



E-MAGAZINE KONSTITUSI

Judicial Review Session of Covid-19 Government Regulations in Lieu of Law



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Editorial Greetings

The judicial review session of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and State Financial System Stability for Handling the Corona Virus Diseases 2019 Pandemic (Law Regulation of Handling Covid-19) became the inaugural session at the Constitutional Court (MK) by implementing related health protocols Covid-19, such as wearing masks, gloves, using sanitizers and maintaining physical distance.

Furthermore, every time there is a trial, the Panel of Judges always informs that the Petitioner can use the information technology used by the Constitutional Court in the form of Zoom and Cloudx to be able to interact in the trial with the Panel of Judges and the litigants. Meanwhile, to watch the trial you can use the YouTube live streaming. In order to use this information technology, the Petitioner must report to the Constitutional Court two days before the online trial.

The use of information technology in court is quite effective in the government's large-scale social restrictions. This continues and is used during the pronouncement of the verdict and during the Halalbihalal of the Constitutional Court Family.

That's a glimpse of the editor's introduction. As usual, we present a unique and interesting rubric in the Constitution Magazine. Hopefully it will be information and entertainment for readers in the midst of the Covid-19 pandemic that is currently hitting.



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4

MAIN REPORT

QUESTIONING THE CONSTITUTIONALITY OF THE REGULATION LAW "COVID-19"

12

BRIEF CASE



ACCUSED OF STEALING, THE INTERNAL COLLECTOR OF A FINANCE COMPANY SUES THE FIDUCIARY GUARANTEE LAW

16

ACTION



MANAHAN MP SITOMPUL, RETURNS TO CARRY OUT HIS DUTIES AS A CONSTITUTIONAL JUSTICE

EDITORIAL GREETINGS 1

EDITORIAL 3

UNCERTAINTY OF INTERPRETATION "IN THE NEXT TRIAL"

Law Regulation Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling Covid-19 (Law Regulation 1/2020) has been discussed and approved by the People's Representative Council at the Plenary Session on May 12, 2019. This means that politically, the People's Representative Council has declared its approval of the Law Regulation. to be stipulated into a Law (UU).

Not long after, on May 16 2020, the President passed and promulgated it on May 18, 2020. Since then, Law Regulation 1/2020 was officially enacted and transformed into Law Number 2 of 2020 concerning Stipulation of Law Regulation Number 1 of 2020 concerning State Financial Policy and System Stability Finance for Handling Covid-19 becomes Law (Law 2/2020). Juridically, Law Regulation 1/2020 has been completed. Greetings already. Now, Law 2/2020 legally has salable and binding power.

One of the implications is that the Law Regulation 1/2020 test case will lose its object. The interesting question is, one of the Petitioners in the trial of the case conveyed the opinion that the People's Representative Council's approval was given very quickly. Is that right? Saying sooner or later, actually when should the People's Representative Council approve or reject a Law Regulation? If traced, the polemic arose as a result of the regulation of Article 52 of Law 12/2011 as a derivative rule of Article 22 of the 1945 Constitution which was suspected to contain inconsistencies and implications for uncertainty.

First, Article 22 Paragraph (2) of the 1945 Constitution states that this government regulation must be approved by the People's Representative Council in the following proceedings. Meanwhile, Article 52 paragraph (2) of Law 12/2011 states differently, the Government Regulation in Lieu of a Law must be submitted to the People's Representative Council in the following trial. The provisions in Article 22 Paragraph (2) of the 1945 Constitution emphasize the necessity of obtaining the approval of the People's Representative Council in the following sessions. Meanwhile, the provisions of Article 52 paragraph (2) emphasize the necessity of submitting the Law Regulation to the People's Representative Council in the following sessions.

Second, the meaning of the phrase "in the following trial" in Article 22 Paragraph (2) of the 1945 Constitution is narrowed in the meaning of the Elucidation of Article 52 Paragraph (2) of Law 12/2011. It is stated, "what is meant by" in the following trial "is" the period of the first session of the People's Representative Council after the stipulation of the Law Regulation ".

The two things above give rise to two opinions. First, as long as it is held after Law Regulation 1/2020 is enacted (March 31, 202), the People's Representative Council trial can be set to become a forum for approving or rejecting the Law Regulation. The People's Representative Council is free to choose which trial to schedule. According to this opinion, there is no problem that the People's Representative Council Plenary

Session on May 12, 2020, will become a forum for People's Representative Council approval of Law Regulation 1/2020.

The second opinion, Law Regulation 1/2020 must be submitted to the People's Representative Council during the first session of the People's Representative Council after the Law Regulation is enacted. The Law Regulation was enacted on March 31, 2020. At that time, the People's Representative Council was in Trial Period III. According to the People's Representative Council calendar, the III Trial Period will be held from 30 March 2020 to 20 June 2020 with the division of (i) Session Period: March 30-May 20 2020; and (ii) Recess Period: 21 May-20 June 2020. Thus, Law Regulation 1/2020 should only have been submitted to the People's Representative Council later in the Session Period in Session Period IV. According to this opinion, the People's Representative Council's approval was deemed hasty and unthinkable.

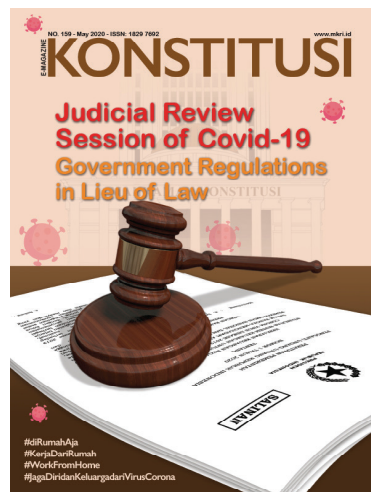
In fact, both opinions are put into practice. As a result, there have been different variants of practices related to the

Law Regulation agreement. There was a Law Regulation which was passed beyond the next trial period. There are those who clearly disapprove and are not rejected. Some are considered rushed. Everything is accepted and practiced in such a way, without attention to determine its certainty according to constitutional standards. To obtain certainty, it requires a binding constitutional interpretation of Article 22 Paragraph (2) of the 1945 Constitution, in particular the phrase "in the following trial". The power of interpretation is only owned by the Constitutional Court through its decision. That power can only be moved by the existence of a case. On that basis, there are at least two choices of steps that can be taken.

First, filing for a constitutionality review of Article 52 paragraph (1) and an explanation of Article 52 paragraph (2) of Law 12/2011. This also confirms

whether the meaning of "in the following trial" with "the first session of the People's Representative Council after the issuance of the Law Regulation" is in line with the 1945 Constitution. Second, a formal review (judicial review of the legislative process or due process of lawmaking) against the 2/2020. For example, with the allegation that the People's Representative Council's approval of Law Regulation 1/2020 as the basis for the ratification and enactment of Law 2/2020 is inconsistent with Article 22 Paragraph (2) of the 1945 Constitution.

The goal is not about winning or losing. There is no need to worry about whatever the Court's decision will be. The most important thing to achieve is to create momentum for the Constitutional Court to carve its constitutional interpretation of Article 22 Paragraph (2) of the 1945 Constitution, especially emphasizing what is meant by the phrase "in the following trial". Through this constitutional interpretation, the Constitutional Court can carve a landmark decision in order to end the clutter of uncertainty regarding when the People's Representative Council should approve or reject a regulation. Let's wait, can anyone feel that they have a strong legal standing and have great attention to participate in organizing a more certain state administration practice in the future? Greetings of the Constitution !!





QUESTIONING THE CONSTITUTIONALITY OF THE REGULATION LAW "COVID-19"

In the midst of the Corona Virus Diseases 19 (Covid-19) pandemic, the Government issued a regulation replacing law No.1 of 2020 concerning State Financial Policy and State Financial Stability for Handling the Covid-19 Pandemic and/or in the Context of Facing Threats Endanger the National Economy and/Or Financial System Stability

(Law Regulation No.1/2020) on March 31, 2020 ago. The Law Regulation was issued on the basis of the implications of the Covid-19 pandemic which had a negative impact on the country's financial system. This can be seen from the decline in various domestic activities so that the Government and the Financial System Stability Committee (KSSK) took anticipatory action in

order to maintain financial sector stability by issuing Law Regulation No. 1/2020.

"For this reason, the Government and related institutions need to immediately take extraordinary policies and steps in order to save the national economy and financial system stability through various relaxation policies related to the implementation of the State Budget

(APBN) in particular by increasing spending for health., spending on social safety nets, and economic recovery, as well as strengthening the authority of various institutions in the financial sector,"said President Joko Widodo as stated on the website of the Cabinet Secretary of the Republic of Indonesia dated April 1, 2020.

However, the Government's actions were questioned on the constitutionality of a number of people. This is shown by the entry of three petitions to the Constitutional Court (MK) requesting that Law Regulation No. 1/2020 was tested constitutionally.

Impunity

On April 9, 2020, a number of community elements tested Article 27 of the 1/2020 Laws, namely the Anti-Corruption Community Association (MAKI), the 1997 Indonesia Mega Bintang Solo Foundation, KEMAKI, LP3HI, and PEKA. In the petition registered with Number 24/PUU-XVIII/2020, the Petitioners argue that Article 27 paragraph (1), paragraph (2), and paragraph (3) of Laws 1/2020 contradicts the 1945 Constitution. The Petitioners state that the state revenue policy which implemented is not a loss to the state and there is immunity for government officials not to be prosecuted or corrected through the Court. In fact, all government administration should be able to be tested or controlled by law, both criminal, civil and State Administrative Courts (PTUN).

In addition, the Petitioners considered Article 27 of the Laws No. 1/2020 has the potential to make officials or rulers such as KSK immune to the law. This is because Article 27 of the Laws No.

1/2020 mentions that the KSK or the executing officer of the Laws cannot be prosecuted both criminally and civil. Apart from the authorities deemed immune to the law, Article 27 of the Laws No. 1/2020 is also considered to have the potential to cause corruption with the existence of Article 27 paragraph (1), especially the phrase "not a loss to the state". Not only that, the article is also considered to have no urgency and a strong legal reason, especially since Law Number 17 of 2003 concerning State Finance regulates state finances in abnormal or emergency conditions as regulated in Article 27 paragraph (3), paragraph (4) and paragraph (5).

Eliminating the Periodic Elements of the State Budget Law

Meanwhile, Din Syamsuddin, Amien Rais, and Sri Edi Swasono along with 21 other individual Petitioners submitted a similar application to the Court Registrar's Office through the *simpel.mkri*.id application on April 14, 2020. Petitioners for Case Number 23/PUU-XVIII/2020 argued that the Article 2 paragraph (1) letter a number 1, number 2, and number 3, Article 27, and Article 28 contradicts Article 23 paragraph (1), and Article 23A, Article 23E paragraph (1), Article 27 paragraph (1), Article 27 paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution.

According to the Petitioner, Article 2 paragraph (1) letter a number 1, number 2, and number 3 Laws 1/2020 negates the meaning of people's sovereignty in the nature of State Budget public revenue and expenditure. The DPR's approval of the State Budget Law constitutes an authorization (power) which

according to Article 23 paragraph (2) and paragraph (3) of the 1945 Constitution, needs to be placed in relation to the implementation of the State Budget. In this case it is understood that as an authorization (power), the Government is obliged to provide accountability for the implementation of the State Budget Law. In addition, the State Budget Law has a character or "periodic" as a differentiator from other laws. Article a quo clearly abrogates the periodic character of the State Budget Law mandated by Article 23 paragraph (1), paragraph (2), and paragraph (3) of the 1945 Constitution. This is due to the opening of the deficit limit above 3% of Gross Domestic Product as regulated in article a. quo, is that it is enforced for 3 (three) Fiscal Years at once, meaning that it is binding and covers three State Budget Laws at once. This clearly nullifies the importance of the periodic element of the State Budget Law which must be stipulated annually.

The Petitioner also examined Article 27 of Laws 1/2020 which was considered to have created power that exceeded limits by guaranteeing immunity for financial officials and this was against the principle of the rule of law and the applicant's constitutional right to legal certainty. Then the Petitioner also argued that in Article 28 of Laws 1/2020 there is a law which has several provisions in it that are declared invalid as long as they are related to the policies stipulated in Laws 1/2020. A total of 12 laws still exist and are in effect, but some of the provisions of the articles contained therein are declared invalid as long as they are related to state financial policies for handling the spread of Corona Virus Disease 2019



(COVID19) and/or in the context of dealing with dangerous threats. national economy and/or financial system stability based on this Laws. The Petitioner considered this to be contrary to the Constitutional Court Decision Number 138/PUU-VII/2009 which had determined the objective requirements for issuing a Regulation Laws.

Damai Hari Lubis also questioned Article 27 paragraph (1), paragraph (2), and paragraph (3) of Laws 1/2020 which is considered to have closed the Petitioner's constitutional right to obtain information on the use of state funds in handling Covid-19. Not only that, this article is also considered to close legal control efforts through the judiciary. This is what made the Petitioner to argue that Article 27 paragraph (1), paragraph (2), and paragraph (3) of the Laws 1/2020 is clearly against the principles of openness and responsibility in achieving the goals of the people's welfare. Petitioner for Case Number 25/PUU-XVIII/2020 also stated

that his economy was affected by the imposition of the Large-Scale Social Restrictions (PSBB) provisions due to the Covid-19 pandemic. Therefore, the Petitioner as an Indonesian citizen wants an open and responsible use of State finances for the prosperity of the people.

Follow Health Protocols

The Constitutional Court also held a preliminary hearing for the three cases to be held in the Plenary Court Room of the Constitutional Court Building on April 28, 2020 with reference to the provisions of the Large-Scale Social Restrictions (PSBB) period, including physical distancing by following the health protocol involving the Constitutional Court Covid-19 Task Force. The Petitioners were limited to a maximum of three people in the Courtroom, which could include the principal Petitioners and their attorneys.

Before entering the courtroom, both the Constitutional Justice Panel Board and the Petitioners were

Preliminary Examination Session on the Case Review of the State Financial Policy Law and State Financial System Stability for Handling the 2019 Corona Virus Diseases Pandemic, Tuesday (28/4) in the Plenary Meeting Room of the Constitutional Court Building. Public Relations Photo / Gani.

checked for body temperature, then put on a mask and gloves, prepared hand sanitizers, and others. If there is a Petitioner or other attorney who wants to attend the trial, the Court prepares a room in the Constitutional Court II Building (the former Ministry of Economy Building) equipped with monitor screen facilities to be able to interact directly with the Panel of Judges in the courtroom. These steps were adjusted to the procedural law principles of the Constitutional Court.

In the preliminary hearing, as an effort to prevent the spread of Covid-19, Chairperson of the Panel of Judges Aswanto appealed to the Parties, both Petitioners, Petitioners,

Government, Experts, Witnesses and various other related parties to be able to use online court facilities. . To support the course of this online trial, the Constitutional Court utilized Zoom and Cloudx technology to make it easier for various parties to continue to be able to attend the trial from their respective residences. The parties who will attend the trial are expected to first report the devices used to the Information and Communication Technology (TIK) Team of the Constitutional Court at least two days before the trial is held. Meanwhile, trial supporters who want to follow the progress of the case being tried can access and watch the trial via live streaming from YouTube at their respective homes.

Regarding the case of the Constitutional Justice Wahiduddin Adams as a Member of the Panel of Judges, conveyed several notes to the Petitioners for Case 23/PUU-XVIII/2020 that there is a need for elaboration regarding legal standing who declares himself a tax paying citizen. "So it is necessary to clarify the legal position between the capacity of the Petitioners as taxpayers and these constitutional rights," explained Wahiduddin.

Furthermore, Wahiduddin continued, the Petitioners also need to explain the relationship between their status and Article 23 of the 1945 Constitution in the correlation of several professions. So that the identity of the Petitioners with the violated constitutional rights has a

clearer cause-and-effect relationship. Thus, this can open up a space for insight into discussion studies for the Court. And there is a need for a comparative description with respect to the application of the constitution to changes in budget posture from other countries that have also experienced the impact of the Covid-19 outbreak.

With regard to case Number 24/PUU-XVIII/2020 submitted by non-governmental organizations, Wahiduddin saw the need to explain the Petitioners in relation to constitutional losses that were targeted from the application of the a quo norm. As for Petitioner for Case Number 25/PUU-XVIII / 2020, Wahiduddin only saw that the



Minister of Finance Sri Mulyani accompanied by Minister of Law and Human Rights Yasonna Laoly and Attorney General ST Burhanuddin were giving press statement after represented the government on material review session of No. 1/2020 Government Regulations in Lieu of Law at Constitutional Court, on Wednesday (20/5/2020). Photo: PR/lfa



Panel judges of the Constitutional Court held a hearing to revise the petition for material review of the Covid-19 Handling Law Regulation on Thursday (14/05) in the Court's Courtroom. Public Relations / Ifa Photo.

Petitioner only needed to improve the petition of the petition.

Constitutional Disadvantages

Meanwhile, Daniel assessed that the Petitioners needed to describe the constitutional disadvantages, both representing individuals, as civil servants, and as non-governmental organizations. For the Petitioners for Case Number 23/PUU-XVIII / 2020 that in their description it states that the provisions are binding on the 2020, 2021 and 2022 APBN Laws. In this case, Daniel considered it necessary for the Petitioners to know that the 2021 and 2022 APBN Laws had no legal product. So this matter needs to be corrected and examined again by the Petitioners, especially if it is related to constitutional losses. As for Petitioner for Case Number 25/PUU-XVIII / 2020, Daniel

explained that the implementation of the PSBB was not regulated in the Law Regulation a quo, but under the legal rules. "So this is not the domain of the Constitutional Court," suggested Daniel.

Furthermore, Aswanto assessed, the petition for Case Number 23/PUU-XVIII/2020 emphasized the improvement of the cause-and-effect relationship between the Petitioners' losses and the enactment of the a quo norm. This is very important to do considering the number of Petitioners with various capacities. "So that the descriptions of individual and institutional losses are not the same," said Aswanto.

Comparison of Legal Instruments

In the petition revision hearing which took place on May 14, 2020, Deputy Chief Justice of the

Constitutional Court Aswanto said that the Petitioner for Case Number 25 / PUU-XVIII / 2020 sent a letter to the Court. In the official letter, his party stated that the case that had been registered Number 25 / PUU-XVIII / 2020 was withdrawn from the submission of judicial review against the 1945 Constitution at the Constitutional Court. So the trial was only continued by hearing information about the revision of the two cases.

Then in revising his petition, the Petitioners for case Number 23 / PUU-XVIII / 2020 represented by Ibnu Sina C. conveyed several points for completing the petition. Some of the improvements, including stating that the number of attorneys and Petitioners is correct is 24 people, strengthening the legal standing of the Petitioners related to the

interests of public health so that the constitutional rights to health of the Petitioners are threatened by the enactment of Article 2 paragraph (1) letter a number 1, number 2, and number 3; Article 16, Article 23, Article 27, and Article 28 of the Law Regulation for Handling Covid-19. The most important thing was conveyed by Ibnu on behalf of the Petitioners, namely the comparison of the emergency legal instruments imposed by other countries in the world on the handling of the Covid-19 problem.

In his explanation, Ibnu gave an example of several legal rules that were enforced in the country of Taiwan. He said that Taiwan did not use the Law Regulation but instead immediately implemented emergency law with a technical mechanism that was not complicated. Next, he also compared the South Korean Government, which is considered very alert because it is ready with special laws on controlling infectious diseases, quarantine, regional public health, AIDS prevention, and financial emergency regulations. In line with South Korea, New Zealand, which, although it does not use laws or Law Regulation and chooses non-legal products to combat the spread of Covid-19, has implemented its rules eight times to deal with this problem.

"Apart from an explanation of the application of laws in that country, in this request for improvement we also include a budget determination from WHO. In essence, explaining how to improve the budget system, apart from having an element of flexibility, every budget must also be accountable. We (Indonesia) already have state finance laws and are not used by the

government," explained Ibnu, who was present at the Plenary Court Room, which was also attended by Constitutional Justice Wahiduddin Adams and Daniel Yusmic P. Foekh as panel members.

Gaffe Norma

Furthermore, the Petitioners for Case Number 24 / PUU-XVIII / 2020 represented by Boyamin bin Saiman mentioned the revision of the petition. One of them, namely the Petitioner has attached an expert opinion related to several components of the terms needed for each part of this Law Regulation 1/2020. Boyamin sees that there are irregularities in this norm, namely in the form of an unusual systematization such as there is no general provision of the rule and directly regarding the scope. So, he considered that this norm is only useful in justice for officials and not for the people.

Meanwhile, related to the Court's advice at the last trial regarding the application of emergency law to other affected countries, Boyamin took Malaysia as an example. He found that Malaysia had not made a law of emergency, only that it was threatening a state of martial law. "Malaysia only threatens martial law and does not create a financial emergency situation," Boyamin explained.

The Petitioners also complete evidence in the form of a list of names of the management according to the teacher or institution certificate. Furthermore, the Petitioners made changes to Petition by requesting the Court to conditionally cancel Article 27 paragraph (1) and completely cancel Article 27 paragraph (1) and paragraph (3) of this Law Regulation 1/2020.

Case Revocation

Then, on May 19, 2020, during the reading session of Decree Number 25 / PUU-XVIII / 2020, the Constitutional Court granted the withdrawal of the request for the material review of Law Regulation 1/2020. Regarding the petition, the Court held a Preliminary Examination through Panel Session on April 28, 2020. Furthermore, the Court held a Panel Session to examine the Revision of the Application on May 14, 2020 without the Petitioner's presence where the Panel of Judges read out a letter from the Petitioner regarding the Revocation of Case Number 25 / PUU- XVIII / 2020 dated 11 May 2020.

"Based on the provisions of Article 35 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court (MK Law), Deliberative Meetings The judge on May 14, 2020 has determined the revocation or withdrawal of application Number 25 / PUU-XVIII / 2020 because according to the law and the application cannot be re-filed and based on the provisions of Article 35 paragraph (1a) of the Constitutional Court Law, the application file is returned to the Petitioner," said the Chief Justice of the Constitutional Court, Anwar Usman in the Court's decision hearing which was held in the Plenary Court Room.

Legitimate Become Law

In the third session for Case Number 23 / PUU-XVIII / 2020 and 24 / PUU-XVIII / 2020, the Government acknowledged that it



Court decision hearing of Judicial Review on Law Regulation of Handling Covid-19 in the Plenary Court Room of the Constitutional Court. Photo: PR/Gani

had ratified Law Regulation Number 1 of 2020 into Law Number 2 of 2020 concerning Stipulation of Law Regulation Number 1 of 2020 concerning State Financial Policy and Financial Stability for Handling the Covid-19 Pandemic and / or in the Context of Facing Threats that Endanger the National Economy and / or Financial System Stability into law. This was conveyed directly by the statement of the Minister of Finance of the Republic of Indonesia, Sri Mulyani Indrawati, who represented the President in the Law Regulation 1/2020 material review session on Wednesday (20/5/2020) in the Plenary Court Room of the Constitutional Court.

Furthermore, Sri Mulyani said that the DPR had also given approval to enact the Bill on the enactment of Law Number 1 of 2020 into law. After the DPR's approval, the

Government has also endorsed the DPR's approval through Law Number 2 of 2020 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Disease Pandemic 2019 (Covid-19) and / or in the Context of Facing Threats that Endanger the National Economy and / or Financial System Stability to Become Law at the 15th DPR Plenary Session of Session III of Session Year 2019-2020 on Tuesday, 12 May 2020.

"This is stated in the State Gazette of 2020 Number 134, Supplement to the State Gazette Number 6516, and hereinafter referred to as Law Number 2 of 2020," Sri Mulyani explained before the session chaired by the Chief Justice of the Constitutional Court Anwar Usman.

Legal and Political Logic

In this regard, the Chief Justice of the Constitutional Court Anwar Usman as the head of the trial gave the Petitioners the opportunity to discuss the case submitted by his party. Then, Zainal Arifin Hoesein as one of the Petitioners' attorneys Number 23 / PUU-XVIII / 2020 said that his party accepted the principles of the Government's statement with the consequence that his party would lose the object of the case request. However, by using straight legal logic, Zainal saw that something extraordinary had happened in the speed at which laws were passed. So that he considered that there had been a mixture of political logic in this agenda. "So, law is mixed with political logic and will injure the principles of the rule of law," said Zainal.

Ahmad Yani as the other attorney for case Number 23/PUU-XVIII/2020 also added, that considering that the object of the case has become a law, his party will submit a new lawsuit with various preparation of clear and firm arguments to strengthen later testing. Responding to the accelerated ratification of the Law Regulation into this law, Yani is of the opinion that the Law Regulation a quo is not really the time for a DPR forum, either to approve or reject it.

"Political decisions have been taken by the House of Representatives. Yes, later it may become the object of our future lawsuit, both formally

and substantially against the Law itself which has become a law," explained Yani before the hearing which was also attended by seven other constitutional judges.

There is no evidence yet

Meanwhile, Kurniawan Adi Nugroho as the attorney for the Petitioners for Case Number 24/PUU-XVIII/2020 presented arguments related to the Government's statement. Whereas when referring to Article 37 of the Constitutional Court Law, continued Kurniawan, the Court Council will examine a case based on the evidence presented at the trial. For this reason, his

party asked the Government to submit evidence of the President's letter to the DPR, including documentation of correspondence within the Government in terms of the enactment of the Law a quo into law.

"Therefore, we submit a request to Your Honor, the Panel of Judges to order the Respondent Party to present the evidence. So that from there it will be seen whether this Law has indeed been enacted or not. So, it is not just a statement," said Kurniawan. ■

(LULU ANJARSARI/SRI PUJIANTI)



Minister of Finance of the Republic of Indonesia, Sri Mulyani Indrawati, who represented the President in a trial for judicial review of Government Regulation in lieu of Law Number 1 of 2020 concerning State Financial Policy and State Financial System Stability for Handling the Corona Virus Diseases 2019 Pandemic (Law Regulation for Handling Covid-19) on Wednesday (20/5/2020) in the Plenary Court Room of the Constitutional Court. Photo: Public Relations / Ifa



ACCUSED OF STEALING, THE INTERNAL COLLECTOR OF A FINANCE COMPANY SUES THE FIDUCIARY GUARANTEE LAW

On Monday (11/5/2020), the Constitutional Court held a trial for Case Number 19 / PUU-XVIII / 2020 which was petitioned by Pazriansyah (Petitioner I) and Firdaus (Petitioner II). The Petitioners state that Article 30, Article 23 paragraph (2), and Article 36 of the Fiduciary Guarantee Law are contrary to the 1945 Constitution. According to the Petitioners, as an individual citizen who works as an employee or an internal collector of a finance company in the Tembilahan area, Pekanbaru, Riau, that in concrete cases while carrying out work when executing fiduciary guarantees, his party actually received reports of alleged criminal acts of theft and vandalism. Even though the execution of the fiduciary guarantee is carried out on default debtors, who are no longer able to fulfill the terms of the financing agreement.

In short, in the continued legal process, the Petitioners were sentenced to five months in prison according to the Supreme Court Decision Number 282 K / PID / 2018 dated May 8, 2018. For this treatment, the Petitioners considered that their party had been placed in the wrong legal position. So that by being forced to carry out a prison sentence, due to allegations of theft of the object of fiduciary security, which should be the authority of the creditor concerned to take an object of fiduciary security that has been problematic.

In the view of the Petitioners, that the Fiduciary Security Law provides preferential guarantees to creditors in creating a system of billing and execution of fiduciary collateral objects, whether run by employees of finance companies or internal collectors or by using the services of collection companies or external collectors. But with the wrong response from a debtor with bad character, the collector's job becomes difficult because he is vulnerable to criminal threats or imprisonment.

"Even though their actions (the Petitioners) in carrying out their work have been in accordance with the Fiduciary Guarantee Law. The debtor has defaulted, so the creditor can take fiduciary collateral in the form of a motorbike, "explained Ari JC Pasaribu as one of the attorneys at the hearing which was also attended by Constitutional Justices Arief Hidayat and Enny Nurbaningsih.

Based on these legal facts, the Petitioners are of the opinion that the provisions in the articles tested do not provide legal certainty and cannot even provide adequate legal protection for collectors in carrying out their work, as stated in Article 1 paragraph (3), Article 24 paragraph (1), Article 27 paragraph (1) and paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution. (Sri Pujianti)

NOT GIVING GUARANTEE OF LEGAL PROTECTION, LAW OF MORTGAGE SUED

The Constitutional Court held a trial for the review of Law Number 4 of 1996 concerning Mortgage Rights and Land-Related Objects (Mortgage Law) registered with Number 21 / PUU-XVIII / 2020 on Tuesday (12/5/2020). Inri Januar (Petitioner I), Oktoriusmas Halawa (Petitioner II), and Eliadi Hulu (Petitioner III) are listed as Petitioners who argue that Article 14 paragraph (3) and Article 20 paragraph (1) of the Mortgage Rights Law are contrary to Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), Article 28G paragraph (1), and Article 28H paragraph (4) of the 1945 Constitution.

According to the Petitioners, the object of mortgage rights is the right to land and objects related to the land, one of which is the building above or below it. In this regard, the Petitioners feel that their constitutional rights are potentially harmed because in principle these articles provide guarantees and protection of legal certainty for holders of mortgage rights (creditors) by equalizing the



power of execution of a mortgage certificate against court decisions that have permanent legal force. Thus, the Petitioners see that these articles only focus on providing legal certainty to creditors. The creditor may execute the object of the mortgage immediately, if the guarantor of the mortgage (debtor) is in default.

"Therefore, the provisions of the a quo articles,

especially insofar as the phrase 'executorial power' and the phrase 'are the same as a court decision that has obtained permanent legal force, and the phrase' breach of promise 'has created injustice and legal uncertainty for the debtor,' Eliadi explained. as one of the Petitioners before the trial chaired by Constitutional Justice Suhartoyo accompanied by Constitutional Justice Wahiduddin Adams and Manahan MP Sitompul.

In their argument, the Petitioners also see that if the debtor can prove himself negligent in making achievements

not because of his own will, but because of an overmacht, then a spatial mechanism is needed for him to do this to obtain justice and legal certainty. Thus, the Petitioners are of the opinion that these articles do not provide legal protection, fairness, and legal certainty for the debtor. For this reason, in his petition, the Petitioner asked for the cancellation of Article 14 paragraph (3) and Article 20 paragraph (1) of the Insurance Rights Law. Sri Pujianti)



THE OWNER OF THE INDONESIAN MIGRANT WORKERS (TKI) DISTRIBUTOR TO SUE THE TERMS OF SOCIAL SECURITY MEMBERSHIP

The inaugural trial for the review of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers (UU PPMI) was held by the Constitutional Court (MK) on Tuesday (12/5/2020) by implementing health protocols related to Covid-19. The Petitioners for Case 20 / PUU-XVIII / 2020 are Sunaryo and Zarkasi who tested Article 5 letter d and Article 54 paragraph (1) letter b of the PPMI Law.

According to the Petitioners, the provisions of Article 5 letter d and Article 54 paragraph (1) of the PPMI Law harm the constitutional rights of the Petitioners. The Petitioner said that his business on behalf of H. Sunaryo had been revoked through the Decree of the Minister of Manpower Number 107 of 2020 concerning the Revocation of the Permit for the Placement of Indonesian Workers of Sentosa Karya Mandiri Inc., Ltd.

"The provisions of the a quo articles oblige the Petitioner to equip migrant workers who will work abroad to have a social security membership number, in this case

the Social Security Administering Body (BPJS) which the Applicant considers unsatisfactory services. In addition, the a quo provision also burdens the Petitioner to deposit a deposit of at least IDR 1.5 billion as guarantee for the protection of migrant workers. As a result, many companies cannot run their business. The government even revoked it unilaterally, "said the Petitioners' attorney, Muhammad Junaedi.

The Petitioners also argue that the Indonesian Migrant Worker Placement Company (P3MI) is guided by the guarantee and protection of every Indonesian citizen abroad in order to avoid human trafficking as contained in Article 1 paragraph (1) of Law Number 21 Of 2007 concerning the Eradication of the Crime of Trafficking in Persons. That the institutional arrangement contained in the PPMI Law is of utmost urgency so that constitutional guarantees can be implemented by institutions in this case is P3MI.

According to the Petitioners, the PPMI Law was present in an effort to empower P3MI as the provider of the placement service for Indonesian migrant workers who had burdens from upstream to downstream. The duties and responsibilities of P3MI which are regulated in Article 52 of the PPMI Law make P3MI play an important role in ensuring the presence of legal certainty for Indonesian migrant workers. (Nano Tresna A.)



DISMISSED WITH DISRESPECT, PROSECUTOR LAW SUED

The Constitutional Court (MK) held a preliminary examination hearing for the review of Law Number 16 of 2004 concerning the Republic of Indonesia Attorney General's Office (Prosecutor Law) on Wednesday (13/5/2020) in the Plenary Court Room. The Principal Petitioner, Jack Lourens Vallentino Kastanya, was directly present at the trial. The Petitioner for Case 28 / PUU-XVIII / 2020 conducted a material review of Article 13 paragraph (1) letter a of the Prosecution Law.

The Petitioners are Civil Servants (PNS) and Functional Prosecutors at the North Maluku High Prosecutor's Office, but have been dismissed based on the Attorney General's Decree Number KEP-003 / A / JA / 01/2013 dated January

14, 2013 concerning Disrespectful Dismissal as Civil Servants. The Petitioner has undergone several legal actions in the bribery case, namely being sentenced to severe discipline in the form of dismissal from a structural position, being made a suspect and being sentenced to prison for 1 (one) year and experiencing dishonorable discharge as a civil servant / prosecutor.

"The provisions of Article 13 paragraph (1) letter a of Law no. 16/2004 which is used as the basis for issuing / issuing the a quo Attorney General's Decree does not provide guarantees, protection and just legal certainty for the Petitioners because they do not consider the imposition of the previously imposed disciplinary sentences," explained the Petitioner.

The Petitioner argued that he had suffered losses, namely the loss of his job as a prosecutor and also a civil servant so that it affected the survival of the Petitioner and his wife and children. In addition, the Petitioner does not receive fair legal certainty and equal treatment before the law, considering that in 1 (one) case the Petitioner must undergo 2 (two) legal processes and receive 2 (two) types of legal sanctions. So that if the Petitioners' petition is granted, the constitutional impairment as argued by the Petitioner will no longer occur.

According to the Petitioner, the dismissal was dishonorable as a Prosecutor because the punishment as regulated in Article 13 paragraph (1) letter a Law No.16 / 2004 is contrary to Article 27 paragraph (2) and Article 28D Paragraph (1) of the 1945 Constitution. (1) letter a Law No.16 / 2004 which is used as the basis for issuing / issuing the Attorney General's Decree Number KEP-003 / A / JA / 01/2013 dated January 14, 2013 concerning Disrespectful Dismissal as a Civil Servant on behalf of Jack Lourens Vallentino Kastanya as the North Maluku High Court Functional Attorney. (Nano Tresna A.)

THE DEFENDANT OF THE MAY 22 RIOT SUES THE CRIMINAL PROCEDURE CODE

The Constitutional Court (MK) held an inaugural trial for the review of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) on Wednesday (13/5/2020) in the Plenary Court Room of the Constitutional Court by implementing health protocols related to Covid-19. The application registered with Number 26 / PUU-XVIII / 2020 was submitted by Azwarmi alias Armi, a defendant in the May 22 2019 riot.

In his petition, the Petitioner felt that he had been harmed by the enactment of Article 182 paragraph (4), Article 183, Article 184 paragraph (1) letter a and letter b of the Criminal Procedure Code. Tonin Tachta Singarimbun as the Petitioner's attorney explained that the Petitioner was sentenced for being proven without rights, possessing and carrying firearms or explosives as referred to in Article 1 paragraph (1) of the Emergency Law Number 12 of 1951 in conjunction with Article 55 paragraph (1) number 1 KUHAP illegally.

According to Tonin, the Petitioner was convicted not based on the indictment but based on facts proven in court. In the indictment, the Petitioner was accused of possessing a



Mayer gun of 22 mm caliber and 3 pieces of 22 mm caliber bullets. However, in the facts of the trial, the evidence presented was Mayer weapons made in Germany with 5 - 7 bullets. This is considered by the Petitioner to be detrimental. In fact, it should only be based on the indictment so as not to violate Article 24 paragraph 1 of the 1945 Constitution which reads, "Judicial power is an independent power to administer judiciary in order to uphold law and justice."

In addition, Tonin also argued that in the evidence, it should not only be based on witness testimony and expert testimony from the Public Prosecutor (JPU) as the evidence considered by the judge in convicting the Petitioner was obtained in the investigation process. Thus, this must be based on witness testimony and expert testimony at trial so as not to contradict Article 27 paragraph (1) of the 1945 Constitution concerning equality of legal position.

Then, continued Tonin, the judge in imposing a crime based on the judge's conviction must consider the testimony of the witness and the expert's testimony of the defendant not only based on the 2 pieces of evidence that can be obtained from the prosecutor. "And if the Prosecutor and the Defendant each submit evidence that is equally strong, then the strongest proof is the one who submits more evidence so as not to contradict Article 28D and Article 28I of the 1945 Constitution," he said. (Utami Argawati)



KIVLAN ZEN SUES FIREARMS LAW

The Constitutional Court (MK) held a preliminary hearing for the examination of the Emergency Law Number 12 of 1951 concerning Amend the Ordonnantietijdelijke Bijzondere Strafbepalingen (Stbl. 1948 Number 17) and the Law of the Republic of Indonesia Number 8 of 1948 (Emergency Law Number 12 of 1951) concerning Weapons Api (Senpi Law) on Wednesday (13/5/2020) in the Plenary Court Room of the Constitutional Court. In the registered session Number 27 / PUU-XVIII / 2020, the Constitutional Court implemented a physical distancing pattern in accordance with the direction of the health protocol that has been regulated by the Indonesian Ministry of Health and the World Health Organization (WHO). In the application submitted by Kivlan Zen, This retired army officer of the Indonesian Army, the Petitioners felt that they were aggrieved by the enactment of Article 1 paragraph (1) of the Senpi Law.

In his description, Tonin Tachta Singarimbun as the attorney revealed that the Petitioner in a concrete case had been arrested on May 29, 2019 on suspicion of possession of illegal firearms and bullets. In the continued legal process, the Petitioner was later charged as a person who committed or participated in a criminal act and assisted in committing a criminal act so that the court was sentenced to Case Number 1113 / Pid.Sus / 2019 / PN Jkt.Pst which was decided on March 3, 2020.

In this regard, Tonin further explained that the articles in the Senpi Law had resulted in not providing legal certainty for the Petitioners and detrimental to their constitutional

rights. Because in the explanation of the article, there is no explanation, jurisprudence, or its derivatives regarding the authority of the Investigator and the Public Prosecutor in conducting the main examination of the case or before passing an interlocutory decision against the Petitioner's exception. Tracing the existence of this norm, the Petitioners are of the view that the previous Senpi Law was an Emergency Law, which in essence relates to an urgent situation and for the government's interest it is deemed necessary to make changes.

"Thus, if the constitutional basis is examined, it is no longer relevant to the Petitioner's constitutional protection because the taking of phrases in the article by the Investigators and the Public Prosecutor can be linked to the Petitioner," Tonin explained in front of the trial which was also attended by Constitutional Justices. Suhartoyo and Enny Nurbaningsih as Members of the Panel of Judges.

The Petitioner also sees that the norm does not reflect the rule of law adopted by Indonesia as stated in Article 1 paragraph (3) of the 1945 Constitution because the phrases in the Senpi Law are complex and have multiple interpretations. Whereas a norm should meet the provisions of language that is easy to understand and uses correct Indonesian grammar. In the absence of a minimum and maximum size for a person as in the phrase 'make, receive, try to obtain, deliver or try to surrender, control, carry, have supplies in him or have in his possession, keep, transport, hide, use' in that article, then the understanding made by the investigator and public prosecutor towards the applicant is not based on law.

In addition, the Petitioner also considered that the article was contrary to Article 28I paragraph (2), especially in relation to the discriminatory treatment experienced by the Petitioner in the verdict on several case numbers related to the possession of illegal weapons and bullets inflicted on him. The Petitioner encountered this discrimination when one of the defendants who had a weapon could be released, while he who had never made the intended accusation still had to carry out the legal process as alleged.

For this reason, the Petitioner requests that the Court decide at least to state that "it does not have binding or nullifying legal force, especially against phrases with a comma (,), the phrase '... or ...'; the phrase '... which without the right to enter into Indonesia makes ...' and '... trying to obtain...'" in the Emergency Law Number 12 of 1951. (Sri Pujianti)



MANAHAN MP SITOMPUL, RETURNS TO CARRY OUT HIS DUTIES AS A CONSTITUTIONAL JUSTICE

Manahan MP Sitompul took the oath of office as a Constitutional Justice for the period 2020-2025. The oath was pronounced in front of the President of the Republic of Indonesia, Joko Widodo, on Thursday (30/4/2020) at the State Palace, Jakarta. The swearing-in event was held in the midst of the Corona Virus Diseases 19 (Covid-19) pandemic that hit the world, including Indonesia. The Covid-19 protocol is very strict when the event takes place. Everyone present wore masks and kept their distance.

The appointment of Manahan as a Constitutional Justice is based on the Decree of the President of the Republic of Indonesia Number 42 / P of 2020 concerning the Reappointment of Constitutional Justices from the Supreme Court. Manahan vowed to carry out his duties as a judge of the Constitutional Court as well as possible. "For God's sake, I promise that I sincerely fulfill the obligations of the Constitutional Justices as well

as possible and fairly as possible. Upholding the 1945 Constitution of the Republic of Indonesia and implementing all laws and regulations according to the 1945 Constitution of the Republic of Indonesia, and serving the nation and nation, may God help me," said Manahan during the pronouncement of the promise as Constitutional Justice.

After reading the oath, Manahan signed the minutes. President Joko Widodo also signed the minutes of the oath of office. Then Manahan, accompanied by his wife Hartaty C.N Malau, received congratulations from the President, followed by invited guests who attended. Of course, the procedures for giving congratulations this time must follow the Covid-19 protocol.

Previously, Manahan's term as a Constitutional Justice ended on April 28, 2020. Manahan took an oath as a Constitutional Justice for the 2015-2020 term in front of President Joko Widodo on April 28, 2015.

Before being appointed as a Constitutional Justice, the man who

President Joko Widodo congratulated Constitutional Court Judge Manahan MP Sitompul after being inaugurated at the State Palace, Jakarta, Thursday (30/4). Photo source / Presidential Secretariat Press Bureau.

was born in Tarutung, December 8, 1953 was the Deputy Chairman of the Banjarmasin High Court. Hakim's career began when he was appointed as a judge at Kabanjahe District Court in 1986 and then transferred to several places in North Sumatra while completing his master's degree. In 2005, Manahan was appointed as Deputy Chairman of the Sragen District Court. It was at that time that he completed his research for his doctoral dissertation by collecting data at the Central Jakarta Commercial Court, Medan, Semarang, Surabaya and Ujung Pandang, as well as conducting a comparative study (literature) to the National University of Singapore and Universiti of Malaysia Kuala Lumpur. However, it was only in 2009 that the doctoral promotion exam could be held at the University of North Sumatra (USU) with the promoter Prof. Dr. Mariam Darus, SH.

In his life, Manahan holds the motto "Ora et Labora" which means praying and working, according to what his parents applied in raising him. He used this motto in pursuing household life with Hartaty C.N Malau, who he edited in 1984. The father of Juristama P. Sitompul, Lawina M. Sitompul and Junistira H. Sitompul explained that his family gave him support in achieving all his goals. ■



CONSTITUTIONAL COURT STILL SESSION, DESPITE THE PANDEMIC

The Constitutional Court held a trial implementation meeting with video conference facilities, Thursday (23/4) in the Plenary Meeting Room of the Constitutional Court Building. Public Relations Photo / Gani.

Since the President officially announced that Covid-19 has become a major problem in Indonesia, the Constitutional Court (MK) has been guided by the Circular of the Minister of PANRB Number 19 of 2020 concerning Adjustments to the Work System of the State Civil Apparatus in Efforts to Prevent Covid-19. Whereas in carrying out official duties, the Constitutional Court applies a pattern of working at home for all levels of officials and employees. However, in the responsibility and authority as a judicial institution, the Constitutional Court is still ready to convene by implementing a social spacing pattern that has been adjusted to the provisions of the Indonesian Ministry of Health and WHO.

Trial in Accordance with Health Protocol

The Constitutional Court (MK) continues to work and strive to ensure that people who seek justice receive services amid the 2019 Corona Virus Disease (COVID-19) pandemic. This is reflected in the preparatory meeting for the trial in the midst of the Covid-19 pandemic, Thursday (23/04). The meeting was attended by Chief Justice of the Constitutional Court Anwar Usman, Deputy Chief Justice of the Constitutional Court Aswanto, Secretary General of the Constitutional Court M. Guntur Hamzah, Registrar of the Constitutional Court Muhidin and several employees in the Registrar's Office and the Secretariat General.

During the meeting, Anwar Usman gave a message that all MK video

conference facilities that are placed in 43 universities throughout Indonesia can be prepared in accordance with the World Health Organization (WHO) health protocol. According to Anwar, the trial that will be held is indeed extraordinary in the midst of the pandemic that has hit. Pandemics like this, according to him, have also occurred since ancient times, the days of the prophets and apostles. "Therefore, whatever happens now is a test or trial for us," said Anwar.

Meanwhile, the Secretary General of the Constitutional Court, M. Guntur Hamzah, said that the Constitutional Court trial which is planned to be held on April 28 can be carried out in accordance with the principles of health protocol. According to him, all employees at the Constitutional Court must instill zero tolerance, there should be no errors



Constitutional judges hold coordination meetings related to case handling during the Covid-19 pandemic. Photo: Public Relations / Ifa

in handling cases during the Covid-19 pandemic, especially in the use of video conferencing for trials.

Furthermore, Guntur revealed, for long-distance trials the Court used Telkom Inc., Ltd's Cloudx. "Using Telkom's Cloudx in combination with our VPN," said Guntur. According to him, in recent days, the applications used have been running, although there are some things that still need to be fixed.

Off line trials in the Court's courtroom were also conducted in accordance with health protocols. The security forces of the Constitutional Court will act decisively to implement the protocol to the parties present. "The parties present must wear masks, gloves, and before entering the Constitutional Court building they must go through a medical examination," said Guntur. He added that the use of masks and gloves was also applied to Constitutional Justices, as part of adherence to health protocols.

Live Conference

Regarding the receipt of a number of requests for judicial review during the Coronavirus Diseases 19 (Covid-19) pandemic, the Constitutional Court (MK) did not remain silent. The Constitutional Court decided to hold a trial in person at the Plenary Court Room. This was decided in a coordination meeting between the constitutional judges and the Registrar and the Secretary General and their staff on Friday (24/4/2020) which was conducted via video conference.

The coordination meeting was attended by all Constitutional Justices and agreed on the need for priority in handling requests related to the judicial review of Law No.1 of 2020 regarding State Financial Policy and Financial System Stability for Handling Covid-19. In addition, it was also decided during the meeting that the trial would take place as usual in accordance with

the provisions of PMK No.1 / 2020. However, by paying attention to health and other regulations during a pandemic period.

"We agreed to hold the trial in one room by changing the place of the courtroom position according to the prevailing health protocol," explained the Chief Justice of the Constitutional Court, Anwar Usman to all the meeting participants.

Regarding this, the Deputy Chairperson of the Constitutional Court Aswanto explained that the trial process would be carried out directly while still carrying out physical distancing as regulated by the health protocols of the Ministry of Health and WHO. ■

PANJI ERWAN



Constitutional Justice Arief Hidayat studied the case during WFH. Photo: Public Relations

ARIEF HIDAYAT: WILLING TO ATTEND THE TRIAL

Since the Constitutional Court (MK) has implemented a work from home system, constitutional judges have also carried out the same thing and carried out various activities from home, including handling cases in the Constitutional Court. Even though they have to work at home, this does not dampen the spirit of constitutional judges to continue carrying out office activities as they should by utilizing existing communication technology and applications in order to keep trying to guarantee the constitutional rights of citizens to be fulfilled. Contacted via telephone by the MK Media team on Monday (20/4/2020), Constitutional Justice Arief Hidayat said that while at home he carried out various activities such as reading, preparing material on discussion of cases that were still there, and making legal opinions.

Arief said that as a judge, he must be willing to go to trial even though he has to go to the office. However, by continuing to apply the prescribed

health protocols, from home to office and vice versa. He also explained that if the trial is conducted online, it must be facilitated by communication media that can be carried out from anywhere. However, continued Arief, for discussions in the RPH which are confidential and closed if necessary, the communication media used must be kept confidential. "I think there is no problem if the trial is conducted online, because we have our own workspace or it can be done in our own homes," he said.

While working from home, continued Arief, the constitutional judges held informal meetings by communicating among the judges through the communication media even though it was only the WhatsApp group. He emphasized that the Constitutional Court under any conditions must be able to carry out its duties and powers and functions according to the mandate of the constitution.

In addition, the Constitutional Court as an institution that protects

the constitutional rights of citizens, safeguards human rights should be able to accept whatever has been decided. Therefore, institutionally the Constitutional Court is able to carry out the duties and functions of the Court as a state institution.

Meanwhile, Arief also said that the impact of Covid 19 was extraordinary. "So if we see, it is not only the health impact but also the economic impact. We also need to anticipate because developed countries are already troubled by this virus, but I see that the policies in Indonesia are policies that are taken comprehensively so that from various aspects it has been calculated correctly," he explained.

Arief also said that the Indonesian state was so large, so vast that it was not only in terms of health that was thought about, but also how to save the lives of the Indonesian people. For this reason, he appealed to all Indonesian people to foster a spirit of mutual cooperation, work hand in hand, and be more solid in facing global disasters. ■

UTAMI ARGAWATI



Constitutional Justice Wahiduddin Adams while serving WFH. Photo: Public Relations

adjustments are related to the pandemic that we are currently facing together," explained Wahiduddin when contacted via telephone on Friday (17/4/2020).

Since the implementation of the WFH, all activities including trials at the Constitutional Court have been temporarily suspended. However, the Court is still preparing for an online trial based on information and communication technology.

Meanwhile, during WFH, Wahiduddin carried out various activities, such as reading and exploring existing cases. The case that is read is a case that has already finished its trial examination. Apart from that, regarding other activities, he also admits that he often does sports and sunbathing to keep his body healthy. "I just leave the house for morning exercise and then sunbathing, so I continue to do sports regularly every morning to stay fit, so all activities are done at home," he explained.

In his hopes Wahiduddin said that the whole community would be able to understand the situation and conditions that were currently happening. The Constitutional Court, including the constitutional judges and employees, remain optimistic that the Covid-19 pandemic will end soon. "Yes, I think this is an unexpected situation and situation, of course in this situation it must be understood together by all parties. Hopefully we hope it won't take too long because it's social distancing," he concluded. ■

BAYU WICAKSONO

WAHIDUDDIN ADAMS: FULFILLING THE PEOPLE'S JUSTICE RIGHTS

Facing the Coronavirus Diseases 19 (Covid-19) pandemic situation, the community is expected to be able not to interact directly with other people. The same thing was done by Constitutional Justice Wahiduddin Adams. Since March 17, 2020, the Constitutional Court (MK) has implemented Work From Home (WFH). However, the Constitutional

Court continues to strive to ensure the constitutional rights of citizens are fulfilled.

"I don't think the Court should be pessimistic about this pandemic. Therefore the Constitutional Court continues to strive in accordance with the Constitutional Court regulations where the public does not feel delayed in obtaining justice which is their right. In addition, of course, the time



Constitutional Justice Daniel Yusmic Foekh examined the case during WFH. Photo: Public Relations

DANIEL Y.P. FOEKH: PRIORITIZED LEGISLATION TESTING

The Constitutional Court Decision Number 138 / PUU-VII / 2009 actually increases the authority to the Court to examine government regulations in lieu of laws. Meanwhile, on the other hand, it has granted constitutional rights to justice seekers if they feel that their constitutional rights have been impaired by the enactment of the Perppu. Given the limited validity period of the Perppu, it is only natural that applications related to testing of Perppu No. 1 Year 2020 will be prioritized.

This was conveyed by Constitutional Justice Daniel Yusmic P. Foekh in an interview via email on Sunday (26/4/2020). Daniel also added that internally the Court is also preparing remote court regulations, including preparing facilities and infrastructure, so that procedural law rules are fulfilled. Asked about his activities while working at home, Daniel said that even though he is still a new constitutional judge,

he is still learning to continue studying.

"I am still learning to adapt to each type and nature of the trial at the Constitutional Court, namely the preliminary trial (panel), examination session (plenary) and Judge Consultative Meeting (RPH) and pronouncement of the verdict," said Daniel.

Daniel also took the time to examine the petition and go over the draft decision that was entrusted to him. He revealed that as a novice drafter, he read again carefully, not only regarding the structure of the content of the verdict which includes the order of the verdict, the identity of the parties, the summary of the petition, consideration of the facts revealed in the trial, legal considerations that form the basis of the verdict and verdict, but also sentences, grammar and writing techniques in each paragraph.

"During WFH I examined and studied the substance of the petition submitted by the petitioner

(the) petitioners, read various related literature, including doing my own research," said the man who was born on December 15, 1964.

Asked about the Government's steps in dealing with the Covid-19 pandemic, Daniel argues that the steps taken by the President are in addition to issuing Presidential Decree No. 11 of 2011 concerning the Determination of Public Health Emergencies for Corona Virus Diseases 2019 (Covid-19) as well as the President promulgating Perppu No. State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic, which was then followed up by the ministers by issuing a Government Regulation on Large-Scale Social Restrictions (PSBB), Regulation of the Minister of Health and a number of technical regulations as well as in the form of policy regulations (beleidsregel), such as instructions or circulars, whether issued by the central government such as the Chief of Police, the Minister of Home Affairs, or regional governments such as Governors and Regents or mayors, must be supported by all the people, so that they can stop the spread of Covid-19. Because without public support, this pandemic situation could be prolonged.

"I hope all parties must actively participate in breaking the chain of virus transmission. We are grateful that according to the government spokesman for handling Covid-19 Achmad Yuriyanto, dated Thursday 16 April 2020, the number of patients who recovered was higher than the patients who died, even though the number of positive people for Covid-19 continued to increase until Saturday 25 April 2020, there were 8,607 positive people. contracted covid-19, 1042 were declared cured and 720 died. This gives a signal that good cooperation has been established between the central, regional and community governments to stop the transmission of Covid-19 by implementing health protocols. This cooperation must be maintained and discipline is the main prerequisite," concluded Daniel. ■

LULU ANJARSARI

ENNY NURBANINGSIH: STILL LEARN THINGS WHEN WFH

Even though the conditions of the Covid-19 pandemic require restrictions on activities and enforcement of work from home (KDR / Work From Home), this does not limit Constitutional Justice Enny Nurbaningsih in studying cases. In an interview via email, Enny conveyed that there was a delay in the trial process for all cases until April 2020. However, during the postponement period, the constitutional judges had enough time to study all files or documents related to the submitted application.

"This means that the files that have been sent by the secretariat and other related documents will be studied / explored by the judges independently. If there are data or materials that are deemed inadequate, please ask the researcher or the substitute clerk online," said Enny.

Asked about the implementation of domestic violence, Enny revealed that for judicial institutions, especially for Constitutional Justices, the meaning of WFH must be related to the main functions of judges, namely examining, hearing, deciding a case. Of all the powers of the Constitutional Court, currently the Court is exercising the authority to examine the Law. He also did not deny that there were cases of judicial review that attracted public attention that were filed towards the end of 2019 and in 2020, such as examining the KPK Law. However, according to him, under abnormal conditions like now, the proceeding process normally cannot be carried out because it will cause a violation of physical distancing.

"Therefore, various cases, both those currently in the panel session stage and those currently in the examination

process, must be postponed for the proceedings. Even though there are results of the in-depth examination, it is impossible for the judge to take decisions (RPH) online because they must be considered in such a way as to guarantee the confidentiality of the verdict," he explained.

Enny added that the Constitutional Court had implemented an online application submission mechanism so that even in the WFH condition, the Constitutional Court did not close the access of the public who wanted to apply. The application is processed in accordance with the application process for receipt of case files. Furthermore, continued Enny, the judge received the application documents that had been submitted to BRPK to be studied not only by panel judges but also by non-panel judges. Due to certain conditions, the Constitutional Court may carry out preliminary hearings by panel judges through *vicon*, as has been done by the Constitutional Court so far.

Responding to a question about his activities during the KDR, Enny said that various activities can be carried out to get rid of this feeling of boredom, apart from studying / deepening a case or preparing a draft decision, he also arranges the house and changes the atmosphere of the house arrangement so that it looks different from the beginning.

"Tidy up the (private) library room by rearranging the entire pile of documents according to their field of knowledge so that they are easy to find. So far, this cannot be done properly because of lack of time at home," he said.

While alluding to his hopes for the community in facing the Covid-19 Pandemic, Enny emphasized that this pandemic cannot only be borne by the government but is a collective task to help reduce the rate of spread.

"Staying at home is a way for us to reduce the spread rate, but the impact is that many people lose their jobs or don't get income. In these conditions, it is fitting for us all to share and help in various ways according to the conditions of our surroundings, for example making donations or providing disinfectants, masks, laundry soap or basic necessities," Enny concluded. ■

LULU/ILHAM



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