constitutional Court’s decision. Concerning point two, it is because the DKPP’s decision is “final and binding,” and it has actually been reviewed in the Constitutional Court, where the provision is in Article 112 paragraph (12) of Law 15/2011 concerning General Election Organizers. In its ruling, the Constitutional Court stated that the phrase “final and binding” is contrary to the 1945 Constitution and has no binding legal force as long as it does not imply that “the decision as referred to in paragraph (10) is final and binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu.”

DKPP and its “Final and Binding” Decision

DKPP was formed to investigate and arbitrate complaints and/or reports of alleged violations of the code of ethics conducted

by election organizers from KPU members, Provincial KPU members, Regency/Municipal KPU members, Bawaslu members, Provincial Bawaslu members, Regency/Municipal Bawaslu members (Article 155 (2) Law 7/2017).

“The Honorary Council for General Election Organizers (DKPP) is an institution that is responsible for handling the implementation of the code of ethics for general election organizers and is an integral function of organizing general elections as regarding general election organizers who are given the task and authority to handle violation of the code of ethics for election organizers based on provisions stipulated in this Law” Article 1 paragraph (11) of Law 10/2016 on the Election of Governors, Regents, and Mayors.

According to Harsanto Nursadi (a quo case expert), based on an integral function, he said that Election administration institutions are an auxiliary body comprised of KPU, Bawaslu, and DKPP. They are an integral part of the electoral functions, which have their respective functions, duties, and authorities that are equal and mutually in control in an effort to conduct a fair general election. Similarly, Zainal Arifin Mochtar also stated that DKPP was formed as a supporting organ for the election organizers that carry out a supervisory function in the context of maintaining the dignity of the authority and honor of the election organizers institution to produce elections with integrity and dignity.

Regarding the “final and binding” nature of the DKPP’s decisions, Harsanto Nursadi explained that DKPP is a board whose position is in the executive domain. Institutionally, due to its position, the DKPP decision is an executive decision whose nature cannot be “final and binding” so that there is room/possibility to review its decision which is considered an abuse of power through the judiciary. There are two forms of decisions in the context of government implementation: declarative and constitutive. In terms of constitutive decisions, decisions that can change rights and obligations are final and binding and can be executed. However, all forms of government decisions must be

reviewed in the judiciary, especially regarding regulation and determination. For this reason, the DKPP decision is final and binding in the context that the decision is constitutive. However, these decisions still have to be reviewed in a judicial institution.

Khairul Fahmi revealed the DKPP’s decision to impose ethical sanctions on election organizers was only a recommendation because the appointment of members from DKPP, KPU, and Bawaslu is based on a presidential decision. Therefore, if DKPP imposes ethical sanctions on the KPU and Bawaslu, they can only provide recommendations to the President. Likewise, election organizers at the regional level are also appointed and dismissed by the KPU and Bawaslu. For this reason, DKPP can only provide recommendations for ethical sanctions to organizers at the regional level who are considered to have committed ethical violations.

In addition, Zainal Arifin Mochtar stated that the phrase “final and binding” has two contexts: the context of judicial and administrative decisions. Both contexts are known in the existing legal conception. In an administrative context, the phrase “final and binding” can only be interpreted as a recommendation. Therefore, the phrase “final and binding” of the DKPP’s decision is not in the context of a judicial decision (which can no longer be taken as a legal remedy) because institutionally, DKPP is not an institution/body under the judicial power (Supreme Court). Thus, the phrase “final and binding” of the DKPP’s decision can only be interpreted as a recommendation (the DKPP’s decision is more of a State Administrative Court’s decision). This means that the authorized official uses the phrase “final and binding” as the basis for dismissing election organizers who commit ethical violations (MK, 32/2022: 93).

Likewise, Topo Santoso also stated that the DKPP’s decision was not a legal court decision. However, the DKPP’s decision to dismiss KPU or Bawaslu members could not be carried out immediately without the Presidential decision because the president has the authority to appoint and

dismiss KPU and Bawaslu members.

However, the State Administrative Court (PTUN) should correct the presidential decision. Thus, indirectly, the DKPP's decision can be annulled by the State Administrative Court's Decision, and the DKPP must respect the decision of the State Administrative Court. (MK, 32/2022:83).

The Compliance of Addresat Institution on the Decision

The conclusion of the Constitutional Court's decision 32/2021 states, "The Court reaffirms the Constitutional Court Decision 31/PUU-XI/2013 dated April 3, 2014, in the a quo decision." While in its ruling, "Stating the provisions of Article 458 paragraph (13) of Law 7/2017 (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) is contrary to the 1945 Constitution of the Republic of Indonesia and is not legally binding as long as it does not imply that "The decision as referred to in paragraph (10) is binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu are decisions of state administrative officials (TUN), who carry out government affairs in accordance with a statutory regulation that is individual, tangible, and final which can be the object of a lawsuit in the in the State Administrative Courts."

In the constitutional review system, there are two main tasks: first, to ensure the functionality of the democratic system in the balance of roles or interplay between the legislative, executive, and judicial branches of power (judiciary). In terms

of constitutional review is intended to prevent the abuse of power by limiting the power of the majority and overseeing the political process so that it runs within the corridors of the constitution. Second, to protect every individual citizen from abuse of power by state institutions that harm their fundamental rights guaranteed by the constitution (Jimly Asshiddiqie, quoted from Tri Sulistyowati et al., 2019:41-42)

The Constitutional Court's in their development is divided into two types: self-executing and non-self-executing. Self-executing is a decision that can be directly implemented since the decision has permanent legal force. This type of decision will be effective immediately without the need for further follow-up in the form of the need to implement an amendment to the law that has been reviewed. In contrast, non-self-executing is a decision that requires particular follow-up. A type of decision that must wait for amendments to the law that has been annulled if the addresat of the decision is related to the legislature. (Maruarar Siahon, quoted from Tri Sulistyowati et al., 2019:47-48).

Tri Sulistyowati et al., in a study entitled "Constitutional Compliance of the Constitutional Court's Decision by State Institutions," in collaboration between the Constitutional Court and the Trisakti Law Faculty in 2019, revealed that the dimensions of implementation or application of a Constitutional Court's decision have at least two dimensions: practical and normative dimensions. In the context of the practical dimension, all Constitutional Court's decisions are self-executing. This means

that it must be carried out by all components of the nation and state (erga omnes) in the life of the nation and state. Meanwhile, in the context of the normative dimension, the Constitutional Court's decisions require follow-up from the institution that becomes the addresat of the decision.

Regarding the DKPP institution and the phrase "final and binding" of the DKPP's decision from the description above, it can be concluded that: first, DKPP is an auxiliary body of election organizers in the executive domain. Second, the DKPP's decision is recommended/declarative. Third, the Constitutional Court's decision 32/2021 is a self-executing type of decision or has a practical dimension. This means that DKPP can directly implement the decision.

Novida's case has shown a different side of the DKPP institution. DKPP not only transformed into a superior electoral institution for KPU and Bawaslu but also became a judicial institution equivalent to the Supreme Court and the Constitutional Court based on their own "final and binding" decisions so that there was no process of checks and balances. While another interpretation made by the DKPP regarding the phrase "final and binding" after the Constitutional Court's decision 31/2013 is a deviation from legal norms. In the constitutional review, non-compliance with the Constitutional Court's decision can be considered constitutional disobedience or justice denied, and can also be considered justice denied.

*The Big Family of the
Constitutional Court wishes you a happy mar-
ried life. Congrats to the beautiful couple*

Prof. Dr. Anwar Usman, S.H., M.H.
(Chief Justice of the Constitutional)

and

Hj. Idayati



THE FINAL AND BINDING NATURE OF DKPP'S DECISION IS QUESTIONED ONCE AGAIN

The Constitutional Court (MK) held a judicial review hearing of Law No. 7 of 2017 on General Elections (Election Law) case Number 32/PUU-XIX/2021 on Tuesday (29/03/2022). In its ruling, the Constitutional Court stated that Article 458 paragraph (13) of the Election Law is contrary to the 1945 Constitution and is not legally binding as long as it does not imply that “The decision as referred to in paragraph (10) is binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu are decisions of state administrative officials (TUN), who carry out government affairs in accordance with a statutory regulation that is individual, tangible, and final which can be the object of a lawsuit in the in the State Administrative Courts.”

The petition for judicial review of the constitutionality of the Election Law against the 1945 Constitution was filed by Evi Novida Ginting Manik and Arief Budiman (Indonesian Election Commissioners for the 2017-2022 Term). Evi and Arief questioned the sanctions for dismissal carried out by the Honorary Council for General Election Organizers (DKPP). Evi and Arief questioned Article

458 paragraph (13) of the Election Law, which reads, “The decision as referred to in paragraph 13 (10) is final and binding.”

Evi was dismissed based on DKPP Decision Number 317-PKE-DKPP/X/2019 dated March 18, 2020, and was followed up with Decree of the President of the Republic of Indonesia (Keppres) Number 34/P of 2020 on the Dishonorable Discharge of KPU Members for the 2017-2022 Term dated March 23, 2020.

Although the State Administrative Court (PTUN) had granted her suit in Decision No. 82/G/2020/PTUN-JKT dated July 23, 2020, and annulled the Keppres No. 34/P of 2020—that granted her return to active duty as a KPU member for the 2017-2022 term. However, Evi revealed that DKPP remained with its decision and didn't acknowledge it. Moreover, due to the final and binding norms of the DKPP's decision. She will be known as a person who committed ethical violations for the rest of her life.

As for Arief, he was dismissed from his position as KPU chairman for the 2017-2022 term by DKPP through decision Number 123-PKE DKPP/X/2020 and followed up with the Decision of the KPU

Plenary Meeting on Wednesday, April 14, 2021, which appointed Ilham Saputra as the new KPU chairman for the 2017-2022 term. Arief was dismissed from his position as Chairman of the KPU due to a report that he had accompanied Evi (Petitioner I) when she filed a suit at PTUN Jakarta, which resulted in the issuing of Letter No. 663/SDM.13-SD/05/KPU/VIII/2020 that granted her return to active duty as a KPU member.

Arief did not file a lawsuit to the Administrative Court as Evi did. Arief reasoned that he had only been dismissed as KPU chairman. Meanwhile, he remains active as a KPU Member. Arief prefers to request the judicial review of Article 458 paragraph (13) of the Election Law to the Constitutional Court. He did this to prevent the constitutional harm that would continue to happen in the future, both to himself and other election organizers.

The Story of Ramdanyah

The norm in the phrase “final and binding” of the DKPP's decision had previously been reviewed in the Constitutional Court. Ramdanyah filed the petition. In his petition, Ramdanyah revealed that DKPP had dismissed him from the

Chairman position and membership of the General Election Supervisory Committee (Panwaslu) of DKI Jakarta Province.

The story begins with the Indonesian Market Traders Association (APPSI) in the 2012 DKI Jakarta Regional Head Election. Advertisement supporting the Governor and Deputy Governor of DKI Jakarta, Joko Widodo and Basuki Tjahaja Purnama (Jokowi-Basuki), was broadcast simultaneously on 27 August 2012 through several national television stations.

Another Governor and Deputy Governor candidate, Fauzi Bowo Nachrowi Ramli (Foke-Nara), reported the case to the DKI Jakarta General Election Supervisory Committee (Panwaslu) because it violated the campaign policy. The advertisement was broadcast outside of campaign hours. Foke-Nara team was accompanied by Ramdansyah, who at that time served as the Chairman of the DKI Jakarta Panwaslu, to report the violation to the Polda Metro Jaya.

The Jokowi-Basuki team feels that Ramdansyah is not neutral and violates the code of ethics. As a result, Ramdansyah was reported to the DKPP on October 10, 2012.

Long story short, Ramdansyah was dismissed permanently by DKPP as Chairman and Member of the General Election Supervisory Committee (Panwaslu) of DKI Jakarta Province through Decision Number 15/DKPP-PKE-I/2012 dated 31 October 2012. Likewise, following up on the DKPP decision, Ramdansyah was also dismissed permanently by the General Elections Supervisory Body (Bawaslu) as a Member of the DKI Jakarta Provincial Panwaslukada through Bawaslu Decree Number



Sidang pembacaan putusan DKPP menjatuhkan sanksi pemberhentian Arief Budiman selaku Ketua KPU RI, pada Rabu (13/1/2020) di Ruang Sidang DKPP.

712-KEP YEAR 2012 dated November 16, 2012. (Also read KONSTITUSI Magazine No. 87 May 2014 p. 8-9).

Ramdansyah strongly objected to the final and binding decision of DKPP. According to Ramdansyah, DKPP is not a judicial power. DKPP is also not an election organizer. Ramdansyah also filed a petition to the Constitutional Court on February 28, 2013. He questioned some articles in the Election Organizing Law before Constitutional Court, including Article 112 paragraph (12), which states, “The decision as referred to in paragraph (10) is final and binding.”

In its legal considerations, the Court affirmed that the final and binding decision of the DKPP cannot be equated with the final and binding decision of the judiciary institutions in general. This is because the DKPP is an internal election organizer authorized by law. The final and binding nature must be interpreted

to apply to the president, the central, provincial, and regency/city KPU (General Elections Commission), and Bawaslu (Elections Supervisory Body) in implementing the DKPP decisions. The decisions of the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu are concrete, individual, and final decisions of TUN officials, which can be the object of a lawsuit in the Administrative Court.

As a result, in its ruling on case Number 31/PUU-XI/2013, the Court stated that the phrase “final and binding” in Article 112 paragraph (12) of the Election Organizing Law is contrary to the 1945 Constitution and is not legally binding as long as it is not interpreted, “The decision as referred to in paragraph (10) is final and binding on President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu.” ■

NUR ROSIHIN ANA.

THE FOLLOW UP ON THE DKPP'S DECISIONS CAN BE AN OBJECT OF A LAWSUIT IN THE STATE ADMINISTRATIVE COURT

The final and binding nature of the DKPP's (Election Organizer Ethics Council) decisions, as stated in Law Number 7 of 2017 concerning General Elections (Election Law), is reviewed once again. This time, former General Election Chairmen Arief Budiman and Evi Novida Ginting Manik filed a petition on material judicial review of Article 458 paragraph (13) of the Election Law.



Arief and Evi virtually attended the preliminary hearing on Monday, August 2, 2021. They questioned Article 458 paragraph (13) and parts of Article 14 letter m, Article 17 letter m,

Article 20 letter m, Article 38 paragraph (4), Article 93 letter g point 1, Article 97 letter e point 1, Article 101 letter e point 1, Article 105 letter e point 1, Article 137 paragraph (1), Article 159 paragraph (3) letter d, Article 458 paragraph

(5), paragraph (10), paragraph (11) & paragraph (14), and Article 459 paragraph (5) of the Election Law.

Evi (Petitioner I) was dismissed by DKPP through DKPP Decision Number 317-PKE-DKPP/X/2019 dated March 18, 2020, and was

followed up with Decree of the President of the Republic of Indonesia (Keppres) Number 34/P of 2020 on the Dishonorable Discharge of KPU Members for the 2017-2022 Term dated March 23, 2020. Although the State Administrative Court (PTUN) had granted her suit in Decision No.82/G/2020/PTUN-JKT dated July 23, 2020, and annulled the Keppres No. 34/P of 2020—that granted her return to active duty as a KPU member for the 2017-2022 term. However, Evi revealed that DKPP remained with its decision and didn't acknowledge it.

Moreover, Evi revealed that due to the final and binding decision of the DKPP, she is being labeled as a person who committed ethical violations to this day when she has actively performed her duties and carried out the regional head election.

“In the implementation (of the regional head election), I made decisions and policies and even supervised it and represented the KPU in overseas activities. The final and binding decision of DKPP had labeled me election fraud and reduced and distorted what the KPU had decided,” she said.

Meanwhile, Arief (Petitioner II) revealed that there was a new legal fact similar to that experienced by Petitioner I that had also happened to a member of the Papua Provincial KPU due to the final and binding nature of the DKPP's decision. “I have concerns that if the [DKPP's] final and binding legal products are interpreted as decisions, more people will not be acknowledged as election organizers,” he said.

Arief was involved in a concrete case, and he was dismissed from his position as KPU Chairman due to a report that he had accompanied



Petitioner I when she filed a suit at PTUN Jakarta, which resulted in the issuing of Letter No. 663/SDM.13-SD/05/KPU/VIII/2020 that granted her return to active duty as a KPU member. He believed that taking legal action in court to seek justice is the right of every citizen guaranteed by the constitution. Thus, he argued that it was unacceptable that his action was declared a violation of the code of ethics. Likewise, the issuance of the a quo letter as the follow-up on PTUN Jakarta's decision was the collegial and collective decision of the KPU chairman and members. Because Petitioner II was a KPU chairman, his letter signing was justified and cannot be declared a violation of the code of ethics.

“Petitioner II cannot file a suit to the State Administrative Court against the KPU decision that followed up on the DKPP's

Decision No. 123/2020. If he took legal action against the follow-up to DKPP's decision Number 123/2020, it would have shown a conflict of interest because the KPU's follow-up decision was made based on a KPU plenary meeting, which Petitioner II attended,” said the Petitioners legal counsel, Juendi Leksa Utama.

Apart from the concrete case, in the petition, the Petitioners also argued that the final and binding nature of the DKPP's decision had hindered their duties as election organizers to coordinate, supervise, and direct the regional KPU.

“The regional KPU, which is hierarchically under the national KPU, is seen as more compliant with the DKPP due to fear of sanctions than following the KPU's order, which is its direct superior,” Juendi said.

Therefore, the Petitioners requested that the Court declare



of the election organizers so that the objectives of the elections carried out by KPU and Bawaslu can be achieved. “One of which is to maintain the democratic administrative system and to implement fair elections that have integrity,” he added.

Eko stated that if the authority of the DKPP were abolished, no institution would oversee the implementation of the elections and supervise the election organizers. He added that the final and binding nature of DKPP’s decisions could not be equated with those of other judicial bodies because the DKPP is an internal apparatus of the election organizers authorized by law. The final and binding nature of the DKPP decision must be interpreted as final and binding for the president, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu.

Not a Judicial Body

On this request, the Constitutional Court affirmed its stance that DKPP is not a judicial body. DKPP, KPU, and Bawaslu are election organizers that have equal standing. The three institutions are equivalent. In this regard, the follow-up to the DKPP’s decision can become the object of the State Administrative Court (PTUN). This is stipulated in Decision Number 32/PUU XIX/2021, which was read out in a hearing held in the Plenary Session Room of the Constitutional Court on Tuesday (29/3/2022).

In this decision, the Court somewhat granted the Petitioners’ argument related to the provisions of Article 458 paragraph (13) of Law (UU) No. 7 of 2017 on General Elections (Election Law) that contradicts the 1945 Constitution. “Article 458

the provisions of Article 14 letter m, Article 17 letter m, Article 20 letter m, Article 38 paragraph (4), Article 93 letter g point 1, Article 97 letter e point 1, Article 101 letter e point 1, Article 105 letter e point 1, Article 137 paragraph (1), Article 159 paragraph (3) letter d, Article 458 paragraphs (5), (10), (11), and (14), as well as Article 459 paragraph (5) of the Election Law along the phrase ‘decision’ is conditionally constitutional insofar as it is interpreted as ‘decree’ that can be appealed in the State Administrative Court.

Unlike Judicial Bodies

Eko Prasetyanto Purnomo Putro, the expert staff of Law and National Unity of the Ministry of Home Affairs, who represented the Government, attended the material judicial review hearing of Law No. 7 of 2017 on General Elections that took place on Tuesday, October 5,

2021. He revealed that the nature of DKPP’s decisions is not the same as the final and binding nature of those of judicial bodies, as they do only for the president; the central, provincial, and regency/city General Elections Commission (KPU); and the Elections Supervisory Body (Bawaslu). Therefore, there are checks and balances on the DKPP.

“Therefore, the DKPP as an independent election organizer must protect the human right to vote and be elected in order to be able to hold general elections that meet the principles of direct, general, free, confidential, honest, and fair,” he said at the hearing chaired by Chief Justice Anwar Usman.

Eko said that DKPP has the right to take steps to enforce the code of ethics among election organizers that have been regulated in laws and regulations, including the Election Law. This is to maintain the integrity, honor, independence, and credibility

paragraph (13) of Law Number 7 of 2017 has no binding legal force as long as it does not interpret, “The decision as referred to in paragraph (10) is binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu are decisions of state administrative officials (TUN), who carry out government affairs in accordance with a statutory regulation that is individual, tangible, and final which can be the object of a lawsuit in the in the State Administrative Courts,” said Chief Justice of the Constitutional Court Anwar Usman reading the verdict.

Constitutional Justice Suhartoyo presented the legal considerations. He stated that the Constitutional Court had considered the norms concerning DKPP decisions which were final and binding in the Decision of the Constitutional Court Number 31/PUU-XI/2013. Therefore, the Court considered that the subject of the Petitioners’ petition is related to Constitutional Court Decision Number 31/PUU-XI/2013. He said that the rest of the Petitioners’ arguments, as long as they are still relevant to the substance of the legal considerations which the Court will elaborate, will also be considered further.

He explained the Constitutional Court Decision No. 31/PUU XI/2013, which reads “final and binding,” must be interpreted as final and binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu and should be read as one unit with legal considerations stating, “are decisions of state administrative officials (TUN) that is individual, tangible, and final which can be the object of a lawsuit in the State Administrative Courts.”

“That based on the legal considerations above, in the a quo case decision, the Court again reaffirmed its stance that DKPP is not a judicial body. DKPP, KPU, and Bawaslu are election organizers that have equal standing. The Court also emphasized that the three institutions are equal and none have a superior position,” he said.

An object of Lawsuit in the State Administrative Court

Constitutional Justice Suhartoyo explained through the a quo decision, the Court asserts and reminds all stakeholders that the phrase “final and binding” in Article 458 paragraph (13) of the Election Law is binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu are decisions of state administrative officials (TUN) that is individual, tangible, and final which can be the object of a lawsuit in the State Administrative Courts. He said that the President, KPU, Provincial KPU, Regency/City KPU, and Bawaslu must implement the DKPP’s decisions, and decisions issued by institutions following up on the DKPP’s decision can be used as objects of lawsuits by parties who do not accept the DKPP’s decisions by filing a lawsuit at the State Administrative Courts.

He added that the State Administrative Courts’ judicial decision with permanent legal force must be obeyed and become the decision of the judiciary with executive power. In other words, the phrase final and binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu are the President, KPU,

Provincial KPU, Regency/Municipal KPU, and Bawaslu only follows up on DKPPs’ decisions whose products can be the object of a lawsuit in the State Administrative Courts.

Thus, in this context, the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu, as direct superiors who are authorized to appoint and dismiss election organizers in accordance with their position, do not have the authority to have different opinions that are contrary to the DKPP’s Decisions or the State Administrative Courts’ Decision which corrects or strengthen the DKPP’s Decision.

“In addition, the Petitioners’ petition insofar as it relates to whether or not the DKPP’s decision can become the object of the Administrative Court as long as it is in line with legal considerations. The a quo decision is legally grounded,” He explained.

He also added that the Court, through the a quo decision, reaffirms in the a quo case ruling that the nature of the legal considerations in case decision Number 31/PUU-XI/2013 relates to the interpretation of Article 458 paragraph (13) of the Election Law which must then be a single interpretation that cannot be interpreted other than as stated in the a quo ruling. Thus, the Petitioners’ arguments are legally grounded in part. And for the arguments and other things that are not considered, it is deemed irrelevant and, therefore, must be declared groundless according to law. ■

LULU ANJARSARI P.

JUDICIAL REVIEW DECISIONS IN MAY 2022

No.	Case Number	Case Subject	Petitioners	Decision	Date	Decision Link
1	45/PUU-XX/2022	Material Judicial Review of Law Number 11 of 2020 concerning Job Creation on Amendment to Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction	Robert Mandala Yasin	withdrawn	May 31, 2022	Click Decision
2	46/PUU-XX/2022	Material Judicial Review of Law Number 30 of 2014 concerning Government Administration	Moch Ojat Sudrajat S	withdrawn	May 31, 2022	Click Decision
3	55/PUU-XX/2022	Material Judicial Review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to Become Laws	Perkumpulan Maha Bidik Indonesia	withdrawn	May 31, 2022	Click Decision
4	2/PUU-XX/2022	Material Judicial Review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to Become Laws	Hardizal	Granting the Petitioner's request partially	May 31, 2022	Click Decision

5	31/PUU-XX/2022	Material Judicial Review of Law Number 23 of 2014 concerning Local Government	Hasanudin	Granting the Petitioner's request partially	May 31, 2022	Click Decision
6	39/PUU-XX/2022	Formal and Material Judicial Review of Law Number 3 2022 concerning State Capital	Sugeng	Unacceptable	May 31, 2022	Click Decision
7	40/PUU-XX/2022	Formal and Material Judicial Review of Law Number 3 2022 concerning State Capital	Herifuddin Daulay	Unacceptable	May 31, 2022	Click Decision
8	47/PUU-XX/2022	Formal and Material Judicial Review of Law Number 3 2022 concerning State Capital	Mulak Sihotang	Unacceptable	May 31, 2022	Click Decision
9	48/PUU-XX/2022	Formal and Material Judicial Review of Law Number 3 2022 concerning State Capital	Damai Hari Lubis	Unacceptable	May 31, 2022	Click Decision
10	53/PUU-XX/2022	Formal and Material Judicial Review of Law Number 3 2022 concerning State Capital	Anah Mardianah	Unacceptable	May 31, 2022	Click Decision
11	54/PUU-XX/2022	Formal and Material Judicial Review of Law Number 3 2022 concerning State Capital	Muhammad Busyro Muqoddas, et al.	Unacceptable	May 31, 2022	Click Decision
12	41/PUU-XX/2022	Material Judicial Review of Law Number 23 of 2004 concerning the Elimination of Domestic Violence	Sindi Enjelita Sitorus and Hesti Br Ginting	Unacceptable	May 31, 2022	Click Decision
13	42/PUU-XX/2022	Material Judicial Review of Law Number 7 of 2017 concerning the General Elections	Almizan Ulfa et al.	Unacceptable	May 31, 2022	Click Decision
14	50/PUU-XX/2022	Material Judicial Review of Law Number 20 of 2016 concerning Trademark and Geographical Indications	Djunatan Prambudi	Unacceptable	May 31, 2022	Click Decision



THE ISSUE OF A POLITICAL PARTY'S AUTHORITY TO ENDORSE PRESIDENTIAL-VICE PRESIDENTIAL CANDIDATES

E. RAMOS Petege and others questioned the provisions on the requirements for the recruitment of political party

members as regulated in Article 29 of Law Number 2 of 2008 on Political Parties (Party Law) to the Constitutional Court (MK) with the case Number 44/PUU-XX/2022 that was held on Monday (18/4/2022). Legal counsel Dixon Sanjaya, who represents the Petitioners, said that Article 29 of the Party Law was detrimental to the Petitioners' constitutional rights. The Petitioners reasoned that the general chairman of the political party that received the most votes was the sole determinant

in selecting the presidential and vice presidential candidates. Through Dixon Sanjaya, the Petitioners said that the provisions of Article 29 of the Political Party Law did not require political parties to conduct selection, regeneration, and recruitment for presidential and vice presidential candidates but instead left them to the party's statute/bylaw. Meanwhile, for the sake of democracy, a participatory and transparent mechanism for the selection and recruitment of presidential candidates is needed. Therefore, the Petitioners believe this could potentially endanger the national political system, especially in relation to the succession of the national leadership. In addition, they believe the internal political parties' recruitment and selection system for presidential and vice presidential candidates was not transparent and instead prioritized sectoral interests. (Sri Pujianti)

IKN LAW IS DEEMED TO POTENTIALLY DISRUPTIVE TO THE NATION'S FUTURE

LAW Number 3 of 2022 concerning the State Capital (IKN Law) was again formally challenged in the Constitutional Court (MK). Case No. 49/PUU-XX/2022 was filed by S. M. Phiodias Marthias, a retired PT Chevron Pacific Indonesia employee. The preliminary hearing for the case was held virtually and was chaired by Constitutional Justice Arief Hidayat on Tuesday (19/4/2022) in the Plenary Court Room.

The Petitioner, who attended the hearing virtually, emphasized that the IKN Law has the potential to disrupt the nation's future or at least reduce the quality of the state government's four main tasks and functions, which he believed is real and has occurred. In his petition, the Petitioner said that the IKN Law could potentially



burden the nation's future because the considerations in its formation did not take into account the need to strengthen the foundation of the nation's intellectual development before the nation's journey went further ahead.

He also said that the nation's fundamental challenges, especially related to intellectual development, were currently not in accordance with the principles of usability and effectiveness. He believed that in the absence of driving factors of the nation's development, the analysis of the state

capital relocation would be limited and potentially hide risks that could endanger the nation. He explained that it is similar to several years before the 1998 crisis when government officials talked about the take-off slogan. It was a sign that they were unaware of the risks that endangered the nation. In the petition, the Petitioner requested that the Court declare the IKN Law not meeting lawmaking provisions, contrary to the 1945 Constitution, and has no binding legal force. (Utami Argawati)

THE LACK OF PUBLIC PARTICIPATION IN THE ESTABLISHMENT OF THE IKN LAW

THE CONSTITUTIONAL Court (MK) has adjudicated judicial review of Law Number 3 of 2022 concerning the State Capital (IKN law) for the fifth time. Case number 48/PUU-XX/2022 was filed by Damai Hari Lubis, an advocate. The preliminary hearing for the case was chaired by the Chair of the

Panel, Arief Hidayat, accompanied by Constitutional Justice Enny Nurbaningsih and Daniel Yusmic P. Foekh on Tuesday (19/4/2022) in the Plenary Court Room of the Constitutional Court. The Petitioner attended the hearing virtually.

Arvid Martdwisaktyo as the Petitioner's legal counsel, argued that the formation of the IKN Law did not really pay attention to the content because lots of matters related to the State Capital were delegated to implementing regulations. In the 44 articles of the IKN Law, there are 13 orders for delegation of regulatory authority in implementing regulations.

The IKN Law does not specifically regulate the administration of the State Capital government. In addition, the IKN Law largely regulates matters in the state capital. The matters delegated in those 13 orders should be regulated in law because they are strategic in nature.

The Petitioner also argued that the formation of IKN Law did not consider the effectiveness of laws and regulations in society philosophically, sociologically, and juridically. Because the state capital is mentioned in the 1945 Constitution, every policy related to it should be formulated in a comprehensive and holistic manner. The state capital relocation policy does not take into account the sociological aspects of national and global conditions that are currently facing the COVID-19 pandemic when the number of active cases is still reasonably high. Therefore, in the petition, the Petitioner requested that the Court annul the State Capital Law as it contradicts the 1945 Constitution. (Nano Tresna A.)



DISCRIMINATION IN ELECTIONS

THE CONSTITUTIONAL Court (MK) held a judicial review hearing for Law Number 2 of 2021 on the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Papua Province (Papua Special Autonomy Law) on Monday (18/4/2022). E. Ramos Petege and Yanuarius Mote filed the petition with case Number 43/PUU-XX/2022.

The petitioners attended the hearing virtually. E. Ramos Petege explained the subject of the petition. Ramos said he and Yanuarius Mote challenged Article 6 paragraph (1) and Article 6A paragraph (2), Article 68A

paragraph (1) and paragraph (2), Article 75 paragraph (4), Article 76 paragraph (2) and paragraph (3) of the Papua Special Autonomy Law. Ramos stated that they suffered specific and actual constitutional impairment due to Article 6 paragraph (1) and Article 6A paragraph (2) of the Papua Special Autonomy Law,

which had shown that equality to be elected in the government only applies to people who are close to those in power, thus closing the opportunity for indigenous Papuans to get jobs and equal opportunities before the law. (Nano Tresna Arfana)





PUBLIC TRANSPORTATION DRIVERS QUESTION THE LOCATION AND FUNDING OF THE NEW STATE CAPITAL

THE RELOCATION of the state capital received public backlash. This time, a public transportation (angkot) driver, Mulak Sihotang, questioned Law

Number 3 of 2022 concerning the State Capital (IKN Law) to the Constitutional Court (MK). Mulak Sihotang filed the petition with case number 47/PUU-XX/2022. The Constitutional Court held the preliminary hearing on Tuesday (19/4/2022). It was chaired by Constitutional Justice Arief Hidayat, accompanied by Constitutional Justice Enny Nurbaningsih and Constitutional Justice Daniel Yusmic P. Foekh.

Mulak Sihotang (the Petitioner) appeared before the Court at the hearing without legal counsel to request

the judicial review of Article 1 paragraph (2), Article 1 paragraph (8), and Article 5 paragraph (4) of the IKN Law. As a tax-paying citizen, the petitioner felt disadvantaged by the funding for the preparation, development, and relocation of the state capital and the administration of the Regional Government of the Special Capital Region, which is sourced from the state budget (APBN) and other legal sources in accordance with the provisions of the legislation. In addition, he believed the formation of the IKN Law, starting from planning, drafting, ratifying, to stipulating, should have been transparent and involved the community. He also believed that had the Law followed the correct procedure, the spatial master plan for East Kalimantan Province should have been revised first to obtain recommendations for the preparation of a master plan for the new state capital. Therefore, the relocation would get permission from the regional government in advance. (Sri Pujianti)

ADVOCATE QUESTIONED THE INCLUSION OF JUDICIAL COMMISSION IN CONSTITUTIONAL COURT'S ETHICS COUNCIL MEMBERSHIP

THE CONSTITUTIONAL Court (MK) held a preliminary hearing of material judicial review of Law Number 7 of 2020 on the Third Amendment to Law Number 24 of 2003 on the Constitutional Court against the 1945 Constitution on

Monday (09/5/2022). Ignatius Supriyadi filed the petition with case number 56/PUU-XX/2022.

At the hearing chaired by Constitutional Justice Arief Hidayat, the petitioner said that the provisions

in Article 27A paragraph (2) letter b of the Constitutional Court Law still involved the role of the Judicial Commission in the Constitutional Court. The Petitioner alleged that the provision defied legal certainty. He said the



previous Constitutional Court's decision had ruled that the Judicial Commission had not played a role in or been involved in the Constitutional Court.

Supriyadi, as an advocate at the Constitutional Court, believes that the provision has led to legal uncertainty for advocates. In addition

to hindering their professionalism, it is inconsistent with previous Constitutional Court decisions

DPD LEADERS AND CRESCENT STAR PARTY QUESTION THE PRESIDENTIAL CANDIDATE THRESHOLD

THE LEADERS of the Regional Representatives Council of the Republic of Indonesia (DPD RI) questioned the presidential and vice presidential candidate threshold provisions as stipulated in Article 222 of Law Number 7 of 2017 concerning General Elections (Election Law). Aa Lanyalla M. Mattalitti, Nono Sampono, Mahyudin, Sultan Baktiar Najamudin (leaders of the DPD RI) filed the petition with Case Number 52/PUU-XX/2022. In addition, the Crescent Star Party (PBB), represented by chairman Yusril Ihza Mahendra and secretary-general Afriansyah Noor also expressed their opposition to it as Petitioner II. The Petitioners considered Article 222 to be contrary to the 1945 Constitution.

Denny Indrayana as the legal counsel, who represented the Petitioners, stated that although the provision had been challenged numerous times in the

Constitutional Court (MK), which ruled to reject or dismiss the petitions, the Petitioners believed that their petition was different than the previous ones. He also stated that Petitioner I, as a state institution, has the duty and responsibility to protect the interests of the regions and their members, believed that the a quo article which limits the presidential threshold to 20% of the House of Representatives (DPR) seats or 25% of the valid national votes, had restricted their right and obligation to promote and fight for equality for regional candidates to run for presidential and vice presidential candidates. The provision, he added, had allowed powerful political elite special access without any regard for their quality, capability, and expertise.

Meanwhile, Petitioner II, who had contested in the 2019 Election, believed that Article 222 of the Election Law had eliminated the possibility for political parties to endorse presidential and vice presidential candidates independently. As a result, a new phenomenon emerged: capital owners or investors reign as sovereigns in Indonesia, not the people.

Therefore, in their petition, the Petitioners request that the Court grants the petitioners' petition in its entirety and "declare Article 222 of Law Number 7 of 2017 concerning General Elections contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force," said Denny. (Sri Pujianti)



QUESTIONING THE CONSTITUTIONALITY OF TRADEMARK IMITATION PROVISION

THE PRELIMINARY hearing of the judicial review of Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark and GI Law) was held by the Constitutional Court (MK) on Tuesday (26/4/2022). Entrepreneur Djunatan Prambudi filed the petition for case Number 50/PUU-XX/2022.

In his petition, the Petitioner suffered a constitutional impairment due to the enactment of Article 21 paragraph (1) and the Elucidation of Article 21 paragraph (1) of the Trademark and GI Law. The Petitioner asserted that the elucidation in the article would lead to increasing trademark cancellation lawsuits to challenge any similarities in other

trademarks, and there would be parties harmed by the imitation of trademarks whose lawsuits are rejected by judges. The Petitioner believed all this would lead to unhealthy business competition, which he experienced.

In addition, in a concrete case, the Petitioner was harmed by the ruling of the District Court of Surabaya Number 05/HKI/Merk/2014/PN Niaga SBY. The decision stipulates that the Petitioner, as the defendant, had several trademarks registered in the Trademarks List of the Directorate of Trademarks—Profil

88, PRO FIL 88, Merek PROFIL 89, among others—that bear similarity to the plaintiff's (PT Profilia Indotech) Profil Tank. The plaintiff also argued that the Petitioner's trademarks were goods similar to those of the plaintiff's and that the Petitioner had deliberately copied and profited off the plaintiff's trademark, which had been well-known and was in great demand by the general public. Therefore, in the petition, the Petitioner requested that the Court accept and grant the petition in its entirety. (Nano Tresna Arfana)



COOKING OIL SCARCITY COMPELS FRIED CATFISH VENDORS TO CHALLENGE TRADE LAW

THE CONSTITUTIONAL Court (MK) held the judicial review hearing of Law Number 7 of 2014 concerning Trade (Trade Law) on Tuesday (26/4/2022). The petition under case Number 51/PUU XX/2022 was filed by Muhammad Hasan Basri, a fried catfish vendor.

The Petitioner questioned Article 29 paragraph (1) of the Trade Law because it had impaired the Petitioner's constitutional rights due to irregular distribution and hoarding of cooking oil, which led to scarcity and skyrocketing price of cooking oil. Further, Irawan said that cooking oil scarcity made it difficult for the Petitioner to do his business. Meanwhile, the high prices would affect the Petitioner's buying power and the prices of his products, thus hindering his business. Therefore, in the petition, the Petitioner requested that the Constitutional Court declare Article 29 Paragraph (1) of the Trade Law was contrary to the 1945 Constitution and not legally binding. (Utami Argawati)



TEACHER QUESTIONS IKN LAW CONSTITUTIONALITY

THE IKN Law has been challenged numerous by people from different occupations. This time, Anah Mardianah, a teacher, questioned and challenged the IKN Law. The preliminary hearing for case Number 53/PUU-XX/2022 was held at the Constitutional Court (MK) on Monday (25/4/2022). The hearing was chaired by Deputy Chief Justice of the Constitutional Court Aswanto alongside Constitutional Justice Suhartoyo, and Constitutional Justice Daniel Yusmic P. Foekh.

Reza Setiawan, the Petitioner's legal counsel, said that the House of Representatives (DPR) as the legislature and the President as the executive have the right to propose a bill. For a law to be ratified, it must first be discussed and approved jointly by the DPR and the President. In regard to this, Article 20 of the 1945 Constitution stipulates the legislative and executive authority to ratify laws regulating people's lives. He



added that it is also in line with Article 1 paragraph (2) of the 1945 Constitution. Thus, the DPR and the President must work together to carry out the lawmaking objective and process.

In the petition, the Petitioner stated that on January 18, 2022, the DPR officially declared the IKN Bill part of the 2020 National Legislative Program (Prolegnas). However, before it was passed, there was a backlash from the provincial and local governments, which the central government and the

DPR disregarded. On February 15, the president ratified the IKN Law. Furthermore, on February 15, 2022, the President ratified the IKN Law. The Petitioner believes that it took less than a month for the a quo Law to be passed since it entered the National Legislative Program (Prolegnas). As such, it did not involve the people. Therefore, the Petitioner requested that the Court declare the formation of the IKN Law unconstitutional because it is contrary to the 1945 Constitution. (Sri Pujianti)

LACKING PUBLIC PARTICIPATION

THE CONSTITUTIONAL Court (MK) held a preliminary hearing for the formal judicial review of Law Number 3 of 2022 concerning the State Capital (IKN Law) on Monday (25/4/2022). The petition under Case Number 54/PUU-XX/2022 was filed by M. Busyro Muqoddas (Petitioner I); Trisno Raharjo (Petitioner II); Yati Dahlia (Petitioner III); Dwi Putri Cahyawati (Petitioner IV); the Indigenous Peoples' Alliances of the Archipelago (AMAN) (Petitioner V); and the Indonesian Forum for Environment (WALHI) (Petitioner VI).

At the hearing, Ermelina Singareta, who represented the Petitioners as legal counsel, said that the IKN Law was formed without any meaningful participation, as referred to in the

Constitutional Court Decision Number 91/PUU-XVIII/2020. She explained that the Law had not involved those who had concerns, such as Petitioners I, II, and IV. They are people with broad and strategic opinions and perspectives on the state capital, which should have been involved in the formulation of the Law.

In the petitioner, the Petitioners also mentioned that the formation of the IKN Law was against the principles

of usefulness and effectiveness. They believe that every legislation should be made on the basis of real needs and usefulness for regulating the life of the people, nation, and state. Thus, based on those reasons, the Petitioners requested that the Court declare the IKN Law unconstitutional because it's contrary to the 1945 Constitution and has no binding legal force. (Utami Argawati)



Constitutional Justices Discuss Challenges of the Judicial Review of the Perppu to Political Superstructure in Indonesia

Delivering legal narratives in a simple, clear, and precise manner is an effort of the Constitutional Court Justices at every public lecture or national seminar he attends. From the end of April to mid-May, the Constitutional Judges attended several public and private universities in person to invite students and lecturers in the field of law to have a deeper understanding of the constitution, constitutional rights, and the Constitutional Court.



Constitutional Justice Daniel Yusmic P. Foekh gave a public lecture with the theme "The Opportunities and Challenges of Judicial Review of the Perppu in the Constitutional Court" at the Faculty of Law of Sam Ratulangi University on Friday (22/4/2022). The lecture took place on site with strict adherence to health protocols.



Chief Justice of the Constitutional Court Anwar Usman spoke at the seminar on the settlement of regional head election disputes organized by the Belitung Regency Government on Friday evening (22/4/2022). He delivered a presentation with the theme "The Constitutional Court's Authorities and Obligation Pursuant to the 1945 Constitution and the Constitutional Court Procedural Law."



Constitutional Justice Daniel Yusmic P. Foekh was a speaker in a monthly discussion with the theme “The Role of the Young Generation for a Democratic Modern Indonesia,” organized by the North Sulawesi executive board of the Indonesian Christian Youth Movement (GAMKI) for 2021-2024 on Saturday (23/4/2022). The event was held in Room C.J. Rantung of the Governor’s Office Building.



Chairman of the Constitutional Court (MK) Anwar Usman gave a public lecture on “The Constitutional Court within the Administration of the Republic of Indonesia” at the Studium Generale of the Faculty of Law of Sudirman University (Unsoed), Purwokerto, Central Java, in the J3 Hall of FH Unsoed on Friday (13/5/2022).



Constitutional Justice Daniel Yusmic P. Foekh was the keynote speaker in a public lecture with the theme "The Enforcement of Code of Ethics and Code of Conduct in the Process of Handling General Election Violations," which was held by the Faculty of Law of the University of Flores, on Saturday (14/5/2022).



Constitutional Justice Arief Hidayat and Secretary General of the Constitutional Court M. Guntur Hamzah were speakers for the Public Lecture on "Internalizing Ideology within the Dynamics of Indonesia's Democracy." The Constitutional Court (MK) and the Faculty of Law of The University of Borneo Tarakan (FH UBT) organized the collaborative event on Saturday, May 14, 2022. (14/5/2022) .

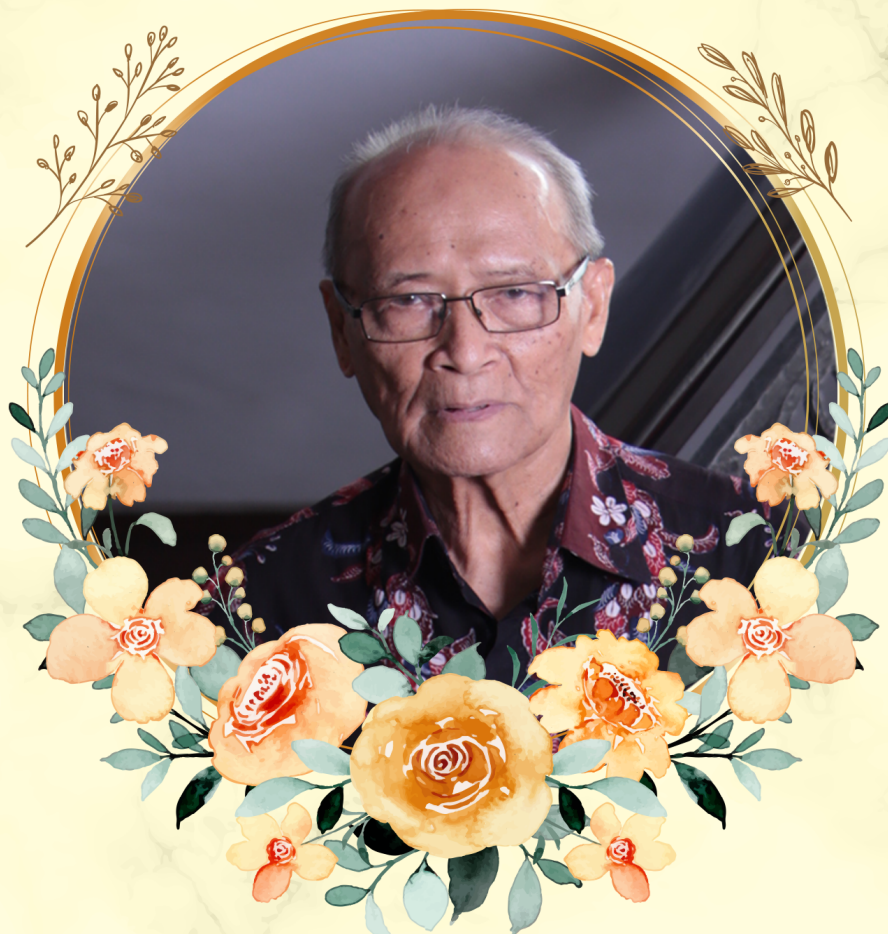


Three Constitutional Justices—Chief Justice Anwar Usman, Constitutional Justice Arief Hidayat, and Constitutional Justice Saldi Isra—delivered presentations on “The Dynamics of the Democratic Law State after the Amendment of the 1945 Constitution” at the National Conference of the Association of Constitutional and Administrative Law Lectures of Indonesia (APHTN-HAN) in Denpasar, Bali, on Thursday evening (19/5/2022).



Constitutional Justice Arief Hidayat gave a public lecture at the Faculty of Dharma Duta, State Hindu University I Gusti Bagus Sugriwa, Denpasar, Bali, on Friday (20/5/2022). In this event, he asserted that Indonesia is different from other countries, and Indonesia's direction is enshrined in the Preamble to the 1945 Constitution.

إِنَّا لِلّٰهِ وَإِنَّا إِلَيْهِ رَاجِعُونَ



The Big Family of the Constitutional Court is deeply saddened by the news of the passing of

Prof. Dr. K.H. Ahmad Syafii Maarif

Member of the Ethics Council of Constitutional Justices

We would like to extend our deepest condolences and prayers to the family and the loved ones.

TUNDERSTANDING CHILDREN'S RIGHTS

Dr. Wilma Silalahi, S.H., M.H.

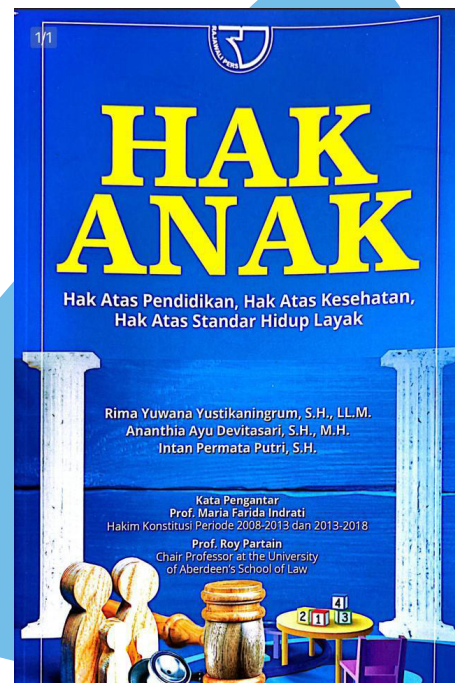
Substitute Registrar of the Constitutional Court of the Republic of Indonesia and Lecturer of the Faculty of Law, University of Tarumanegara, Jakarta.

The book entitled “Children’s Rights, Rights to Education, Rights to Health, Right to an Adequate Standard of Living” (*Hak Anak, Hak Atas Pendidikan, Hak Atas Kesehatan, Hak Atas Standar Hidup Layak*) is about child protection. However, children cannot be protected without being provided with nutritious food, housing, care, health services, education, or the opportunity to make decisions about their own lives and in society. In addition, in order to realize the efforts to protect children, the interaction between different types of rights is also important. Therefore, the Convention on the Rights of the Child (CRC) comes into place. Convention on the Rights of the Child (CRC) is an international human rights treaty that sets out economic, social, cultural, civil, and political rights.

This book describes that the children’s welfare has a place to prevent acts or negligence (usually by a parent) that could threaten their integrity or development or show an immediate threat or potential harm in the future. The current framework of child

protection is still focused on child protection and does not clearly focus on family social problems. However, in addressing welfare issues that affect children, the family context should be a major

concern for child protection and other support services for children and families. Economic inequality and well-being are strongly correlated with child protection interventions and are



TITLE: HAK ANAK, HAK ATAS PENDIDIKAN, HAK ATAS KESEHATAN, HAK ATAS STANDAR HIDUP LAYAK

(Children’s Rights, Rights to Education, Rights to Health, Rights to Adequate Standard of Living)

AUTHOR: Rima Yuwana Yustikaningrum, S.H., LL.M., Ananthia Ayu Devitasari, S.H., M.H., Intan Permata Putri, S.H.

PAGE: 222

PUBLISHER: PT. RajaGrafindo Persada, 1st Edition, 1st Print, Depok.

also considered risk factors for child abuse and neglect.

This book emphasizes that parents should actively work to support their child's development. The children must have the opportunity to grow up in their own families. Therefore, the CRC acknowledges that children must be protected from violence, abuse, neglect, and parental separation, which is sometimes necessary for the child's best interests. CRC requires a child rights approach to care and children's protection. This means that children should be seen as rights holders, not beneficiaries of adult favors.

Further, this book also discusses birth certificates as a child's identity right that should be easily accessed and free of charge, issues of children born out of wedlock, children born to parents of different nationalities, street children, religious freedom, especially for children born out of wedlock adhere to and believe in religious teachings other than those recognized as official by the government. This book also goes into depth about sharia law in Aceh which has its own privileges and autonomy based on religion, where the implementation of sharia law in Aceh is legal and in accordance with the laws and regulations issued by the central

government. It also mentions that there is no obligation for non-Muslim children to wear a school uniform with a designated uniform for female Muslim students. In the context of children born from mixed nationality marriages, the Government of Indonesia grants citizenship to the child. The same also applies to children born in marriages between Indonesian citizens and people who do not have citizenship or if both parents are stateless persons.

Furthermore, this book describes the right to education as one of the certain rights recognized and protected by the International Covenant on the Economic, Social, and Cultural Rights (ICESCR). Education and all its forms or levels are still related to each other with the following aspects: (1) availability, (2) accessibility, (3) acceptability, and (4) adaptability. This book further explained that two main characteristics have an impact on access to education—the cost of education and efforts to eliminate discrimination. More specifically, this book describes that access to education is one of the international human rights laws, which is often associated with domestic law, including the constitutional level of a country. One aspect or principle that should not be ignored in access to education is the non-discrimination aspect because it is the focus of human rights in the education sector, which

includes the promotion of equality and the prohibition of all forms of discrimination in the education sector, as stated in the 1960 CDE. And also the state's role to routinely identify children who experience discrimination on access to education. Concerning discrimination, the Constitutional Court believes that to decide if an action is a discrimination or not, what must be considered is the presence or absence of objective reasons and reasonable criteria that lead to the different policy.

According to UNICEF, 67% of children with special needs in Indonesia have not had access to proper education due to several factors such as poverty, equity, and gender equality. In addition, the three most significant factors cause children to drop out of school: socio-economic problems, early marriage, and disability.

Furthermore, the government has an inclusive education program, which is a form of special education service that requires all children with special needs to receive an equal education in regular classes with children of their age and is a form of equity from education without discrimination where children with special needs and children, in general, receive the same education. Moreover, several factors are believed to influence the success of inclusive education in Indonesia, including the rational aspect, scope aspect, fast action aspect, resource aspect, commitment aspect, core staff

aspect, parent aspect, leadership aspect, and relationship with other parties aspect.

This book also describes the constitution's guarantee and implementation of children's rights in the health sector. Protection against discrimination on access to health is regulated in Article 24 of the CRC, which guarantees the children's right to gain access to the highest standard of health and health facilities for treatment and rehabilitation. Provisions for protection against discrimination on access to health include: (1) reducing infant, under-five, and child mortality; (2) promoting basic health protection; (3) eradicating disease and malnutrition; (4) ensuring prenatal and postnatal health services for pregnant and postpartum women; (5) provide education and related knowledge about health, hygiene, and sanitation; (6) develop preventive measures for family health and planning family health services by including the provisions of the pediatric treatment protocol. This book further explains that the state's responsibility in fulfilling public health consists of three principles: obligations to respect, protect, and fulfill. In addition, it also presents the comparison of the implementation of children's rights in the health sector in

various countries, including Indonesia, the Netherlands, Germany, the United States, and Africa.

This book also discusses child labor rights. The exploitation of child labor is relatively widespread in some countries because of the loose state control over child labor and working conditions. Although the country members of the CRC have an obligation to guarantee and protect children's rights, many cases still show that these obligations are not realized, and many children are left alone without the protection of the state and their parents. Therefore, the CRC issued a general statement on state obligations regarding the impact of the business sector on children's rights which, among other things, emphasized that "the state must take all necessary, appropriate, and reasonable" measures to prevent business enterprises from causing or contributing to violations of children's rights

More specifically, this book describes the minimum age to be allowed to work in each type of job, which due to the nature or circumstances of the environment in which the work is carried out, may endanger the health, safety, or morals of young people, must not under 18 years of age. The

types of jobs permitted shall be determined by national laws or regulations, or by the competent authority, after consulting with the employers' organizations or employers' associations and workers concerned, if any. However, there are exceptions if the national laws or regulations or the competent employer's authority, after consulting with the organizations of employers or employers' associations and workers concerned, if any, may allow children aged 16 years and over to work on the condition that the children's health, safety, and their morals are fully protected, and they have received special education or vocational training regarding the job concerned.

This book is highly recommended for teachers of constitutional law, state administrative law, the science of legislation, government science, students, legal practitioners, and the general public as a reference, especially those who want to enrich their knowledge about human rights. Don't miss it.

“There is absolutely no reason to hinder self-development. It is not others who determine our style, but ourselves who determine the direction of our journey in life.”

CONSTITUTIONAL COURT

HEARING PROTOCOLS



MUST WEAR MASKS AND GLOVES, CHECK BODY TEMPERATURE, AND KEEP A DISTANCE.



THE PARTIES CAN ATTEND THE HEARING THROUGH A VIRTUAL HEARING



IMPLEMENTING RESTRICTIONS ON ATTENDANCE IN THE COURTROOM FOR PARTIES TO A MAXIMUM OF TWO PEOPLE



SPRAYING DISINFECTANTS ON ALL COURT FACILITIES AND INFRASTRUCTURE WHICH INCLUDES COURTROOMS, COURT WAITING ROOMS, COURT RECORDING ROOMS, TOILETS, AND ALL EQUIPMENT.



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Prof. Dr. Sardjono Jatiman, Multiculturalism, and Customary Rights

LUTHFI WIDAGDO EDDYONO

Researcher at Constitutional Court

In the discussion concerning the amendments to the 1945 Constitution, in the past, it was not only legal experts who took part in it. In fact, experts from other branches of science were also joined and discussed the constitutional norms that would be amended. Prof. Dr. Sardjono Jatiman, a sociology professor at the University of Indonesia, is one of the experts invited by PAH I BP MPR. Prof. Dr. Sardjono Jatiman spoke at the 27th PAH I BP MPR Meeting on March 7, 2000. He discussed the concepts of a plural society, heterogeneous society, and Indonesian diversity.

“...Every day we always say that the nation of Indonesia is an ancient nation. A nation that has been around for thousands of years. However, the truth is it’s just a myth. Because Indonesia is a new nation that only existed in 1928. At that time, we agreed to become a nation. Well, at the time, it was a cultural process, i.e., we agreed that we were different. Because we were different, we just brought some things that united us, such as one motherland and one nation, but we didn’t say one language at that time because we only said that we uphold the language of unity. So, this is then translated into our Constitution as a unifying language. Well, thus, indeed, from the beginning, we acknowledged our diversity. So, from the

beginning, Indonesian society was a plural society. Well, this must be distinguished from society. People are often confused about the concept of plural society and heterogeneous society. If we talk about a plural society, the basis is primordial ties, ethnicity, race, and religion. Those are plural. In contrast, a heterogeneous society is basically a profession of expertise, so that heterogeneous society is an urban society, while a plural society is a society whose ethnic, racial, and religious orientation is still strong like the Indonesian nation.”

Prof. Dr. Sardjono Jatiman, as quoted in *Comprehensive Manuscript on Amendments to the 1945 Constitution of the Republic of Indonesia, Background, Process, and Discussion Results from 1999-2002, Book I Background, Process, and Amendments Results to the 1945 Constitution Jakarta: Secretariat General and the Registrar of the Constitutional Court*; (Revised Edition, July 2010), placed these social stages in the Indonesian context, as follows:

“At this time, we begin with a pluralistic society, and subsequently, various regions or areas develop to become a heterogeneous society. Well, that’s why when we formed a state, the state of Indonesia was formed in 1945. However, the Indonesian nation is still in the process. So, we often assume that the Indonesian

nation became (a nation) in 1945 or 1928. However, this is an ongoing process. If we cannot do this process properly, disintegration can arise. This is what happened in the past. Because why? It’s because we did not acknowledge our plurality. In fact, since the beginning, in Article 18, our plurality was recognized by our Constitution. Where pluralism is precisely at our lowest level—at the village level. Well, indeed, we often compare our plural society with the plural society in the United States. However, actually, our plural society is very different from the plural society in America. Why? Because in Indonesia’s pluralistic society, each ethnic group has its own territory.

Further, Prof. Dr. Sardjono Jatiman concretely proposed that PAH I BP MPR incorporate the elucidation of Article 18 of the 1945 UD into an article. This is to guarantee the protection of the local culture and economy. In the end, after the amendment to the 1945 Constitution, the elucidations of the articles were removed, and Article 18 was drastically added.

“Well, therefore, I suggest that perhaps the elucidation of Article 18 is incorporated in the body with several changes. So, the protection of local culture can be implemented. Not to mention the local economy.

Therefore, any attempt at uniformity in this country should be avoided. Any form of uniformity

must be avoided because, from the beginning, we agreed that we are diverse. Well, maybe it is possible to emphasize that because the Constitution does not mention the state symbol. Perhaps it is better to incorporate the national symbol, where the word “Bhinneka Tunggal Ika” is incorporated as one of the agreements. And Bhinneka is mentioned at the initial. So, the Tunggal is a later process, not a manipulation, I think. Not engineering. But it is a transformation. At some point, it will happen. So that at a certain point in time what we called it, .. like we are today, there are Betawese, and there are Jakartans. Later, there will be people from North Sumatra and Batakese. Therefore, the migration process will run like that, so social processes naturally occur in areas or regions. There will be cross-cutting between tribes, between religions, and that’s what we might do. So that ethnic boundaries will disappear naturally. Well, I guess..., we need to develop multiculturalism in this country. Because, after all, a pluralistic society is always prone to conflicts. However, we cannot eliminate conflict because conflict is a natural thing. The important thing is resolving conflicts without violence. Therefore, the process of becoming Indonesia will continue. While the Indonesian state has indeed been formed, it should not be considered that the Indonesian nation was the final form when we became independent in 1945.”

As quoted in the Comprehensive Manuscript, Prof. Dr. Sardjono Jatiman emphasized that the construction of agrarian law was correct, from customary rights to national rights, then to state rights. According to Prof. Dr. Sardjono Jatiman, there must be a provision that stipulates state land is not owned by the government. Prof. Dr. Sardjono Jatiman explained it as follows:

“...the problem of local community development is where the construction is, actually the legal construction is correct. If I take a look at agrarian law, the legal construction is indeed from customary rights to national rights, from national rights to state rights, and it should stop there. It is not the government’s right. Because why? When it becomes the government’s right, then it will become an official right. That’s what happened. It really did happen, right? So, customary land becomes Nation land, state land, and government land becomes official land. So, it should stop on state land. Well, we have confusion between state land and government land. And this may have a special statutory rule or be incorporated in the article that stipulates that state land is not government land, I suppose.”

In regard to this, the recognition of the tenure rights of customary law communities is much more potent after the amendment to the 1945 Constitution. Not only are there additional articles in Article 18, but the existence of the Constitutional Court through its interpretation also confirms this. For example, in Decision 35/PUU-X/201.

In considering the decision, the Constitutional Court emphasized that the 1945 Constitution Article 18B paragraph (2) and Article 28 I paragraph (3) have provided recognition and protection for the existence of customary forests in agreement with the customary rights area of a customary law community. This is a consequence of the recognition of customary law as “living law,” which has been going on for a long time and has continued until now. Therefore, placing customary forests as part of state forests is ignoring the rights of indigenous

peoples. The Constitutional Court finally decided that “customary forest is a forest located in the territory of customary law communities” is not interpreted as “customary forest is a state forest located in the territory of customary law communities.”

Furthermore, the word “shall respect” in Article 4 paragraph (3) of the Forestry Law, according to the Constitutional Court, must be interpreted more firmly—that the state recognizes and respects customary law community and their traditional rights, in line with the intent of Article 18B paragraph (2) of the Constitution 1945. As for the requirements for the recognition and respect of customary law communities, the phrase “insofar as they still exist and their existence is recognized” must be interpreted as long as they remain in existence and in agreement with societal development because customary law is an unwritten law in general and is a living law, meaning it is accepted and implemented (observed) and obeyed by the people concerned because it fulfills a sense of justice for them and is in accordance with and recognized by the constitution.

According to the Constitutional Court, another interesting thing is regarding the conditions as long as they still exist and their existence is recognized; in fact, the status and functions of forests in customary law communities depend on the status of the existence of customary law communities. The possibility that happens is the fact it still exists, but its existence is not recognized or, in fact, does not exist but its existence is recognized. If, in fact, it still exists but its existence is not recognized, this can cause harm to the community concerned. In order to prevent adverse impacts, the 1945 Constitution orders the existence and protection of the customary law community to be regulated in law so as to ensure the existence of fair legal certainty.

The Impeachment of President Soekarno and the Emergence of “Acting President” in the State Administration System

LUTHFI WIDAGDO EDDYONO

Researcher at Constitutional Court

It's exactly on March 12, 1967, the formal dismissal of President Soekarno was done. At that time, the Provisional People's Consultative Assembly (MPRS) issued a Resolution of the Provisional People's Consultative Assembly of Republic of Indonesia Number XXXIII/MPRS/1967 in 1967 on the Revocation of Executive Powers from President Soekarno.

This process begins with the things explained in the section Considering the TAP MPRS. In the beginning, initially, it was the Opening Speech of the President/Mandatar of the Provisional People's Consultative Assembly delivered to the Provisional People's Consultative Assembly on June 22, 1966, entitled “*Nawaksara*” and the Letter of the President of the Mandatar of the Provisional People's Consultative Assembly dated January 10, No. 01/Pres/1967 concerning Complementary *Nawaksara*, it was stated that the MPRS did not meet the people's expectations in general, and “the members of Provisional People's Consultative Assembly in particular, because it does not clearly state the responsibilities for the President's policy regarding

the counter-revolution rebellion. G-30-S/PKI and its epilogue, economic setbacks and moral decline.”

The President/Mandatar of the Provisional People's Consultative Assembly has handed over the powers of the State Government to the bearer of MPRS Decree No. IX/MPRS/1966 as stated in the Presidential/Mandatar Announcement of the Provisional People's Consultative Assembly dated February 20, 1967. Furthermore, based on the written report of the Commander of Operations for Restoration of Security and Order/Bearer of the resolution of MPRS No. IX/MPRS/1966 in his letter No. R-032/67, dated February 1, 1967, and his report speech before the Extraordinary Session of the Provisional People's Consultative Assembly, he stated that there were indications that President Sukarno had implemented policies that indirectly benefited the G-30-S/PKI and protected the important figures of the G30-S/PKI. This is described in the Considering section.

The things that are considered in this TAP MPRS are:

1. Resolution and Memorandum of the People's Representative Council-Mutual Assistance

(Dewan Perwakilan Rakyat Gotong-Royong), dated 9 and 23 February 1967;

2. Speech of the Chairman of the Provisional People's Consultative Assembly at the opening of the Extraordinary Session of the Provisional People's Consultative Assembly;
3. Opening speech by the Chairman of the People's Representative Council-Mutual Assistance (Dewan Perwakilan Rakyat Gotong-Royong) at the opening of the Extraordinary Session of the Provisional People's Consultative Assembly;
4. Government statement before the People's Representative Council-Mutual Assistance (Dewan Perwakilan Rakyat Gotong-Royong) on March 4, 1967;
5. Speech on the report of the Commander of Operations for Restoration of Security and Order/Bearer of the resolution of MPRS No. IX/MPRS/1966 before the

Extraordinary Session of the Provisional People's Consultative Assembly on March 7, 1967.

Consists of 2 CHAPTERS. CHAPTER I contains five articles. Article 1 states that President Sukarno has been unable to fulfill constitutional responsibilities, as befits the obligation of a Mandataris to the (Provisional) People's Consultative Assembly, as the one who gave the mandate, which is regulated in the 1945 Constitution.

Article 2 contains another reason—that President Sukarno has been unable to carry out the policy and the decision of the (Provisional) People's Consultative Assembly, as befits the obligation of a Mandataris to the (Provisional) People's Consultative Assembly, as the one who gave the mandate, which is regulated in the 1945 Constitution.

Article 3 contains a prohibition for President Sukarno to carry out political activities until the general election and since this resolution comes into force, revoke the mandate of the Provisional People's Consultative Assembly from President Sukarno and all State Government Powers,

which is regulated in the 1945 Constitution. This is an interesting topic to study and understand because President Soekarno had a large and strong base of supporters at that time, so such a ban was considered important.

The following article is an article about the beginning of authoritarianism history in Indonesia. Article 4 stipulates the enactment of Resolution of the (Provisional) People's Consultative Assembly No. XV/MPRS/1966, and appointed General Suharto, the bearer of resolution of MPRS No. IX/MPRS/1966 as Acting President based on Article 8 of the Law 1945 until the election of the President by the People's Consultative Assembly as a result of the General Election. Suharto was then re-elected until his term of office in the reform era ended in 1998—exactly 32 years of President Suharto in power.

Article 8 of the 1945 Constitution before the amendment states that If during his term the President passes away, resigns, is impeached, or is unable to carry out his duties, he shall be replaced until the end of that term by the Vice President. However, General Suharto was not Vice President. He was an Acting

President. A position that is not recognized in the constitution. Therefore, in Article 5, it is stated that the Acting President is subject to and responsible to the (Provisional) People's Consultative Assembly.

CHAPTER II only consists of one article, that is, Article 6. The article stipulates the settlement of legal issues concerning Dr. Ir. Sukarno, carried out according to the legal provisions in order to enforce law and justice. This article also submits its implementation to the Acting President.

The interesting is that Chapter III also only consists of one article. Article 7 states, "This resolution comes into force on the day of stipulation and has retroactive effect starting on February 22, 1967." This retroactive effect is quite confusing. One of the principles firmly held in preparing a statutory regulation is that it must not be retroactive (non-retroactive). This is the principle of legality. There may be other reasons that need to be done, especially related to transitoir conditions. ■



THE IMPACT OF DKPP'S DECISION AS THE ELECTION ORGANIZERS

● DR. WILMA SILALAH, S.H., M.H.

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

As a country that adopts a democratic system, the highest sovereignty rests with the people. The embodiment of popular sovereignty is conducted through direct, general, free, confidential, honest, and fair general elections. As mandated by the 1945 Constitution, general elections are carried out by election organizers who have high integrity and understand and respect citizens' civil and political rights. The organizers of this general election are national, permanent, and independent in accordance with Article 22E Paragraph (5) of the 1945 Constitution, which constantly carries out its duties. One indicator of the success of the general elections lies in the readiness and professionalism of the election organizers themselves, including the General Elections Commission (KPU), the General Election Supervisory Body (Bawaslu), and the Honorary Council for General Election Organizers (DKPP) are an integral part of the electoral functions, which have their respective functions, duties, and authorities.

As an election organizer, the General Elections Commission (KPU) is free from any party's influence in implementing its duties and authorities. The

implementation of honest and fair elections is one of the important factors for the election of people's representatives who are more qualified and able to voice people's aspirations. Therefore, as the election organizer, the General Elections Commission (KPU) must have integrity and be national, permanent, and independent. The national character, in this case, is reflected in the KPU's working area and its responsibilities as election organizers covering the entire territory of the Unitary State of the Republic of Indonesia (NKRI). Furthermore, the permanent nature shows the KPU as an institution that carries out its duties continuously even though a certain term of office limits it. Meanwhile, the independent nature confirms that the KPU is free from any party's influence in elections.

The next election organizer is the General Election Supervisory Body (Bawaslu), which is responsible for overseeing the implementation of elections throughout the territory of the Republic of Indonesia. The General Election Supervisory Body (Bawaslu) supervises the implementation of elections in the context of prevention and prosecution for the realization of democratic elections. The General

Election Supervisory Body has the authority to oversee the implementation of the election stages, receive complaints, and handle cases of administrative violations, election crimes and violations, and codes of ethics. The General Election Supervisory Body membership consists of individuals who can supervise the implementation of elections.

In carrying out their duties, the General Elections Commission (KPU) and the General Election Supervisory Body (Bawaslu) are supervised by the Honorary Council for General Election Organizers (DKPP). Thus, the Honorary Council for General Election Organizers (DKPP) is an institution in charge of dealing with violations of the election organizers' code of ethics. DKPP is devoted to checking and balancing (check and balance) the performance of the KPU, Bawaslu, and their staff. Furthermore, DKPP is responsible for handling complaints and/or reports of alleged violations of the code of ethics committed by election organizers. Philosophically, DKPP was previously named the Honorary Council of the General Elections Commission (DK KPU) in 2008. The DK KPU is an ethical institution that functions through Law Number 22 of 2007

on General Election Organizers to resolve the issue of violations of the code of ethics for organizers. However, the DK KPU did not have strong authority at that time. The DK KPU served to summon, examine, adjudicate, and try to provide recommendations to the KPU and was ad hoc in nature.

The authority of DK KPU was not strong enough because, from the competency perspective, the DK KPU membership is relatively good; however, from the structural aspect, it is not balanced because election organizers dominate it. On its journey, the DK KPU provides changes and new hopes for the public related to violations of the election organizers' code of ethics. From this good achievement, the political elite (Government, DPR, the judiciary, and election monitoring institutions) agreed to improve the capacity of authority and ensure that this institution is established, but with the expansion of its authority not only to handle the KPU and Bawaslu's code of ethics at each level, which resulted in the Honorary Council for General Election Organizers (June 12, 2012) based on Law Number 15 of 2011 on the General Election Organizer (UU 15/2011). Therefore, DKPP is present in the context of realizing the General Elections Commission (KPU) and the General Election Supervisory Body (Bawaslu) with integrity and credibility as election organizers.

In its development, the presence of the DKPP is considered to have caused various problems, among others, as proposed by a *judicial review* to the Constitutional Court against the constitutionality review of Article 28 paragraph (3) insofar as the phrase "In the plenary meeting, DKPP decides on the dismissal of members as referred to in paragraph (1)", Article 28 paragraph (4) insofar as the phrase "the decision making as referred to in paragraph (3) by the DKPP shall be further regulated

by the DKPP Regulation", Article 100 paragraph (4) along with the phrase "In the event of the plenary meeting, DKPP decides on the dismissal of members as referred to in paragraph (1) and paragraph (2)," Article 101 paragraph (1) insofar as the phrase "the decision making by the DKPP as referred to in Article 100 is further regulated by the DKPP Regulation", Article 112 paragraph (9) along with the phrase "DKPP determines the decision", Article 112 paragraph (10) insofar as the phrase "The decision of DKPP", Article 112 paragraph (12), Article 112 paragraph (13) along with the phrase "must implement DKPP's decision", and Article 113 paragraph (2), which reads "Decision making" Law 15/2011. The Constitutional Court has decided on the constitutional review of the a quo articles through the Decision of the Constitutional Court Number 31/PUU XI/2013, dated April 3, 2014.

Constitutional Court Decision Number 31/PUU-XI/2013

In the Decision of the Constitutional Court Number 31/PUU-XI/2013, dated April 3, 2014, the Petitioner was Ramdanyah, S.S., S.Sos., S.H., MKM., as an individual Indonesian citizen who previously worked as Chairman and Member of the General Election Supervisory Committee (Panwaslu) in the DKI Jakarta Regional General Elections who handled the Legal Sector and Handling Violations felt that his constitutional rights had been harmed due to the enactment of the norms of Law 15/2011 and created legal uncertainty because it negates the authority of the guidance and supervision of the KPU and Bawaslu on

- Article 28 paragraph (3), along with the phrase "In the case of a plenary meeting DKPP decides to

dismiss members as referred to in paragraph (1)"

- Article 28 paragraph (4) insofar as the phrase "the decision-making as referred to in paragraph (3) by DKPP is further regulated by DKPP Regulation";
- Article 100 paragraph (4) along with the phrase "In the case of a plenary meeting," DKPP decides on the dismissal of members as referred to in Paragraph (1) and Paragraph (2);
- Article 101 paragraph (1) as long as the phrase "decision making by DKPP as referred to in Article 100 is further regulated by DKPP Regulation";
- Article 112 paragraph (9) along with the phrase "DKPP makes a decision";
- Article 112 paragraph (10) along with the phrase "DKPP's Decision";
- Article 112 paragraph (12), Article 112 paragraph (13) insofar as the phrase "must implement DKPP's decision";
- and Article 113 paragraph (2) along with the phrase "Decision making" contrary to Article 1 paragraph (3), Article 22E paragraph (1) and Paragraph (5), and Article 28D paragraph (1) of the 1945 Constitution.

According to the Petitioner, the enactment of the articles concerning the issue of constitutionality in question by the Petitioners, the constitutional problems experienced by the Petitioners are as follows:

1. The Petitioner loses the constitutional right to become a general election organizer because the decision of DKPP permanently dismisses the Petitioner from the membership of the General Election Supervisory Committee (Panwaslu) in the DKI Jakarta Regional

General Elections and has been followed up with the dismissal as a member and Chairman of the General Election Supervisory Committee (Panwaslu) in the DKI Jakarta by Bawaslu. In fact, previously, the Petitioner's performance received positive feedback and recognition from various groups;

2. The Petitioner has difficulty in becoming an instructor because always associated with the Decision of DKPP;
3. The decision of the DKPP disrupts the performance of General Election organizers, including the General Election Supervisory Body (Bawaslu), the General Election Commission (KPU), and their staff, who ultimately may harm or at least delay the implementation of the General Election and create legal uncertainty on the duties and authorities of the General Election Supervisory Body (Bawaslu), the General Election Commission (KPU), and their staff.

In its legal considerations, the Court first considers matters as follows:

- a. Article 22E paragraph (5) of the 1945 Constitution reads, "The general elections shall be organized by a general election commission that shall be national, permanent and independent in nature";
- b. Concerning the interpretation of the phrase "a general election commission" as contained in Article 22E Paragraph (5) of the 1945 Constitution, the Court, in the legal considerations of Paragraph [3.18] Court Decision Number 11/PUU VIII/2010, dated March 18,

2010, among other things, stated that:

" . . . In order to ensure the implementation of general elections that adopt the principles of direct, general, free, confidential, honest, and fair, Article 22E Paragraph (5) of the 1945 Constitution stipulates that "The general elections shall be organized by a general election commission that shall be national, permanent and independent in nature." The phrase "a general election commission" in the 1945 Constitution does not refer to an institution's name but refers to the function of organizing general elections that are national, permanent, and independent. Thus, according to the Court, the function of organizing general elections is not only carried out by the General Elections Commission (KPU), but also includes the general election supervisory agency, in this case, the General Elections Supervisory Body (Bawaslu) as a unitary function of organizing general elections that are national, permanent, and independent. This definition is more in line with the provisions of the 1945 Constitution, which mandates the existence of an independent general election organizer to be able to hold general elections that meet the principles of direct, general, free, confidential, honest, and fair. Organizing general elections without supervision by an independent institution will threaten the principles of direct, general, free, confidential, honest, and fair elections. Therefore, according to the Court, the General Elections Supervisory Body (Bawaslu), as regulated in Chapter IV Article 70 to Article 109 of Law 22/2007, must be defined as a general election organizer responsible for supervising the implementation of general elections, so that the function

of organizing general elections is carried out by the element of an organizer, in this case, the General Election Commission (KPU), and the general election supervisory element, in this case, the General Elections Supervisory Body (Bawaslu). In fact, the Honorary Council overseeing the performance of the general election organizers must also be interpreted as an institution that is an integral part of the function of organizing general elections. Thus, the independence of the general election organizers is real and clear..."

Based on these considerations, it is clear that the Honorary Council for General Election Organizers (DKPP) is an organization that is an integral part of the function of organizing the General Election as referred to in Article 22E Paragraph (5) of the 1945 Constitution, which oversees the performance of the general election organizers.

Furthermore, according to the Court, Article 24 Paragraph (2) of the 1945 Constitution reads, "*The judicial powers shall be carried out by a Supreme Court and by its subordinate judicatory bodies dealing with general, religious, military, state administrative judicial fields, and by a Constitutional Court.*" Meanwhile, Article 24A paragraph (5) of the 1945 Constitution reads, "*The organization, authority, membership, and judicial procedures of the Supreme Court as well as of its subordinate judicatory bodies shall be regulated by law.*" The meaning of the phrase "regulated by law" in Article 24A paragraph (5) of the 1945 Constitution means that the establishment of a judicial body under the Supreme Court has to do with the Act. Meanwhile, Article 27 of Law 48/2009 reads:

- (1) A special court may only be established in one of the judicial environments under the Supreme Court, as referred to in Article 25.
- (2) Provisions concerning the establishment of a special court, as referred to in Paragraph (1), shall be regulated by law.

Furthermore, in the Elucidation of Article 27 paragraph (1) of Law number 48 of 2009 stated, “That which is meant by ‘special courts’ are, juvenile courts, commercial courts, human rights courts, anti-corruption courts, industrial relations courts, and fishery courts within the public courts, and tax courts within the state administrative courts.”

Based on the above provisions, the judiciary in Indonesia consists of the Supreme Court and its subordinate judicatory bodies dealing with public, religious, military, state administrative judicial fields, and a Constitutional Court. The Honorary Council for General Election Organizers (DKPP) is excluded from a special court that is included in one of the judicial fields under the Supreme Court as intended by Article 24 paragraph (2) of the 1945 Constitution and Article 27 paragraph (1) of Law 48/2009 and are not included as one of the actors of judicial authority as referred to in Article 24 paragraph (2) of the 1945 Constitution. This has also been confirmed in one of the considerations in the Court Decision concerning the dispute over general election results (PHPU), in paragraph **[3.18.1]** Decision Number 115/PHPU.D-XII/2013, dated October 1, 2013 (Tangerang City Regional Head Election) which stated, “DKPP is a state administrative organ which is not a judicial institution

as referred to in Article 24 of the 1945 Constitution which has independent authority to enforce law and justice.”

Article 1, number 22 of Law 15/2011 states, “The Honorary Council for General Election Organizers, hereinafter abbreviated as DKPP, is an institution responsible for handling violations of the General Election Organizer’s code of ethics and is an integral part of the function of organizing the General Election.” Furthermore, Article 109 paragraph (2) of Law 15/2011 states, “The Honorary Council for General Election Organizers (DKPP) was established to checking, reviewing, follow up and decide on complaints and/or reports of alleged violations of the code of ethics committed by KPU members, Provincial KPU members, Regency/Municipal KPU members, PPK members, PPS members, PPLN members, KPPS members, KPPSLN members, Bawaslu members, Provincial Bawaslu members and Regency/Municipal Panwaslu members, sub-district Panwaslu members, On-field Election Supervisors, and Overseas Election Supervisors.” Based on this provision, according to the Court, the object of the case handled by DKPP is limited to an official or general election organizer’s personal or individual behavior (ethics). The existence of DKPP as an ethical institution that handles violations of the code of ethics committed by election organizers is necessary for an effort to oversee the implementation of direct, general, free, confidential, honest, and fair general elections.

Concerning the authority to dismiss election organizers, it has been regulated in the provisions of Article 27 paragraph (4) of Law 15/2011 for members of KPU, Provincial KPU, and Regency/Municipal KPU, Article

41 paragraph (2) of Law 15/2011 for PPK members, Article 44 paragraph (2) of Law 15/2011 for PPS members, Article 48 paragraph (3) of Law 15/2011 for PPLN members, Article 46 paragraph (2) of Law 15/2011 for KPPS members, Article 50 paragraph (2) of Law 15/2011 for KPPSLN members, and Article 99 paragraph (3) of Law 15/2011 for Bawaslu members, Provincial Bawaslu, Regency/Municipal Panwaslu, Sub-district Panwaslu, On-field Election Supervisors, and Overseas Election Supervisors. Based on the articles above, administratively, the official authorized to appoint and dismiss the general election organizers is the President if it is related to the General Elections Commission (KPU) and the General Election Supervisory Body (Bawaslu) members; the General Elections Commission (KPU) if it is related to Provincial KPU members, PPLN members, and KPPSLN members; Provincial KPU if it is related to Regency/Municipal KPU members; Regency/Municipal KPU if it is related to District Election Committee (PPK) members, Voting Committee (PPS) members, and KPPS members; General Election Supervisory Body if it is related to members of Provincial Bawaslu, Regency/Municipal Panwaslu, Sub-district Panwaslu, On-field Election Supervisors, and Overseas Election Supervisors. DKPP itself has the authority to decide on the dismissal of general election organizers only if DKPP has checked, reviewed, and/or verified the complaints, listened to the defense and statements of witnesses, and paid attention to the evidence submitted regarding alleged violations committed by general election organizers, as long as they are related to violations of the code of ethics committed by

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general election organizers [vide Article 111 of Law 15/2011]. According to the Court, DKPP has the authority to decide on whether or not there is a violation of the code of ethics committed by the general election organizers, along with the sanctions that can be imposed on the general election organizers without being influenced by any institution, including the President, KPU, and Bawaslu. This is a form of independence of the DKPP as one of the institutions that carry out the function of organizing general elections.

Law 15/2011 authorizes DKPP to decide on imposing sanctions on the general election organizers if, during the examination process by DKPP as regulated in the law of general election organizers, it is proven that they have violated the election organizer code of ethics.

The sanctions can be in the form of a written warning, temporary dismissal, or permanent dismissal. According to the Court, DKPP decides the sanctions, which are sanctions for violating the code of ethics committed by officials or individuals of election organizers. Further, the decision of the DKPP is final and binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu. Thus, the follow-up to DKPP decisions made by the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu are decisions of state administrative officials (TUN), who carry out government affairs in accordance with a statutory regulation that is individual, tangible, and final. Therefore, only the decisions of the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu can be the object of a lawsuit in the State Administrative Courts.

Based on the considerations of the Court above, the decision of the DKPP, which is final

and binding as referred to in Article 112 paragraph (12) of Law 15/2011, may create legal uncertainty whether the final and binding referred to in the Law are the same as the final and binding decision of the judiciary. In order to avoid legal uncertainty over the existence of this provision, the Court must emphasize that the final and binding decision of the DKPP cannot be equated with the final and binding decision of the judiciary in general because the DKPP is an internal election organizer authorized by law. The final and binding nature of the DKPP's decision must be interpreted as final and binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu in implementing DKPP decisions. The decisions of the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu are individual, tangible, and final decisions of State Administrative officials, which can be the object of a lawsuit in the State Administrative Courts. Will the State Administrative Courts examine and reassess the decision of the DKPP, which is the basis for the decision of the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu? This is the authority of the State Administrative Courts. Therefore, the final and binding decision referred to in the a quo Law must be interpreted as final and binding for the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu implementing the DKPP Decision.

Because the point of the Petitioners' petition on the DKPP Decision, which is final and binding, has been given a certain meaning by the Court so that it does not eliminate the final phrase and binding entirely. Thus, with respect to the Petitioner's petition on Article 28 paragraph (3) which reads, *"In the event that the plenary meeting of DKPP decides*

on the dismissal of members as referred to in paragraph (1)", Article 28 paragraph (4) insofar as the phrase "the decision making as referred to in Paragraph (3) by DKPP is further regulated by DKPP Regulation," Article 100 paragraph (4) which reads, "In the event that the plenary meeting of DKPP decides on the dismissal of members as referred to in paragraph (1) and paragraph (2)," Article 101 paragraph (1) insofar as the phrase "decision making by DKPP as referred to in Article 100 shall be further regulated by DKPP Regulation," Article 112 paragraph (9) insofar as the phrase "DKPP determines the decision," Article 112 paragraph (10) along with the phrase "DKPP's decision," Article 112 paragraph (13) insofar as the phrase "must implement the DKPP's decision", and Article 113 paragraph (2) insofar as the phrase "Decision-making" Law 15/2011 is no longer relevant for consideration, so it is not legally grounded.

Thus, the phrase *"final and binding"* in Article 112 paragraph (12) of Law 15/2011 is contrary to the 1945 Constitution or unconstitutional and has no legal binding as long as it is not interpreted, *"The decision as referred to in paragraph (10) is final and binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu."* Therefore, the Petitioners' argument is legally grounded in parts.

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

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GIVE "PEACE" OF TIME

● **Immanuel B.B. Hutasoit**

Head of Subdivision for Foreign Cooperation

Peace is a journey of a thousand miles and it must be taken one step at a time.

(Lyndon B. Johnson, the 36th president of the United States)

Make Peace with Independence

It is not an excessive euphoria if we can proudly proclaim that Indonesia's independence was not a gift from Japan, the Netherlands, or anyone else. As stated in the Preamble to our Constitution, we proudly acknowledge only two factors that made Indonesia's independence possible: the grace of God Almighty and lofty aspiration. Only the divine factor and the founding fathers' efforts made us finally free to decide the path of Indonesian independence.

When discussing the factor of God Almighty, it is absolutely something that most of the nation's children will agree with. However, this article will talk more about the founding father's efforts in realizing the dream of independence, the efforts for independence through negotiation and diplomacy.

After the proclamation of independence, there were at least several stages of diplomacy to maintain independence: from the Linggarjati Agreement, the Roem-Royen Agreement to the Dutch-Indonesian Round Table Conference. It's important to see how the founding fathers make peace with themselves, make peace with ego, make peace with plurality, make peace with personal interest and slowly achieve what we dream of together.

The Linggarjati Agreement is a political accord concluded after the Dutch were determined to reassert their control over the nation by force but soon realized that they were not in a position to restore Dutch authority after the Indonesian nationalists Soekarno and Hatta declared the independence of the Republic of Indonesia on August 17, 1945, soon after the capitulation of the Japanese in World War II. In short, through the Linggarjati Agreement, the Indonesian people are actually trying to gain international recognition. The negotiations of this agreement were attended by the representatives of Indonesia, the Netherlands, and the British Government acted as an intermediary. The main content of the agreement was that the Netherlands recognized Indonesia as a de facto authority over Java, Madura, and Sumatra.

The Roem-Royen agreement was initially

rejected among politicians because this agreement was considered a defeat for Indonesia. However, in the end, the government and the Indonesian people accepted the agreement. The main point of the agreement is for the Netherlands to cease all military operations and free all prisoners of war captured. This agreement makes the founding fathers more flexible in realizing the dream of true independence.

The Dutch-Indonesian Round Table Conference was the pinnacle of Indonesian diplomacy, which finally brought peace between Indonesia and the Netherlands as a whole. This negotiation took place from 23 August to 2 November 1949. The agreement was reached, and the Netherlands recognized the Republic of the United States of Indonesia as an independent and sovereign Nation.

Based on the explanation above, it can be seen that it needs at least four years (since the Proclamation of Indonesian Independence in 1945) for the Netherlands to come to terms with the conditions and recognize that Indonesia is no longer their "pet" that they can control. The Indonesian people also continued to be persistent and consistent for four years, trying to achieve (independence). It is proven that peace takes time.

Peace Diplomacy

In Great Britain, Prime Minister Lloyd George (1916-1922) implemented Diplomacy by Organizing Conferences in the post-war era. Prime Minister George spent more than three years attending a series of international meetings to shape a new world. The meeting between allies started as soon as the cease-fire was signed. During 1919-1922, he attended at least thirty-three international conferences; (countless informal meetings that preceded).

In particular, one of the hot topics of discussion was a requirement that would be imposed on the Ottomans (Now Turkey). Decisions about the Ottoman Empire were mostly agreed upon at the First London Conference (starting on February 1920). The decision was confirmed in the Italian Riviera resort in the

city of San Remo (April 1920) and realized in the agreement signed in Sèvres, a suburb of Paris, on August 10, 1920.

Regarding negotiations for a peace settlement in the Middle East, the facts show that it will take a lot of time for this to happen. Of all the peace treaties, the United Kingdom's treaty with the Ottoman Empire was the last to be made between the two. According to the Encyclopaedia Britannica 12th Edition Vol 32, it is stated that it will take sixteen months to reach an agreement on substantive issues and another four months to settle the remaining issues and sign an agreement. Overall, it took almost two years for Prime Minister George to conclude a peace treaty with the Ottoman Empire.

Constitutional Court (MK) as Peacemaker

For the 5th WCCJ congress holding, which will be held in Nusa Dua Bali in October 2022, the theme "Constitutional Justice and Peace" has been agreed upon since 2020. The theme was decided upon through a meeting of the working body of the WCCJ (World Conference on Constitutional Justice) called the WCCJ Bureau. As the Asian representative in

the WCCJ Bureau, the Constitutional Court of the Republic of Indonesia (MKRI) has been trusted to be a member of the bureau since 2015 till now. So, it can be said that the MKRI actively participated in initiating and overseeing the theme selection.

The discussion of peace at the WCCJ congress must be recognized that it is not intended as a concept of international law relating to conflicts between countries because this is beyond the jurisdiction of the Constitutional Court. The concept of peace is perceived in terms of peace within the country. The Constitutional Court is placed as a peacemaker.

For example, in Indonesia, with authority given by the Constitution, the Constitutional Court, as

the Guardian of the Constitution, has the authority and obligation to realize constitutional justice in a formal, procedural, and substantive manner. In realizing justice, the Constitutional Court must adhere to the Constitution as the Preamble to the 1945 Constitution (paragraph 4) discuss the subject of peace as follows:

"Pursuant to which, in order to form a Government of the State of Indonesia that shall protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace, and social justice."

It's no secret that some constitutional courts abroad have similarities in terms of authority. For example, the authority to ensure the constitutionality of a norm (law), the authority to settle disputes between state bodies, and the authority to adjudicate the orderliness of the electoral process and results that lead to the establishment of democracy. In carrying out these functions,

it can be understood that the Constitutional Court is one of the actors in strengthening political life in the state. Thus, realizing justice in the context of the state must and should contribute to the achievement of peace.

As stated in the WCCJ Statutes, the basic principle, which is also an essential value upheld by WCCJ members, is the enforcement of constitutional justice, democracy, and human rights. By giving respect to the Constitution (Supremacy of the Constitution), the Constitutional Court contributes to improving citizens' belief that law and justice are not just a figment. Therefore, it is important to understand that constitutional awareness and filing a case to the Constitutional Court is a peaceful way that needs to be taken to resolve constitutional issues.





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