

E-MAGAZINE **KONSTITUSI**

**REGENT CANDIDATE
FOR YALIMO REGENCY
DISQUALIFIED IN THE 2ND
REGENT ELECTION REDO**



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CONSTITUTIONAL HISTORY CENTER

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It has been more than a year since the Covid-19 pandemic has occurred in Indonesia and various parts of the world. The world is concerned, sad, gripped due to the pandemic. Millions of people have been positive or affected by the corona virus, ranging from asymptomatic, mild symptoms, moderate symptoms to severe symptoms that require serious treatment. The impact also extends to various sectors, the hardest hit is the economic sector, especially for the lower class of the economy.

Constitutional Court also experienced the impact of the pandemic, more than 100 employees have been affected by the corona virus, although most of them have experienced mild, moderate and asymptomatic symptoms since last year. As a result, various efforts have been made by the Constitutional Court, such as implementing strict health protocols, conducting antigen swab tests to vaccinating employees. We are grateful that almost all of the employees affected by Covid-19 have been declared cured and they can return to work.

However, since July 2021, the pandemic in Jakarta and many parts of Indonesia has increased sharply. The government finally decided to implement a Restriction Toward Community Activity (PPKM). The Constitutional Court complies with government regulations to apply the Work From Home (WFH) pattern more than Work From Office (WFO). This includes postponing the hearing of the Constitutional Court until July 21, 2021. It aims to break the chain of the spread of Covid-19 within the Registrar's Office and the Secretariat General of the Constitutional Court.

Besides the Covid-19 issue, the editorial team of Constitutional Magazine continues to regularly produce various manuscripts. We have prepared various articles from fixed and distinctive rubrics. We hope that the Covid-19 pandemic in the world and Indonesia will end soon. So that we can all work optimally in various aspects. Don't give up, may we all be healthy and happy with the family. Enjoy reading!



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MAIN REPORT

ENFORCING DEMOCRACY IN YALIMO REGENCY ELECTION

The formation of regional governments, both executive and legislative, actually have a very important role to accelerate the vitality of democracy. The holding of direct regional head elections (pilkada) can be a starting point for the role of the community in political dynamics at the local level. That the process of institutionalization and political decision-making takes place at a locus that is more local and fundamental. It involves the support and trust of the local community.

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ACTION



CONSTITUTIONAL COURT ACHIEVES UNQUALIFIED OPINION AGAIN

INTERPRETING WINNING AND LOSING

A few minutes after the final of the Euro 2020 football lately, two facts of opposite expression appeared. Look how the English players look down. He was staring blankly. When he was lining up for the medals, there was no smile. His expression was flat, tending to have a gloomy, disappointed aura. While walking, a number of players immediately removed the medals that had not been wrapped around their necks for 30 seconds.

Between the faces with the lines of "disappointment", they watched the Italian players with expressions that were the opposite of cheers of joy. Luke Shaw, the goalscorer for England, stared intently at Giorgio Chiellini, the captain of the Italian team, who was lifting and showing off his newly won trophy. "It's a great sensation and I'm happy for all Italians around the world, because we created something extraordinary," said Italy coach Roberto Mancini. The next day, it appeared in the media news, England captain Harry Kane admitted that defeat against Italy would leave scars that will be felt for some time to come. Italy's victory made English players languish, as well as their supporters around the world.

That's the fact. The feeling of winning and losing will certainly make each players felt different levels of emotion. Ian Robertson in the book "The Winner Effect," writes the reasons why winning is so much fun, in large part because of chemistry. Victory increases testosterone, which in turn increases the chemical messenger dopamine, and that dopamine reaches the reward network in the brain, which makes you feel better. So said Robertson.

The losing side is often followed spontaneously by thoughts of negativism, namely the nature or tendency to reject, oppose, or deny it. When someone or one party loses, generally admitting defeat is a difficult thing. By admitting defeat, means declaring an acknowledgment that the other person or party has better qualities. Automatically, it hurts the self-concept of someone or the losing party. This has the potential to generate low feeling. As a result, which is commonly seen, the party who is in a losing condition will be busy blaming the situation rather than reflecting and contemplating (contemplation).

In every competition, everyone wants to win. With this victory/winning, a contestant becomes very excited and more

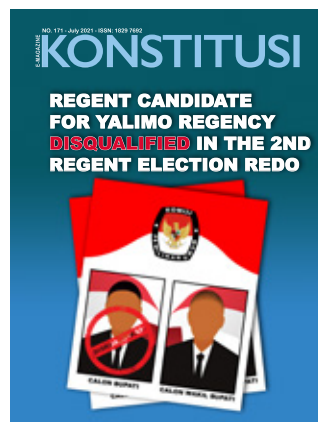
motivated. This is a positive thing. Yet of course, not in all occasions the contestation is able to always be in a position to be a winner. There is a balanced probability in a contest, if you don't win, you lose. Ironically, losing is often not easy and smooth to be accepted gracefully. Is that something normal?

It is perfectly normal for a person to feel sadness, anger, or disappointment when a loss is experienced. It is said that this is closely related to an individual's instinct to survive. Naturally-human, an individual has the mindset of insisting (insisting) to win. There is egocentrism in a person when he cannot see from another point of view. This is something normal and natural.

Let's see more clearly, that our life is not full of competitions, including the most obvious is the contestation in the political field, especially the contestation of fighting for power to govern the country. Therefore, in the face of the fact that life is full of contestations, it is important for all parties to first define what "win" is before making a decision to participate in the contest, as well as measuring performance against the winning target. Do not create this definition after the fact that the results of the contestation are obtained as a way to serve one's own egocentrism. It is good to have targets and high expectations in contestation. However, it is worth taking the time to do some in-depth introspection regarding those goals and expectations.

At this point, the declaration to be ready to win and ready to lose ahead of any field and level contestation being held is a promise and a pledge to oneself that must be consistently carried out. As illustrated at the beginning, losing is painful, but it is important to instill in yourself that accepting defeat is an honor. The point is, never treat defeat as an excuse for self-doubt but as nothing more than a panel of indicators that something should and can be improved.

Now, the choice is in the hands of each individual. Whether to choose losing as a brutal bulldozer that destroys the building itself, the environment, and the future, or interpret and use it as a means of 'upgrading' to get ready to pick up victory in the contestation in the future. To be sure, losing is not the final judgment, unless someone makes it so. Long Live Constitution!





Window

JILI JULIUS CAESAR

I D.G.Palguna

“If you must break the law, do it to seize power: in all other cases observe it”

Julius Caesar



Julius Caesar, Roman general as well as historian and later emperor, surely many people know. But perhaps, only a few know—even in the medical world—that C-section aka Cesarean section aka Caesarean section, namely an operation in which the fetus is taken from the uterus or womb by cutting the “wall” of the abdomen and uterus is an “inheritance” from the Emperor. Surprisingly, the “legacy” in the form of a non-natural birth is not linked by factual and rational reasons, but by a rumor that revealed that Julius Caesar was born this way. That was why such a “birth method” is called a Cesarean section. The rumor itself is strongly opposed by historians.

What historians “agreed” to is that Julius Caesar was the “cause” of changing a month’s name that we now know as July or July (in English). How did that happen? It is written that, before changing (to be precise) to July, his “original” name was Quintilis. In Latin, Quintilis actually means “fifth”. Quintilis mensis means fifth month. It was in

Quintilis mensis aka the fifth month (according to the Roman calendar) that Julius Caesar was born. However, when he died, honoring him was actually done by changing the name Quintilis to Juli (July) and making July no longer “represent” the fifth month but the seventh month. So, July does not refer to the death of Julius Caesar but rather to his birth. However, it was his death that made his birth immortal—which symbolically means turning the gloom into an atmosphere of joy.

Like mystical luck, it turns out that July is a month with quite a lot of happy days. Many important events in history were “born” in this month. July 4th is a day of joy because it is celebrated as the birthday of the United States. Furthermore, on July 4, 1776, that the United States Declaration of Independence was proclaimed, despite the statement “We ... the Representatives of the United States of America” which stated “Absolve from all Allegiance to the British Crown” (Freedom from all Submission to the British Crown) in the declaration of independence actually (new) only represented the 13 (former) British colonies: New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

The next happy July is July 14 (Le quatorze juillet), Bastille Day, which is always celebrated with glee as the day the Bastille Fortress fell. The fortress whose official name is Bastille Saint-Antoine, during the reign of the absolute kings of France was

used as a “political prison.” It was this iconic building that was stormed by supporters of the French Revolution on July 14, 1789, and demolished and (after the revolution) renamed the Place de la Bastille. The fall of the Bastille was an important landmark in the French Revolution—even though when it was invaded, it is said, there were only seven political prisoners there. Bastille Day is so famous that he not only inspired the formation of an indie rock band in England, Bastille, but also inspired James Watkins to make an action-thriller film entitled Bastille Day - which commercially managed to penetrate the box office despite “only” getting an average of three stars in film critic reviews.

Don’t forget that July is the month of the Olympics. Every four years in July, athletes from all over the world feast on this multi-event championship. Not even the Covid-19 pandemic has been able to delay the joy of the Olympics. It has to keep going. His joy can’t be “submitted” to the pandemic. So, now in this July, in Tokyo the joy continues even though the audience is poor. That’s the Olympics, a grand event which according to the “myth” is said to have been originally held on the plains of Olympia on the initiative of a demigod named Heracles in honor of the god Zeus who had helped the assassin to be so powerful? Of course, it wasn’t the five years as Roman Emperor that earned him respect. Caesar is a blend of ingenuity, intellect, courage and charisma. He grew to be a powerful politician during the Roman Republic from the position of a shrewd and brave general who managed to

win a number of battles in a long series of battles for approximately eight years against the Gallic tribes (hence the Gallic Wars) and culminating in the Battle of Alesia (the Battle of Alesia) which marked the subjugation or expansion of the Roman Republic to all of Gaul (which today is mostly France and Belgium). Caesar also skyrocketed his reputation in the eyes of the Roman people in general. He is their hero. Caesar's popularity and charisma made the Senate—which at the time was the holder of government power as well as the Republican advisory council—worried. Thus, the Senate also cut the number of legion (legion) troops under Caesar's command. Hereafter, when the Gallic War ended, which made Caesar's name even more fragrant, the Senate ordered Caesar to resign from his position as military commander. However, Caesar blatantly refused the order of the Senate. Instead, he led his troops to Rome across the Rubicon River with the status of supreme military commander. It is here that he uttered his famous words, "We have crossed the Rubicon" which is now used as an expression to show that the decision has been made and can't be changed anymore. Caesar's defiance sparked a civil war which he won. Caesar also held the reins of Roman government almost alone. Be a dictator. During his reign, Caesar carried out major reforms to the Roman Constitution, namely in the form of a series of promulgation of laws in a span of five years (49 BC - 44 BC). The Roman constitution itself was in the form of a set of rules and customs which together with various written laws (laws) were used as guidelines for the administration of the government of the Roman Republic. This massive reform of the Roman Constitution was carried out because Caesar, in his early days in power, witnessed the chaotic and completely dysfunctional Roman Republic. The government "machine" was destroyed. The central government was completely helpless. The provinces had turned into dukedoms which were under the absolute rule of their governors. Meanwhile, the soldiers had used the Constitution

as a tool to serve their political ends. With a weak central government, corruption is rampant uncontrollably. The status quo was maintained by a corrupt aristocracy who of course does not feel it is necessary to improve the system that has made them rich. This



is what made Caesar felt the need to reform the Constitution. There were three main goals to be achieved. First, he intended to crush the armed forces in the Roman provinces so that order was again in the hands of the Republic. Second, he wanted to create a strong central government in Rome. Second, he wanted to create a strong central government in Rome. Third, he intended to knit the entire Republic into a cohesive unit. Roman history further records, Caesar's first goal was achieved when he succeeded in conquering Pompey and his supporters. Pompey—whose full name was Gnaeus Pompeius Magnus which is said to mean Pompey the Great—was actually Caesar's former sidekick when the three of them (namely Julius Caesar, Gnaeus Pompeius Magnus, and Marcus Licinius Crassus) were together as the Triumvirate—a body of three officials, of which there were various types according to their duties and functions—in the Roman Republic. Meanwhile, to realize the other two goals, Caesar must be sure that his power in the government there is no question. Therefore, he also

seized power or effective control over the government by increasing his own authority. At the same time, it must reduce the power of other political institutions. Adding authority was conducted by mastering important magistracies positions. Meanwhile, weakening other political institutions, he did so by carrying out additional reforms. At the same time, Caesar controls the mechanism for electing magistrates, appoints his own supporters to Senate posts, and takes steps to prevent the Senate from taking steps that are not in his favour.

Caesar's steps and his growing power frightened the Senate. The final word was decided: Julius Caesar must end by being killed. The "official" reason was to prevent the Republic from being pushed by Caesar's growing power. So, at the Senate hearing in March 44 BC, at the Theater of Pompey, 23 stabs from a group of Senators pierced the body of Julius Caesar. This conspiracy was led by three people: Marcus Junius Brutus, Gaius Cassius Longinus, and Decimus Junius Brutus. It is considered that there were about 60 senators who participated in this conspiracy.

There is an interesting thing—even to this day it is still a "cross dispute"—that is, the last words spoken by the Emperor when he learned of the conspiracy of the senators to harm him. Classical researchers and writers are divided. Some say that Julius Caesar said nothing. There is also a saying, Caesar had said words in Latin which when translated means, "You too, son?" I don't know which one is right. Meanwhile, the famous English poet, William Shakespeare, wrote a special play about this phenomenal character in a play entitled Julius Caesar. In the manuscript, in the scene where Caesar is being stabbed in a crowd, Caesar points to Brutus (who knows which Brutus) while exclaiming in disbelief, *Et tu, Brute?* in which the English script reads, "You too, Brutus?" ("You too, Brutus?"). Uniquely, it is precisely the words written in Shakespeare's plays that are often quoted as the "real" Julius Caesar's last words. ■

CONSTITUTIONAL COURT DECIDED RE-VOTING FOR REGIONAL HEAD ELECTION IN YALIMO

The court disqualifies the candidate for regent Erdi Dabi. The re-voting (PSU) of the Yalimo Regent Election must be held.

Yalimo Regency was formed in 2008 as a result of the division of Jayawijaya Regency in Papua Province. Yalimo Regency is formed based on Law no. 4 of 2008 concerning the Establishment of Yalimo Regency in Papua that was ratified and promulgated on January 4, 2008. The total area of Yalimo Regency is ± 1,253 km². There are 5 (five) districts in Yalimo Regency; Elelim District, Apalapsili District, Abenaho District, Benawa District, and Welarek District. District is an administrative division term at the sub-district level in the provinces of Papua and West Papua.

Yalimo Regency held regional head elections (pilkada) in the Simultaneous Pilkada on December 9, 2020. Two pairs of contestants competed for votes in the election of the regent and deputy regent of Yalimo, namely candidate pairs (paslon) number 1 Erdi Dabi and John W. Willi (Erdi-John), and pair number 2 Lakius Peyon and Nahum Mabel (Lakius-Nahum).

Disconnect cooperation

Lakius Peyon and Erdi Dabi are both incumbent candidates. Lakius Peyon is the Regent of Yalimo. Meanwhile, Erdi Dabi is the deputy regent of Yalimo. Previously, the Regent of Yalimo was held by Er Dabi and his deputy, Lakius Peyon. Er Dabi is the father of Erdi Dabi. Lakius Peyon rose to become

advanced in the election contestation as a candidate for regent.

The phenomenon of the disconnect cooperation of the incumbent candidate's partnership is common. At least in the 2020 simultaneous elections, there are about 36 incumbent pairs who decided to separate, "move to another heart". Lakius Peyon and Erdi Dabi are examples of this case.



Re-voting decision

The recapitulation of the vote count results determined by the General Election Commission (KPU) of Yalimo Regency put

regent replacing Er Dabi who died on December 7, 2016. The vacant deputy regent position was later filled by Erdi Dabi.

In the 2020 regional elections, Lakius Peyon and Erdi Dabi were running as contestants. Yet, the two of them were no longer together alias broken partnership. Each of them

Erdi-John with 47,881 votes, while Lakius-Nahum got 43,067 votes. Erdi-John was ahead of 4,814 votes (5.29%) compared to Lakius-Nahum.

Lakius-Nahum objected to the recapitulation of the vote count results set by the Yalimo KPU. Furthermore, Lakius-Nahum submitted a petition for a dispute

over the election results (PHP) of the regent and deputy regent of Yalimo Regency to the Constitutional Court (MK).

Based on the hearing examination, the Court was of the opinion that the argument of the Petitioner (Lakius-Nahum) regarding the change in the vote acquisition in the Welarek District was legally grounded. Likewise with the Petitioners' argument regarding the sabotage of 29 ballot boxes which resulted in invalid voting results at 29 polling stations in Apalapsili District, the Court was of the opinion that the argument had legal grounds.

As a result, in the hearing on the pronouncement of Decision Number 97/PHP.BUP-XIX/2021 on Friday, March 19, 2021, the Court partially granted Lakius-Nahum's request. The Court ordered the Respondent to carry out re-voting at all polling stations in Welarek District as well as at 29 polling stations in Apalapsili District.

Re-Voting Dispute Volume One

The Yalimo Regency General Election Commission on May 5, 2021 conducted a re-voting (PSU). In accordance with the Constitutional Court's Decision Number 97/PHP.BUP-XIX/2021, the PSU was held in Welarek and Apalapsili Districts, followed by the

two pairs of candidates, Erdi-John and Lakius-Nahum.

Furthermore, on May 11, 2021, the Yalimo Regency General Election Commission determined and announced the results of the post-PSU recapitulation. Based on the Yalimo Regency KPU Decision Number 117/PL.01.8-Kpt/9122/KPUKab/V/2021, Erdi-John's votes outperformed Lakius-Nahum's.

Lakius-Nahum again filed an objection to the Constitutional Court on May 17, 2021. In the main case, Lakius-Nahum argued that Erdi Dabi did not meet the requirements as a candidate for regent because he was sentenced by the Jayapura District Court.

Re-voting Volume Two and Disqualification

Jayapura District Court Decision Number 500/Pid.Sus/2020/PN. Jap, dated February 18, 2021, explicitly stated that Erdi Dabi was proven to have intentionally violated Article 311 paragraph (1), paragraph (2), and paragraph (5) of the LLAJ Law. Erdi Dabi was driving a car under the influence of alcohol, which hit the victim, Christin Meisye Batfeny.

The Court was of the opinion that Erdi Dabi no longer met the requirements as a candidate for Regent because he was proven to

have committed a crime punishable by imprisonment for more than 5 (five) years and had not fulfilled the provision for a 5 (five) year pause after completing his criminal period. In addition, he has committed a disgraceful act as stipulated in the provisions of Article 7 paragraph (2) letter i of Law 10/2016. Therefore, Erdi Dabi should be disqualified from the contest.

As a result, in Decision Number 145/PHP.BUP-XIX/2021 that was pronounced in the hearing on Tuesday, June 29, 2021, the Court disqualified the candidate for regent Erdi Dabi. The Court also ordered the Yalimo General Election Commission to carry out the re-voting, followed by the Lakius-Nahum candidate pair as long as they still met the candidacy requirements, and to open up opportunities for new pairs of candidates, including providing opportunities for John W. Willil as long as they meet the requirements.

We expect that the re-voting volume two of the Yalimo Regency elections will run well, safely, smoothly, democratically, in accordance with the provisions of the legislation. Don't spoil the beautiful sunrise at Yalimo. It is time to compete in a healthy contestation, full of harmony, far from anarchy. ■

NUR ROSIHIN ANA

DECISION SUMMARY NUMBER 145/PHP.BUP-XIX/2021

Disputes on the Results of Regent and Deputy Regent Election of Yalimo Regency, Papua Province, 2020

VERDICT EXCERPT

Hearing

Before making a final decision,

In Exception

Rejecting the exception of the Respondent and the Related Parties.

In the Main Case

1. Granting the Petitioner's application in part;
2. Declaring the disqualification of the Candidate for Regent Erdi Dabi from the Candidate Pair for Regent and Deputy Regent of Yalimo Regency Number 1 because he no longer met the requirements as a candidate pair for the Election of Regent and Deputy Regent of Yalimo Regency in 2020;
3. Declaring the cancellation of the Yalimo Regency General Election Commission Decision Number 55/PL.02.6-Kpt/9122/KPU-Kab/XII/2020 concerning the Determination of the Recapitulation of Vote Counting Results for the 2020 Yalimo Regent and Deputy Regent Elections, dated 18 December 2020, and the Commission's Decision Yalimo Regency General Election Number 117/PL.01.8Kpt/9122/KPU-Kab/V/2021 concerning Stipulation of the Recapitulation of Vote Count Results after the Constitutional Court Decision Number 97/PHP.BUPXIX/2021 In the 2020 Yalimo Regency Regent and Deputy Regent Election, dated May 11, 2021;
4. Declaring the cancellation of the Yalimo Regency General Election Commission Decision Number 044/PL.023-Kpt/9122/KPU-Kab/IX/2020 concerning the Determination of the Candidate Pairs for the 2020 Yalimo Regent and Deputy Regent Elections on 23 September 2020, and the Election Commission Decision General Yalimo Regency Number 045/PL.02.3-Kpt/9122/KPU-Kab/IX/2020 concerning Determination of Serial Numbers and List of Candidates for Election of Regents and Deputy Regents of Yalimo Regency in 2020, dated 24 September 2020;
5. Ordering the Respondent to carry out re-voting in the 2020 Yalimo Regency Regent and Deputy Regent Election, followed by Candidate Pair Number 2 (Lakius Peyon, SST. new candidates include providing opportunities for John W. Willil as long as they meet the requirements;
6. Ordering the re-voting must have been carried out within a grace period of 120 (one hundred and twenty) working days since this decision was pronounced, and determine and announce the results of the re-voting, and report the results to the Constitutional Court within 7 (seven) working days after the stipulation. the results of the recapitulation of the results of the re-voting;
7. Ordering the General Election Commission to supervise and coordinate with the Papua Province General Election Commission and the Yalimo Regency General Election Commission in the context of implementing this decision, and to report the results of its supervision to the Constitutional Court within 7 (seven) working days after the determination of the results of the recapitulation of the results re-voting;
8. Ordering the General Elections Supervisory Agency to supervise and coordinate with the Papua Province General Elections Supervisory Agency and the Yalimo Regency General Elections Supervisory Agency in the context of implementing this decision, and to report the results of its supervision to the Constitutional Court within 7 (seven) working days after the determination the results of the recapitulation of the results of the re-voting;
9. Ordering the Indonesian National Police and their staff, particularly the Papua Provincial Police and the Yalimo District Police to secure the re-voting process for the Regent and Deputy Regent of Yalimo in accordance with their respective authorities;
10. Rejecting the Petitioner's application for other than and the rest.

MAINTAINING DEMOCRACY IN YALIMO REGIONAL ELECTION



Yalimo Regent's Office

The formation of regional governments, both executive and legislative, actually plays very important role to accelerate the vitality of democracy. The holding of direct regional head elections can be a starting point for the role of the community in political dynamics at the local level. The process of institutionalization and political decision-making takes place at a locus that is more localized and fundamental. It involves the support and trust of the local community.

Through the elections, it is expected that regional head candidates will be able to answer all the challenges that exist in their communities in order to achieve better regional development improvements. However, at the local level democracy party which has

recently become a big celebration of local people in Indonesia, it is still colored by an election process that is not in accordance with the laws and regulations that have been set.

The Yalimo Regency Pilkada involved two pairs of regional head candidates, namely the 2020 Yalimo Regency Regent and Deputy Regent

Candidate Pair Number 01 Erbi Dabi and John W. Wilil (Related Parties) and the 2020 Yalimo Regency Regent and Deputy Regent Candidate Pair Number 2 Lakius Peyon and Nahum Mabel (the Petitioner). However, in the implementation of elections in this area, disputes between pairs of candidates were unavoidable

until they finally proceeded to the Constitutional Court in the case registered Number 145/PHP.BUP-XIX/2021.

Administrative Violation

In the decision pronouncement hearing of this case, Pither Ponda Barani as the Petitioner's attorney conveyed the administrative violation committed by Erbi Dabi. The reason is, he was driving a vehicle drunk with alcohol and hit to death a policewoman member of the Papua Regional Police Propam on September 17, 2020. In accordance with the Criminal Provisions of Article 311 paragraph (5) of Law Number 22 of 2009 concerning Road Traffic and Transportation, then the Panel of Judges The Jayapura District Court sentenced him to four months in prison. However, the person concerned was transferred to a city prisoner as stated in Decision Number 500/Pid.Sus/2020/PN.Jap.

According to the Petitioners, this decision had legal force prior to the decision of the Constitutional Court Number 97/PHP.BUPXIX/2021 in the 2021 Yalimo Regency Regent and Deputy Regent Election. "So that the defendant Erdi Dabi no longer meets the requirements as a candidate for regent," said Pither Ponda Barani on the hearing which was held on Wednesday (2/6/2021) in the Plenary Court Room.

In addition to reporting the violation case, the Petitioners also filed for the cancellation of the Decision of the General Election Commission of Yalimo Regency Number 117/PL.01.8-Kpt/9122/KPU-Kab/V/2021 concerning the Determination of the Recapitulation of Vote Count Results Post-Decision of the Constitutional Court Number 97/PHP. BUP-XIX/2021 in the Election of Regent and Deputy Regent of Yalimo Regency. In his argument, the Petitioners revealed

that the re-voting had been carried out on May 5, 2021 in the Welarek District in 61 villages with 76 polls/TPS.

No Conditions for Cancellation of Candidates

Regarding the arguments put forward by the Petitioners at a follow-up hearing held by the Constitutional Court on Friday (4/6/2021), Commissioner of the General Elections Commission of the Republic of Indonesia (KPU RI) Hasyim Asy'ari gave a statement that there was no provision that regulates the cancellation of candidates or pairs of candidates due to the status of convicts temporarily or after voting in Law Number 10 of 2016 concerning the Election of Governors, Regents, and Mayors (Pilkada Law). Therefore, the General Elections Commission can't impose sanctions because there is no legal norm that regulates the election issues that occurred in the Yalimo Pilkada.

The General Elections Commission's explanation regarding the cancellation rules for pairs of regional head candidates with the status of convicts refers to Article 164 paragraph (8) that is further stated in General Elections Commission Regulation/PKPU Number 1 of 2020 which is changed to PKPU Number 9 of 2020 especially Article 90 paragraph (1) letter b. Article 90 paragraph (1) letter b states, "The Candidate Pair is proven to have committed a criminal offense punishable by imprisonment for a minimum of 5 (five) years or more based on a court decision that has permanent legal force, before voting day".



Pither Ponda Barani as the Petitioner's attorney after attending the Yalimo Regent Election Dispute hearing, on Wednesday (02/06) in the Court's Meeting Room. Photo: Public Relations/lfa.



The atmosphere of the follow-up hearing on the dispute over the results of the Yalimo Regent's re-voting, Friday (06/04) in the Court's Meeting Room. Photo: Public Relation/lfa.

Apalapsili District

At this second hearing, Papua Province Bawaslu Amandus Situmorang was also present to provide information related to the supervision of the PSU implementation after the Constitutional Court's decision Number 97/PHP.BUPXIX/2021. In clarifying at this hearing, Amandus reported that there was a difference in the timing of the elections in Apalapsili District. Based on the General Elections Commission Regulation, the election should have started at 07.00 WIT, but in the field the election was held at 10.30 WIT and 10.45 WIT. In addition, during this election, there were also voters (no other than TPS Supervisors) whose attendance was represented by other people.

Furthermore, related to the recapitulation of the vote count

results at the district level, Amandus said the activity was carried out at 09.30 – 14.30 WIT by the PPD of the Apalapsili District. After the results of the recapitulation of the vote count, each candidate pair witnesses accept and do not submit objections to the results that have been submitted.

Walarek District

Meanwhile, regarding the election in Welarek District, Amandus said that the Election Supervisory Agency Team arrived at 08.55 WIT and headed to 2 villages with 4 polling stations closest to the airport. That there was no election activity found by local residents, so he asked the General Election Commissions Commissioner for the Papua Province, Adam Arisoi, to start the election immediately. Next, Amandus also mentioned the

recapitulation of the vote count results at the district level which was carried out on May 11, 2021, at 18.31 WIT with the submission of the recapitulation of the recount results for 47 TPS in Welarek District by the Welarek District regional election committee.

Amandus explained more clearly that when the ballot box was opened, the Welarek District Level D Results were not found that were scattered in other ballot boxes so that the Welarek District regional election committee experienced difficulties in reading the results. Therefore, the Yalimo Regency General Election Commission asked for advice from the Yalimo Regency Election Supervisory Agency to open another ballot box to ensure the existence of District Results D. As a result, when the Welarek District PPD continued to submit

the recapitulation of the vote count results in Form D of District Results, the Witness of Candidate Pair 1 filed an objection.

Therefore, regional election committee of Welarek District was unable to explain and answer the objection. Then the Yalimo Regency General Election Commission asked for the opinion of the Yalimo Regency Election Supervisory Agency, which then dismissed the Welarek District regional election committee and took over the Welarek regional election committee tasks to recapitulate the results of the re-count of votes at the Welarek District level based on the C TPS level results for 61 villages from 76 TPS in the area. As a result, Candidate Pair Number 1 received 1,068 votes and Candidate Pair Number 2 with 20,742 votes. Next, after making improvements and corrections to the vote acquisition, Candidate Pair Number 1 received

4,236 votes and Candidate Pair Number 2 as many as 17,464 votes.

Election Participant Requirements

Based on the Decision of the Constitutional Court Number 56/PUU-XVII/2019, one of the requirements to become a candidate pair for election participants is “never as a convict based on a court decision that has obtained permanent legal force for committing a crime punishable by imprisonment of 5 (five) years or more,...”. This is a fragment of the Court’s Legal Considerations read by Constitutional Justice Suhartoyo during the Judgment Hearing on Case Number 145/PHP.BUP-XIX/2021.

Furthermore, the Court is of the opinion that the criminal threat in the phrase “threatened with a sentence” refers to the formulation of criminal threats written in the applicable laws and regulations.

As referring to a proven crime based on a judge’s decision that has permanent legal force. Thus, according to the Court, it is a fatal mistake when the term “criminal threat” is simply equated and/or interchanged with the term “imprisonment period (*strafmaat*) imposed by a judge”.

In the case of a crime committed by Erdi Dabi, the Court has taken a close look at the Jayapura District Court Decision Number 500/Pid.Sus/2020/PN. Jap, dated February 18, 2021, which described Erdi Dabi as being legally and convincingly proven to have committed a criminal act intentionally violating the provisions of Article 311 paragraph (1), paragraph (2), and paragraph (5) of Law Number 22 of 2009 concerning Traffic And Highway Transportation (UU LLAJ). Therefore, the status of the threat of imprisonment against Erdi Dabi is



Chief Justice of the Constitutional Court Anwar Usman read out the verdict in the 2020 Yalimo District Regent Election Dispute Case, on Tuesday (06/29) in the Court’s Hearing Room. Photo:Public Relations/Ifa’s photo.

closely correlated with the provisions of Article 7 paragraph (2) letter g of Law 10/2016. Even though Erdi Dabi at the time of his candidacy had complied with the provisions of Article 7 58 paragraph (2) letter g of Law 10/2016, these conditions still apply to him because he is still a candidate for regional head who has not completed all stages of the election until his inauguration.

In line with this case, the Court also links that as a candidate pair who is currently following the stages of the voting and re-voting process, Erdi Dabi should also meet the requirements for candidacy as a participant in the 2020 Yalimo Regent and Deputy Regent Election. Erdi Dabi must also fulfilled the “waiting period” of 5 (five) years from the end of the criminal period and publicly announce the criminal status he is undergoing to the public.

The Court is of the opinion that regional head candidates must maintain the completeness of other requirements as regional head candidates, including not being allowed to commit disgraceful acts as stipulated in the provisions of Article 7 paragraph (2) letter i of Law 10/2016. Based on the legal facts that occurred in this case, Erdi Dabi as a candidate for regional head has violated the provisions of Article 7 paragraph (2) letter i of Law 10/2016.

Disqualified from the Contest

Constitutional Justice Arief Hidayat explained that based on the legal facts in the Yalimo Pilkada case, the Court is of the opinion that Erdi Dabi as a candidate for the Yalimo Regency Regent from

Candidate Pair Number 1 no longer meets the requirements as regent candidate. Thus, Erbi Dabi must also be disqualified from the 2020 Yalimo Regency Regent and Deputy Regent Election contestation.

Due to this disqualification, the re-voting of the Regent and Deputy Regent of Yalimo Regency in 2020 left only one pair of candidates. For this reason, the Court affirms several considerations related to this matter. Among other things, the Yalimo Regency General Election Commission opened the re-registration of candidate pairs; include the Petitioner as one of the pairs of candidates participating in the re-voting without re-selection, as long as there are no new things that could cause the non-fulfillment of the requirements as a pair of candidates based on the provisions of the legislation; The existence of non-fulfillment of the requirements for Candidate Pair Number 1 due to a personal mistake made by candidate for Regent Erdi Dabi cannot be charged to the candidate for Deputy Regent from Candidate Pair Number 1 John W. Wilil so that he can submit himself or be proposed as a candidate pair without re-selection, as long as it is not found. new things that may cause the condition to be unfulfilled; if there is more than one pair of candidates later, the Yalimo Regency General Election Commissions must re-draw the serial number of the pair of candidates; If there is no new pair of candidates, the re-voting will still be carried out in accordance with the provisions of the legislation.

“The Court canceled all votes in the 2020 Yalimo Regency

Regent and Deputy Regent Election, both those stipulated in the Yalimo Regency General Election Commission Decree Number 55/PL. Voting Results for the 2020 Yalimo Regency Regent and Deputy Regent Election, dated December 18, 2020, and Yalimo Regency General Election Commission Decision Number 117/PL.01.8-Kpt/9122/KPUKab/V/2021 concerning Stipulation of Recapitulation of Vote Count Results Post-Judgment of the Court Constitution Number 97/PHP.BUPXIX/2021 in the 2020 Yalimo Regency Regent and Deputy Regent Election, dated May 11, 2021,” said Constitutional Justice Arief Hidayat in the verdict hearing held on Tuesday (29/6/2021) in the Plenary Court Room and attend parties virtually.

Meanwhile, related to the fact that there are pairs of candidates who do not meet the applicable legal provisions, the Court is of the opinion that a re-voting must be carried out in the entire territory of Yalimo Regency. Elections must use the Permanent Voters List (DPT) used during voting on December 9, 2020 and re-voting on May 5, 2021. Furthermore, with regard to the non-fulfillment of the requirements for the regional head candidate by Candidate Pair Number 1 which resulted in disqualification and a re-voting must be carried out, the Petitioners’ arguments other than and the rest, especially the argument regarding the change in the vote acquisition of each pair of candidates in the Welarek District are no longer relevant to consider. ■

SRI PUJANTI



NO CASSATION IN BANKRUPTCY DECISION

THE Constitutional Court (MK) held a preliminary examination hearing on the judicial review of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UU 37/2004) online on Thursday (17/06/2021). The application registered under Number 23/PUU-XIX/2021 was submitted by PT. Sarana Yeoman Sembada, represented by Sanglong alias Samad as the President Director, tested the norms of Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004. The Petitioner argued that Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 eliminates justice for the Petitioner.

Previously, the Petitioner was handed a PKPU/Postponement of Debt Payment Obligations status in the fourth case decision. It means that there were 3 (three) cases in which his side had previously rejected the evidence. But in the fourth case, the

parties are the same, the evidence is the same, but it is granted. In his petition, the applicant described in the Constitutional Court's decision Number 17/PUU-XVIII/2020, one of the important points of consideration for the Panel of Judges was to place the "peace proposal mechanism" as a mechanism that ensures the legal process runs fairly and quickly. In fact, from the Petitioner's point of view, the application for Postponement of Debt Payment Obligations (PKPU) is used as a mode to bankrupt a private business entity.

According to the appellant, Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 are contradictory to the 1945 Constitution. The appellant feels that his legal rights have been usurped and harmed, due to the provisions of the said article. Whereas the Cassation and Judicial Review legal remedies are an ordinary legal remedy and extraordinary legal remedies so that Court Decisions at the District Court, High Court, and Supreme Court levels that have legal

force can still be requested for re-examination to the Supreme Court as the State Supreme Court Institution, which is intended to correct an error or mistake if it occurs on the decision of a lower court by a higher court. Where the error or mistake is human nature, including the Panel of Judges who examine and hear cases, even though the Application for Cassation and Review does not suspend or stop the implementation of court decisions.

Thus, in its Petitem, the appellant ask the Court to declare Article 235 paragraph (1) and Article 293 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations contradict the 1945 Constitution of the Republic of Indonesia, therefore it is not has binding legal force, for this reason, a cassation and judicial review may be submitted to the Supreme Court of the Republic of Indonesia. (Utami Argawati)



FORMER PERTAMINA PENSION FUND PRESIDENT DIRECTOR SUED THE AUTHORITY OF SUPREME AUDIT AGENCY

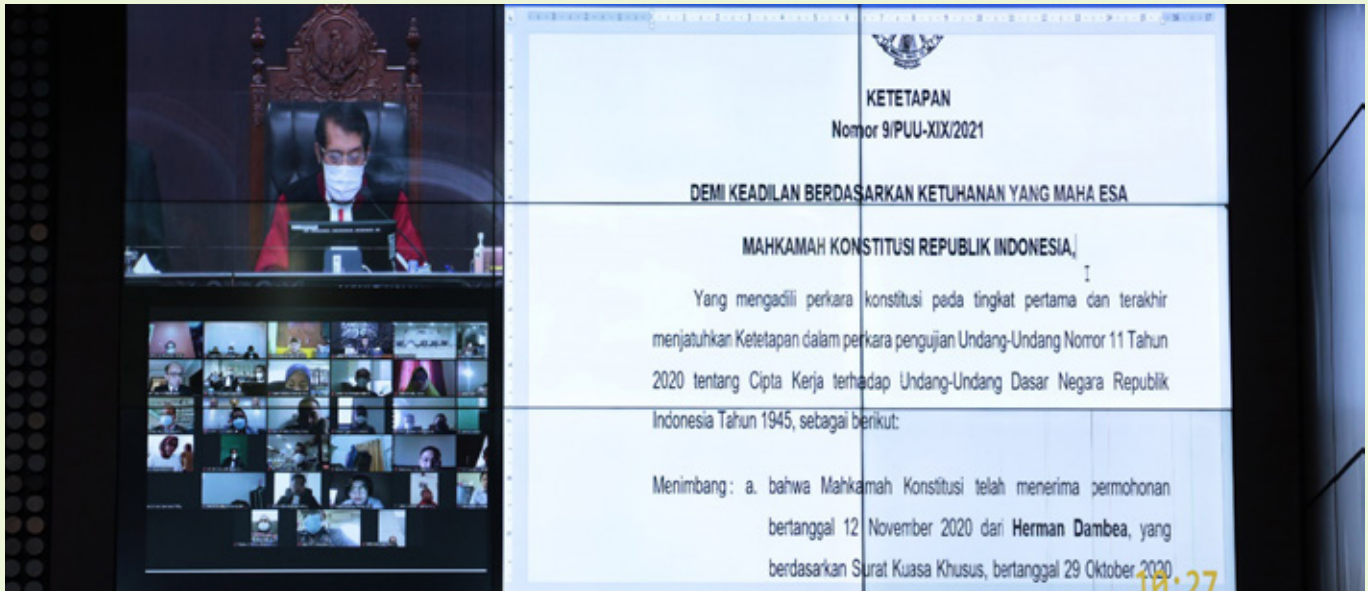
THE authority of the Supreme Audit Agency (BPK) as stated in Article 6 paragraph (1) and Article 10 paragraph (1) of Law Number 15 of 2006 concerning the Supreme Audit Agency (BPK Law) was sued to the Constitutional Court (MK). The hearing of Case Number 26/PUU-XIX/2021 was held on Monday (21/6/2021) online. This application was submitted by the former President Director of the Pertamina Pension Fund, Muhammad Helmi Kamal Lubis who is a convict in the corruption case of PT Pertamina's pension fund.

The appellant has been harmed by his constitutional rights to obtain protection, legal certainty, and equal treatment before the law and feels that his constitutional rights have been impaired as a result of

the actions of the Supreme Audit Agency conducting the examination, even though it is not his duty and authority. According to the Petitioner, at the time of the examination the Petitioner was not a state official, not an employee of a state-owned enterprise and not managing state finances. Supreme Audit Agency, at the request of investigators, will conduct investigative audits of state-owned enterprise subsidiaries and other entities that manage money from state-owned enterprise employees. Furthermore, the results of the Supreme Audit Agency audit become legitimacy for investigators that in these activities there are state losses because the calculations have been carried out by Supreme Audit Agency.

In addition, the Petitioners conveyed that the examination conducted by Supreme Audit Agency was also contrary to the Principles of Formulation of Criminal Acts that must comply with written legal principles (*Lex Scripta*), must be interpreted as read (*Lex Stricta*) and not generate multiple interpretations

(*Lex Certa*). Based on this argument, the Petitioners asked the Constitutional Court to state that Article 6 paragraph (1) and Article 10 paragraph (1) of the Supreme Audit Agency Law are contrary to the 1945 Constitution and have no legal force as long as it does not mean that there is direct equity participation of the central/regional government in BUMN(state-owned enterprise)/BUMD (regional owned enterprises), receive direct assignments from the government to manage natural resources or carry out public services or obtain facilities from the government to manage state finances. The Petitioners argue that Article 6 paragraph (1) and Article 10 paragraph (1) of the Supreme Audit Agency Law are not clear and unequivocal so that they can be interpreted differently by state agencies—in the Petitioner's case of Supreme Audit Agency. This resulted in the Petitioner's constitutional rights and/or authority being impaired against Article 1 paragraph (3), Article 28D paragraph (1), and Article 28G paragraph (1) of the 1945 Constitution. (Utami Argawati)



CONSTITUTIONAL COURT DETERMINES THE WITHDRAWAL OF JOB CREATION LAW

THE CONSTITUTIONAL Court (MK) has issued a decision in the case of judicial review of Law Number 11 of 2020 concerning Job Creation. The application was submitted by Herman Dambea, Commissioner of PT Radio Al-Adha in Gorontalo, North Sulawesi. The hearing on the pronouncement of Decree No. 9/PUU-XIX/2021 was held online at the Constitutional Court on Tuesday (29/6/2021) afternoon. "Accepting the withdrawal of the Petitioner's Application," said Chief Justice of the Constitutional Court Anwar Usman accompanied by other constitutional judges, in the hearing of the pronouncement of the decision.

The Court declared that Application Number 9/PUU-XIX/2021 regarding the petition for review of

the Job Creation Law was withdrawn. The Court also stated that the Petitioner could not resubmit the a quo petition. Then, ordered the Registrar of the Constitutional Court to record the withdrawal of the Petitioner's application in the Electronic Constitutional Case Registration Book (e-BRPK) and return a copy of the application file to the Petitioner.

The Court has also held a panel hearing to examine the revision of the petition on 7 June 2021 online. At the panel hearing, the Petitioner's attorney stated that he was not ready to submit the revised application and would withdraw his application and would officially submit a letter to withdraw the Petitioner's application to the Court.

On June 9, 2021, the Constitutional Court received a letter from the Proxy of the Petitioner dated June 9, 2021 regarding the revocation of Case Number 9/PUU-XIX/2021. Regarding the withdrawal of the

Petitioner's application, Article 35 paragraph (1) of the Constitutional Court Law states, "The Petitioner may withdraw the Application before or during the examination of the Constitutional Court" and Article 35 paragraph (2) of the Constitutional Court Law states that the withdrawal will result in the application being unable to be filed anymore.

Until finally, the Judges Consultative Meeting (RPH) on June 9, 2021 determined that the revocation or withdrawal of application Number 9/PUU-XIX/2021 was grounded according to law and the Petitioner's petition could not be resubmitted. RPH also ordered the Registrar of the Constitutional Court to record the withdrawal of the Petitioner's application in the Electronic Constitutional Case Registration Book (e-BRPK) and return a copy of the application file to the Petitioner (Nano Tresna A.).



RULES OF INSTRUCTION IN CONSTITUTIONAL CIVIL LAW

THE CONSTITUTIONAL Court (MK) completely rejected the application submitted by Wiefried Milano Maitimu who represented the Ambon-Lease indigenous community in the Pronunciation Hearing on the judicial review of the Civil Code (KUHPer), Tuesday (6/29/2021). The Petitioner for Case Number 1/PUU-XIX/2021 postulated the provisions of Article 831, Article 832, Article 834, Article 849, Article 852, Article 852a, Article 857, Article 862, Article 863, Article 864, Article 865, Article 867, Article 869, Article 872, Article 913, Article 914, Article 916, Article 916a, Article 920, and Article 921 of the Criminal Code contradict Article 18B paragraph (2) and Article 28 paragraph (3) of the 1945 Constitution.

Based on the Court's Legal Considerations that was read directly by Constitutional Justice Arief Hidayat, it was stated that customary law is a subsystem of the national legal system. In other words, in the Indonesian judicial system, customary law is one of the sources of law in deciding cases.

Therefore, the judge in examining and deciding a case is obliged to explore legal values that are alive and well maintained in the midst of society.

Arief said that normatively, the freedom of judges in deciding such cases has been regulated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. However, if in judicial practice there is customary law that is no longer in accordance with the legal needs of the community, the judge can also make a decision that is different from the applicable customary law.

"Thus, judges' decisions were born that indirectly contain new legal norms that better reflect a sense of justice, expediency, and legal certainty," said Arief in a hearing held in the Plenary Court Room of the Constitutional Court with the virtual attendance of the parties.

In connection with the appellant's petition that postulates the application of customary law with the articles in the Criminal Code governing inheritance, the Court is of the opinion that there is no paradoxical relationship between the two, especially if the parties agree to fully use the Criminal Code. Therefore, the Court considers that

there is no relevance between adopting customary law in the Criminal Code. In addition, there is also no question of the constitutionality of the norms of the articles concerning inheritance in the civil law with the constitutionality review requested by the Petitioner.

In the previous hearing, the Petitioner said a quo norms were contrary to the provisions of customary law regarding inheritance which were practiced by the Maluku customary law community unit, especially the Ambonese community. The reason is that the customary law system that regulates inheritance can no longer be used because the courts in Indonesia in deciding an inheritance case refer to the civil law. As a result, the Petitioner who should have inheritance rights as a 'child of the house' in the form of a residence (or also called *rumahtua* in Maluku customary law) can't have this right. To note, 'house children' are a hereditary system in Ambon, namely children who are not recognized by the male family, but are still recognized by the female family and can continue the family line from the female family (Sri Pujianti).



THE CONSTITUTIONAL COURT DETERMINES THE REVOCATION OF THE CASE FOR JUDICIAL REVIEW OF THE PORNOGRAPHY LAW

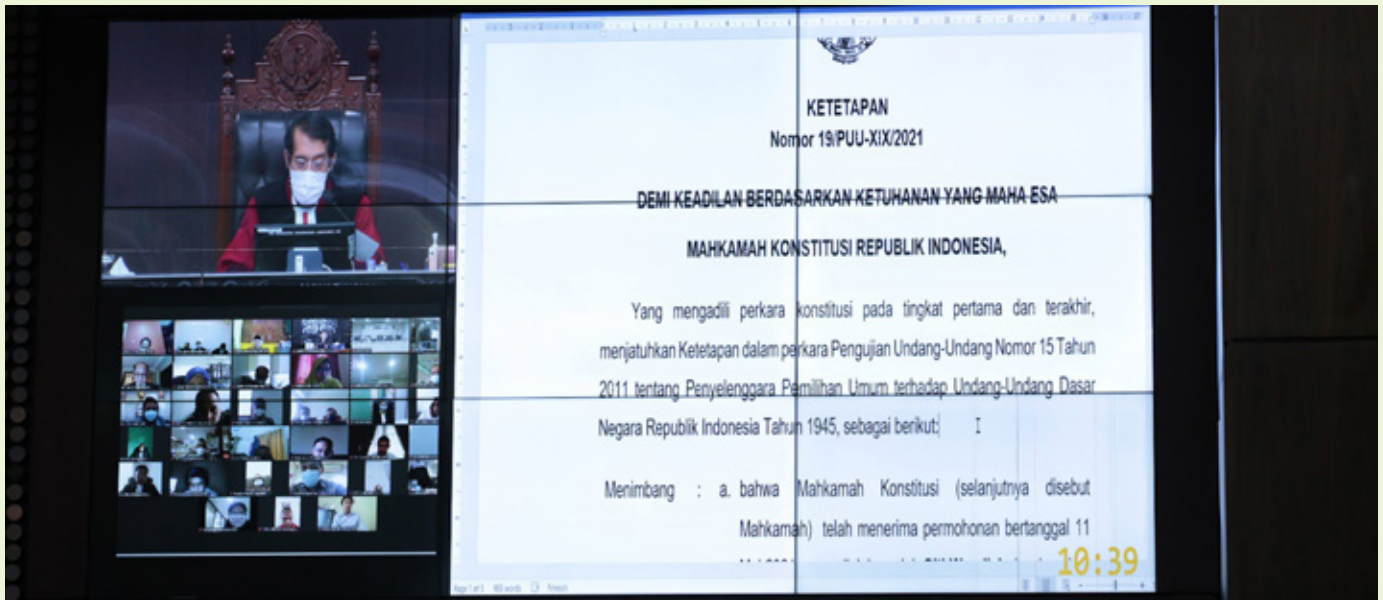
THE CONSTITUTIONAL Court (MK) handed down a decision in the case of Judicial Review of Law Number 44 of 2008 concerning Pornography (UU Pornography) against the 1945 Constitution. The application was filed by Elok Dwi Kadja. The pronouncing hearing of Decree No. 13/PUU-XIX/2021 was held at the Constitutional Court on Tuesday (29/6/2021) afternoon. "Accepting the withdrawal of the Petitioners' request, said Chief Justice of the Constitutional Court Anwar Usman accompanied by other constitutional judges in the online hearing.

The Court also stated that petition Number 13/PUU-XIX/2021 regarding the review of the material explanation of Article 4 paragraph (1) of the Pornography Law against the 1945 Constitution was withdrawn. In addition, it states that the Petitioner can't resubmit the a quo petition. Furthermore, the Court ordered the Clerk of the Constitutional Court to record the withdrawal of application Number 13/PUUXIX/2021 in the Electronic Constitutional Case Registration Book (e-BRPK) and return a copy of the application file to the appellant.

In response to Elok's request, the Constitutional Court issued Decree of the Chief Justice of the Constitutional Court Number 13.13/PUU/TAP.MK/Panel/4/2021 concerning the Establishment of a Panel of Judges to Examine Cases Number 13/PUU-XIX/2021, dated April 21, 2021. The Court also issued a decision of the Chairperson of the Panel Judge of the Constitutional Court Number 17.13/PUU/TAP.MK/HS/4/2021 concerning the Determination of the First Hearing Day to examine case Number 13/PUU-XIX/2021, dated April 21, 2021. Furthermore, the Court will conduct a Preliminary Examination of the application through a Panel Hearing on April 28, 2021. After that, the Constitutional Court received a letter of revocation of application from the Petitioner dated May 24, 2021 via electronic mail (e-mail) and the physical letter was received on the same day.

On May 25, 2021, the Court held a panel hearing to examine the revision of the petition. In the hearing, the Court confirmed the letter of revocation of the application to the Petitioner and the attorney of the Petitioner confirmed the revocation of the application.

Until finally the Consultative Meeting of Judges (RPH) on June 9, 2021 determined that the revocation or withdrawal of application Number 13/PUU-XIX/2021 was grounded according to law and the appellant could not resubmit the application. RPH also ordered the Registrar of the Constitutional Court to record the withdrawal of the Petitioner's application in the Electronic Constitutional Case Registration Book (e-BRPK) and return a copy of the application file to the Petitioner. (Nano Tresna A.)



THE CONSTITUTIONAL COURT STIPULATES WITHDRAWAL OF PUU FOR ELECTION ORGANIZERS

THE HEARING for the pronouncement of the decision on the withdrawal of the case for the Judicial Review of Law Number 15 of 2011 concerning General Election Organizers (UU Election Organizers) was held at the Constitutional Court (MK) on Tuesday (29/6/2021) afternoon. This application was submitted by Siti Warsilah. "Determining, granting the withdrawal of the Petitioner's request," said Chief Justice of the Constitutional Court Anwar Usman accompanied by eight constitutional judges in the online hearing.

The Court in its decision also stated that Petition No. 19/PUU-XIX/2021 regarding the examination of Election Organizers against the 1945 Constitution was withdrawn. In addition, it states that the Petitioner can't resubmit a quo petition. Furthermore, the Court ordered the Clerk of the Constitutional Court to record the withdrawal of application Number 19/PUUXIX/2021 in the Electronic Constitutional Case Registration Book (e-BRPK) and return a copy of the application file to the appellant.

The Court has conducted a preliminary examination of the application through a panel hearing on June 15, 2021. In the preliminary hearing, it turned out that there

was a difference between the written application and the one submitted orally during the hearing. The difference in question does not only concern the description, but also concerns the laws and articles whose constitutionality is tested.

Based on these facts, the Court loses its relevance in providing advice because there is a difference between the written petition of the Petitioner and what was conveyed orally by the Petitioner in the hearing. Given these differences, the Court advises the Petitioners to consider the continuation of a quo petition.

The appellant was aware of the differences in the material referred to so that the appellant declared to withdraw the a quo petition. Furthermore, the Petitioners sent a letter on June 17, 2021 regarding the Revocation of the Application for Judicial Review of the Election Organizing Law which was received by the Registrar of the Constitutional Court on June 22, 2021. Until finally the Consultative Meeting of Judges (RPH) at the Constitutional Court on June 23, 2021 determined that the revocation or withdrawal of the petition was legally grounded. (Nano Tresna A.)



THE INDONESIAN PROSPEROUS LABOR UNION HAS NO LEGAL STANDING TO REVIEW THE JOB CREATION ACT

THE CONSTITUTIONAL Court (MK) held a hearing to pronounce the verdict on the case for judicial review of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution, on Tuesday (29/6/2021) afternoon. This application was submitted by the (Confederation) of the Indonesian Prosperous Labor Union ((K)SBSI). In the decision, the Court stated that the application for Indonesian Prosperous Labor Union could not be accepted.

"The verdict, adjudicating, declares the appellant's request can't be accepted," said Chief Justice of the Constitutional Court Anwar Usman accompanied by eight other constitutional judges, while reading the verdict for Decision Number 109/PUU-XVIII/2020 in an online hearing.

The Petitioner in his application examined a number of articles in the Job Creation Law. The norms for which constitutionality testing is requested are Article 81 number 15, Article 81 number 18, Article 81 number 19, Article 81 number 26, Article 81 number 27, Article 81 number 37, Article 151 and Elucidation of Article 81 number 42 (Article 154A paragraph (1) and paragraph (2) of the Job Creation Law against Article 1 paragraph (3), Article 27 paragraph (2), and Article 28D paragraph (2) of the 1945 Constitution.

The Court in its legal deliberations stated that the Petitioner in his application explained that he was a Legal Entity as Association that had been registered with the Central Jakarta Manpower Sub-dept. and registered with the Ministry of Law and Human Rights. The applicant in this case was represented by Prof. Dr. Muchtar Pakpahan, S.H., M.H., as Chairman of the Central Executive Board of Indonesian Prosperous Labor Union and Vindra Whindalis as Secretary General based on the results of the 6th Congress (K) SBSI. Before the Court further considers the constitutional impairment of the Petitioner, the Court will first consider the capacity of the Petitioner as a Legal Entity of the Association to file the application.

Based on Article 47 paragraph (2) and paragraph (4) of the Articles of Association of Indonesian Prosperous Labor

Union and Article 12 paragraph (7) of the Bylaws (K) SBSI states that the General Chairperson is authorized to act for and on behalf of the organization both inside and outside the organization. Furthermore, Article 12 paragraph (8) letter a Bylaws (K) SBSI states that the Secretary General has the authority to act for and on behalf of the organization related to the administration of the organization both inside and outside the organization. Thus, those who can act to represent the Legal Entity of the Association of Indonesian Prosperous Labor Union are the General Chairperson to represent the organization in general and the Secretary General is limited to the administration of the organization. Therefore, in the context of the petition for judicial review of the law in the Constitutional Court, the person authorized to submit the petition absolutely must be the general chairman.

The hearing with the agenda of examining the petition for improvement was held at the Constitutional Court on April 21, 2021. In the hearing, the Court asked for an explanation related to the death of Prof. Dr. Muchtar Pakpahan, S.H., M.H. as the General Chairperson of Indonesian Prosperous Labor Union who acted on behalf of the Petitioner in the hearing. The Petitioner's attorney confirmed the fact.

The appellant's attorney in the hearing also explained that based on the Decree of the 6th Congress, the name Vindra Whindalis was the Secretary General of the organization. However, after examining the evidence, the name of Vindra Whindalis as Secretary General was not found, instead, the name of Bambang Hermanto as Secretary General of the Petitioner was found. In addition to these legal facts, the Court also did not find any other evidence that could prove that it was true that the name Vindra Whindalis was the Secretary General of Indonesian Prosperous Labor Union for the 2018-2022 period as stated in the appellant's petition.

Based on these considerations, according to the Court, the Petitioner is not represented by a party entitled to act for and on behalf of the Petitioner as referred to in Article 47 paragraph (2) and paragraph (4) of the Articles of Association (K) SBSI and Article 12 paragraph (7) and paragraph (8) Bylaws Indonesian Prosperous Labor Union. Therefore, the Court is of the opinion that the Petitioner has no legal standing in filing a quo petition. (Nano Tresna A.)

VERDICT LIST IN JUNE 2021

No	Case Number	Subject	Petitioner	Verdict
1	9/PUU-XIX/2021	Material Examination of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution	Herman Dambea	Withdrawn
2	13/PUU-XIX/2021	Material Examination of Law Number 44 of 2008 concerning Pornography against the 1945 Constitution	Elok Dwi Kadja	Withdrawn
3	19/PUU-XIX/2021	Material Examination of Law Number 15 of 2011 concerning General Election Organizers against the 1945 Constitution	Siti Warsilah	Withdrawn
4	109/PUU-XVIII/2020	Material Testing of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution	The Central Executive Board of the Confederation of Indonesian Prosperous Trade Unions (DPPK-SBSI) represented by Johannes Dartha Pakpahan, S.H., M.A., as General Chair and Vindra Whindalis as Secretary General	Unacceptable
5	1/PUU-XIX/2021	Material Testing of the Civil Code against the 1945 Constitution	Wiefried Milano Maitimu	Objected for all
6	8/PUU-XIX/2021	Material Examination of Law Number 37 Year 2004 concerning Bankruptcy and Suspension of Obligation for Payment of Debt against the 1945 Constitution	Hendry Agus Sutrisno	Objected for all
7	12/PUU-XIX/2021	Material Examination of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles against the 1945 Constitution	Rega Felix	Rejecting the petition of the appellant in its entirety

8	14/PUU-XIX/2021	Material Examination of Law Number 6 of 2018 concerning Health Quarantine against the 1945 Constitution	Rowindo Hatorangan Tambunan	Rejecting the petition of the appellant in its entirety
9	15/PUU-XIX/2021	Material Examination of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering against the 1945 Constitution	<ol style="list-style-type: none"> 1. Cepi Arifiana; 2. M. Dedy Hardinianto; 3. Garribaldi Marandita; 4. Mubarak 	<ol style="list-style-type: none"> 1. Granting the petition of the Petitioners in its entirety; 2. Stating the Elucidation of Article 74 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering (State Gazette of the Republic of Indonesia of 2010 Number 122, Supplement to the State Gazette of the Republic of Indonesia Number 5164) as long as the sentence "What is meant by "predicate crime investigator" is officials from agencies authorized by law to carry out investigations, namely the Indonesian National Police, the Attorney General's Office, the Corruption Eradication Commission (KPK), the National Narcotics Agency (BNN), and the Directorate General of Taxes and the Directorate General of Customs and Excise, Ministry of Finance of the Republic of Indonesia. with the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted "What is meant by 'predicate crime investigator' is an official or agency authorized by legislation to carry out an investigation"; 3. Ordering the loading of this Decision in the State Gazette of the Republic of Indonesia as appropriate.

DECISION FOR DISPUTE ON THE RESULTS OF THE ELECTION OF REGIONAL HEAD IN JUNE 2021

No	Case Number	Subject	Petitioner	Verdict
1	145/PHP.BUP-XIX/2021	Disputes on the Results of the 2020 Regent Election Regency Yalimo	Lakius Peyon and Nahum Mabel	<p>In Exception Rejecting the exception of the Respondent and the Related Parties. In the Main Case of</p> <ol style="list-style-type: none"> 1. Granting the appellant's application in part; 2. Declaring the disqualification of the Candidate for Regent Erdi Dabi from the Candidate Pair for Regent and Deputy Regent of Yalimo Regency Number 1 because he no longer meets the requirements as a candidate pair for the Election of Regent and Deputy Regent of Yalimo Regency in 2020; 3. Declaring the cancellation of the Yalimo Regency General Election Commission Decision Number 55/PL.02.6Kpt/9122/KPUKab/XII/2020 concerning the Determination of the Recapitulation of Vote Count Results for the 2020 Yalimo Regent and Deputy Regent Elections, dated 18 December 2020, and the General Election Commission Decision Yalimo Regency Number 117/PL.01.8-Kpt/9122/KPU-Kab/V/2021 regarding the Determination of the Recapitulation of Vote Counting Results after the Constitutional Court Decision Number 97/PHP.BUP-XIX/2021 in the 2020 Yalimo Regency Regent and Deputy Regent Election , dated May 11, 2021; 4. Declaring the cancellation of the Yalimo Regency General Election Commission Decision Number 044/PL.02.3-Kpt/9122/KPU-Kab/IX/2020 concerning the Determination of the Candidate Pairs for the 2020 Yalimo Regent and Deputy Regent Elections, dated 23 September 2020, and the Election Commission Decision General Yalimo Regency Number 045/PL.02.3-Kpt/9122/KPU-Kab/IX/2020 concerning Determination of Serial Numbers and List of Candidates for Election of Regents and Deputy Regents of Yalimo Regency in 2020, dated 24 September 2020;

				<ol style="list-style-type: none"> 5. Ordering the Respondent to carry out re-voting in the 2020 Yalimo Regency Regent and Deputy Regent Election followed by Candidate Pair Number 2 (Lakius Peyon, SST.Par. and Nahum Mabel, SH) as long as they still meet the candidacy requirements, and open opportunities for pairs new candidates include providing opportunities for John W. Willil as long as they meet the requirements; 6. Ordering the re-voting must have been carried out within a grace period of 120 (one hundred and twenty) working days since this decision was pronounced, and determine and announce the results of the re-voting, and report the results to the Constitutional Court within 7 (seven) working days after the stipulation. the results of the recapitulation of the results of the re-voting; 7. Ordering the Respondent to carry out re-voting in the 2020 Yalimo Regency Regent and Deputy Regent Election followed by Candidate Pair Number 2 (Lakius Peyon, SST.Par. and Nahum Mabel, SH) as long as they still meet the candidacy requirements, and open opportunities for pairs new candidates include providing opportunities for John W. Willil as long as they meet the requirements; 8. Ordering the re-voting must have been carried out within a grace period of 120 (one hundred and twenty) working days since this decision was pronounced, and determine and announce the results of the re-voting, and report the results to the Constitutional Court within 7 (seven) working days after the stipulation. the results of the recapitulation of the results of the re-voting; 9. Ordering the Indonesian National Police and their staff, particularly the Papua Provincial Police and the Yalimo District Police to secure the re-voting process for the Regent and Deputy Regent of Yalimo in accordance with their respective authorities; 10. Rejecting the appellant's application partly.
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ANNOUNCEMENT

Enforcement of Strict Health Protocols at the Constitutional Court Building during the Covid-19 Pandemic:

1. Every guest is required to show an **ANTIGEN SWAB** certificate with a **NEGATIVE** result which is valid for 3 **DAYS**
2. It is a must to use **MASK** and **FACE SHIELD** during visiting
3. Good health condition and body temperature should **NO MORE THAN 37.3** degrees Celsius
4. Audience time is limited to a maximum of **30 MINUTES**



30
minutes



Satgas Covid-19 Mahkamah Konstitusi

#IngatProtokolKesehatan

#MKRI mencegah Penyebaran Covid19



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CONSTITUTIONAL COURT ACHIEVES UNQUALIFIED OPINION AGAIN

The Constitutional Court (MK) won an Unqualified Opinion (WTP) on the Financial Statements of the Constitutional Court for Fiscal Year 2020. This Unqualified Opinion was also achieved by the Court for the 15th time in a row since 2006.

The announcement of Unqualified Opinion was held during the Submission of the Examination Result Report (LHP) of the 2020 Constitutional Court Financial Statements, on Tuesday (29/6/2020). "Since the Constitutional Court was established to this day, we have got 15 Unqualified Opinions. We are so grateful, we appreciate this. And this is part of the transparency and accountability of constitutional court that is shown to the people and to the Financial Services Authority which is then conveyed to the people and the president," said Financial Services Authority Member III Achsanul Qosasi directly in the Court's Hall.

Furthermore, Achsanul said that the achievement of the Unqualified Opinion was a good thing that was done by the Constitutional Court. According to him, BPK's findings on the Financial

Statements to the Constitutional Court for Fiscal Year 2020 are simpler than the previous year.

"Last year, it was a bit complicated, but it could be followed up and finished. In fact, this year, there are only 3 things; findings of official travel, official housing and cooperation agreements," he said in front of Chief Justice of the Constitutional Court Anwar Usman, Secretary General of the Constitutional Court M. Guntur Hamzah, and limited invitations.

On the same occasion, Chief Justice of the Constitutional Court Anwar Usman said that he was proud and grateful to the BPK for the supervision and examination.

Anwar said that the achievement of the Unqualified Opinion for the Constitutional Court was 15 times in a row reaching the peak of state money

Chief Justice of the Constitutional Court Anwar Usman together with Secretary General of the Constitutional Court M. Guntur Hamzah submitted the results of the examination of the Financial Statements of the Constitutional Court to Member III of Financial Services Authority Achsanul Qosasi, Tuesday (29/06) in the Hall of the Constitutional Court. Photo: Public Relation/Iffa.

management. According to him, this achievement was also obtained from the assistance of the Financial Services Authority which always provided notes or directions related to findings so that they could be followed up.

For information, an unqualified opinion based on Law Number 15 of 2004 is a type of opinion given by Financial Services Authority on the Audit of Government Financial Statements which states that the financial statements of the audited entity present fairly in all respects, material, financial position, results of operations and cash flows of certain entities in accordance with generally accepted accounting principles in Indonesia. ■

UTAMI ARGAWATI/LULU ANJARSARI P



Constitutional Justice Arief Hidayat was the speaker for the Moot Judicial Unit National Webinar organized by the Faculty of Law, University of 17 August 1945, Semarang, Saturday (26/06) at the Constitutional Court Building. Photo: Public Relation/Ifa.

DISCUSSION REGARDING LAW WITH CONSTITUTIONAL JUDGES

As statesmen who are experts in the field of constitutional law, Constitutional Justices do not only act as judges who adjudicate constitutional cases in the courtroom. However, they are also expected to play an active role in sharing knowledge and experiences in various seminars, public lectures, and discussions in public spaces. Throughout the end of June to July 2021, the Constitutional Court Justices became speakers whose presence sparked discussions and seminars and field lectures to become more concrete in terms of theory and practice. Followings below are a series of activities of Constitutional Justices in presenting various legal materials to students, communities, advocates, and observers of constitutional law and government.

Law in Indonesia

Law in Indonesia is not secular. It is based on ideology and the basis of the state; Pancasila and the 1945 Constitution. This was conveyed by Constitutional Justice Arief Hidayat in the National Webinar of the Moot Court Unit, Faculty of Law, University of 17 August 1945, Semarang with the theme "Jurisprudence as a Source of Law in Considering Judge Decisions. in Court", on Saturday (26/6/2021) morning.

In this activity, Arief explained that justice is based on the One Godhead. "The Constitutional Court's decision has a passion for justice in the one and only God. In reading the verdict, if we wrongly enforce the law, we are not responsible to the state and nation, but also to God Almighty," said Arief.

Arief said, Indonesia is a constitutional state based on law and a democracy or democracy based on law. Therefore, in Indonesia, the law can't be made into a commodity, so we must be careful because we are responsible to God Almighty.

Arief further revealed that judicial power is regulated in Article 24 Paragraph (2) of the 1945 Constitution. In this article, it is explained that power is exercised by a Supreme Court (MA) and judicial bodies under it in the general court environment, religious court environment, judicial environment military, administrative court environment, and by a Constitutional Court (MK). "The Constitutional Court has the authority to conduct a judicial review to examine the law whether the law is consistent or corresponds to the

constitution. If the law is inconsistent with the constitution, the Constitutional Court can cancel the law," he explained online.

In deciding cases, both regional and presidential elections, sometimes, there is a shadow judicial review. Thus, it can become a judicial review in the Constitutional Court. According to Arief, judges must be guided by various legal sources of the 1945 Constitution, the Law and see the opinions of experts and professors, and influential book references. "The important thing is the jurisprudence of decisions that have been taken by the Constitutional Court based on empirical facts or social facts and the most important thing is the judge's own conviction," said he.



Chief Justice of the Constitutional Court Anwar Usman when answering questions from the participants of Special Education for Advocate Profession Class XI by Widyagama University Malang with Branch Executive Board of the Indonesian Advocates Association (DPC Peradi), that took place online at the Constitutional Court Building, Saturday (26/06). Photo: Public Relations/Ihham WM.

The Important Role of Advocate

Chairman of the Constitutional Court (MK) Anwar Usman became the main speaker in the Special Advocate Profession Education (PKPA) Class XI in collaboration with the Faculty of Law, Widyagama University Malang and National Lawyers Council of Indonesian Advocates Association on Saturday (26/6/2021). The event was also attended by the Chancellor of the Widyagama Malang University, Agus Tugas, the Chairperson of the Branch Executive Board of the Indonesian Advocates Association Malang, Dian Amimuddin, as well as a number of lecturers from the Faculty of Law, Widyagama Malang University, virtually.

At the beginning of the material, Anwar discussed the drastic changes from the amendments to the 1945 Constitution which included almost 92% of the norms contained in it experiencing changes. As an outline, Anwar said the changes were in the

number of chapters from 16 chapters to 21 chapters and changes to the articles which before the amendment were only 37 then became 73 articles. The concrete form of this change is also contained in Article 24 paragraph (1) of the 1945 Constitution. Thus, continued Anwar, the Constitutional Court is an institution which in the amendment is stated as the judicial power which has the authority to decide at the first and final levels and the decision is final.

Through this virtual discussion room, Anwar reminded advocates that as a judicial institution, it is impossible for the Constitutional Court to make decisions that satisfy all parties. Therefore, the Constitutional Court sees the importance of the existence of advocates in establishing legal understanding of the decisions made in each case submitted by justice seekers. He assessed that the milestones of law enforcement and justice are not only the duty of the police and judges in

the judiciary, whether religious courts, commercial courts, state administrative courts, and others.

"Advocates also play a role in law enforcement and justice. Thus, the task of fellow advocates is not only to win a case, but the main purpose of their existence is to assist law enforcement because advocates are law enforcement officers and have the same position as a prosecutor, even advocates can play a wider role. If the judge's authority is limited, whether in the case or the jurisdiction. The legal coverage area can be from Sabang to Merauke. The resolved cases can also vary, ranging from criminal cases, civil cases, and even constitutionality cases by becoming a legal representative for the Petitioner in submitting an application to the Constitutional Court," explained Anwar.

The Authority of Constitutional Court

Chief Justice of the Constitutional Court Anwar Usman was a speaker at the 2021 Litigation Education and Training held by the Attorney General's Office of the Republic of Indonesia on Thursday (1/7/2021). In front of 30 participants, Anwar presented a material entitled "The Constitutional Court and the Procedural Law". In this activity guided by the Head of the Functional Engineering Training Center (Kapus DTF) Judhy Sutoto, Anwar invited the participants to know more about the history of the birth of a state institution called the Constitutional Court.

Anwar explained that the Constitutional Court is an institution of judicial power that was born after the reformation in 1998 and as a result of the amendments to the 1945 Constitution. Anwar continued, in the 1945 Constitution as a result of the amendments, the Constitutional Court has the authority to have several powers.

According to Anwar, the reforms in 1998 and the amendments to the 1945 Constitution also brought extraordinary consequences to the existing constitutional structure in Indonesia. For example, he mentioned that there used to be an institution called the Supreme Advisory Council. Then after the amendment, the institution was abolished, but new institutions emerged such as the Regional Representatives Council, the Judicial Commission, and including the emergence of the Constitutional Court.

"The existence of the Constitutional Court is also a result of the amendment to Article 1 Paragraph (2) of the 1945 Constitution so that in carrying out this mandate the Constitutional Court is present as an institution that oversees and maintains the constitution," explained Anwar.



Chief Justice of the Constitutional Court Anwar Usman was the speaker for Litigation Training activities held by the Indonesian Attorney General's Office online, on Thursday (01/07) at the Constitutional Court Building. Photo: Public Relation/Ifa.

The Crown of Constitutional Court's Authority

Constitutional Justice Saldi Isra was the speaker for Special Advocate Profession Education (PKPA) class VII, Islamic University 45 Bekasi. This activity was held virtually on Saturday (7/3/2021). In this activity, Saldi said that constitutionally the existence of the Constitutional Court (MK) is regulated in Article 24 of the 1945 Constitution which mentions the power of the judiciary. Judicial power in the article consists of 2 branches, namely by a Supreme Court and judicial bodies under it in the general court environment, religious courts, military courts, state administrative courts, and by a Constitutional Court.

"The Constitutional Court is the one because it is only in the capital and has no power under it. This is confirmed in the constitution, and the decision is final," said Saldi. According to him, the debate regarding the final decision of the Constitutional Court is a very long debate.

Furthermore, Saldi explained, one of the reasons for the existence of the Constitutional Court is because of the large number of cases in the Supreme Court. So that a very specific judicial power institution was created, namely the Constitutional Court.

The Constitutional Court's authority is to examine laws against the Constitution, to decide on disputes over the constitutional authority of state institutions, to decide on the dissolution of political parties, to decide disputes over election results. Furthermore, the Constitutional Court is obliged to give a decision on the opinion of the House of Representatives regarding alleged violations by the president and/or vice president according to the Constitution. The existence of the Constitutional Court's authority in examining laws against the Constitution is part of the checks and balances of state institutions.

"The crown of authority of the Constitutional Court is to test the Law against the Constitution," said Saldi in front of the PKPA participants.

In the development of the



Constitutional Justice Saldi Isra was the speaker for the Special Advocate Profession Education organized by the 45 Bekasi Islamic University online, Saturday (03/07). Photo: Public Relation.

implementation of its authority, continued Saldi, the Constitutional Court stated Article 50 of Law no. 24 of 2003 contradicts the 1945 Constitution. Article 50 contains a provision which states that the laws that can be tested in the Constitutional Court are laws that were promulgated after the amendment to the 1945 Constitution.

According to Saldi, the article was declared unconstitutional based on Decision No. 066/PUU-II/2004 (Examination of Law No. 1 of 1987 concerning Kadin). The Constitutional Court also has the authority to examine Government Regulations in Lieu of Law with the consideration that the laws and regulations create new legal norms with the same force as the Law.

The Constitutional Court's authority in judicial review, said Saldi, is divided into two; formal and/or material testing. Formal examination is the examination of the law relating to the process of forming the law and other matters that do not include material examination. Meanwhile, material testing is the examination of laws relating to the content in paragraphs, articles, and/or parts of the Act that are

considered to be contrary to the 1945 Constitution.

The History of Government System in Indonesia

Constitutional Justice Saldi Isra was a speaker at the Constitutional School organized by Constitutional Advocates in collaboration with Raja Grafindo Persada Publishers and the Constitutional Court on Saturday (7/10/2021). In the activity themed "Indonesian Government System" and at the same time as the Opening of the Constitutional School 2.0, Saldi reviewed in detail the history of the development of the government system in Indonesia. The theme of this online lecture is also in line with the subject matter contained in the book entitled "*Sistem Pemerintahan Indonesia: Pergulatan Ketatanegaraan Menuju Sistem Pemerintahan Presidensial*" by Saldi Isra.

Moderated by Hario Danang from the Faculty of Law, Padjadjaran University, Saldi emphasized the importance of exploring the debate over the Indonesian government system.

This is due to the formulation of the Indonesian constitution in the practice of state administration has undergone several changes, including the 1945 Constitution of the beginning of independence, the RIS Constitution, the 1950 Provisional Constitution, and the return to the 1945 Constitution. 1959 and even in the 1999 period. One of the objectives of the amendment to the 1945 Constitution, continued Saldi, was to maintain the presidential system of government.

In this limited forum, Saldi started his presentation by citing the definition of constitution according to K.C. Wheare in his book entitled "Modern Constitutions". According to Wheare, the constitution is a written document, a general and basic framework, which describes the entire system used by the state and in which there are rules regarding government.

"So, if you read the constitution of any country, you will find the state system adopted by the country concerned. But it should be emphasized that in fact we rarely find direct mention of a presidential/parliamentary system of government in the constitution. If a search is carried out, then the characteristics in the constitution will be found, whether a country runs a presidential or parliamentary system in its government," said Saldi in an online activity attended by Fitrah Bukhari as Founder of Constitutional Advocate.

Furthermore, Saldi explained that the government system is a system explaining the relationship between executive and legislative power holders. Thus, while talking about the government system, it will be related to how the correlation between the two power holders in a state government is. For example, Saldi illustrates the parliamentary government system found in other countries, such as Malaysia, Japan, and Germany that recognizes the holding of general elections only once to elect members of the legislature.

In this system of government, continued Saldi, there is no agenda to elect the Prime Minister. The result of this parliamentary election will determine the strategic composition of the position in the representative country. In contrast to the presidential system of government, Saldi said that the general election was held twice, either simultaneously or separately, to elect the legislature and the executive. Therefore, it is a natural thing if there is a sovereign struggle between these two institutions in a country that adheres to a presidential system of government.

“So, the potential for tension that arises in this system is very reasonable because there are two institutions that are given sovereignty by the people to manage the country. Because the concepts of legislative and executive power holders are of course separate, so the political process takes place in two institutions that both manage the people’s sovereignty,” added Saldi.

The Actual Issues of Law and Constitution in Indonesia

The highlight of The 20th Indonesian Scholars International Convention (ISIC) was held virtually on Saturday (7/10/2021). The theme was Indonesia Leveling Up: Enhancing Indonesia’s Crisis Resilience. This activity was organized by the Indonesian Student Association in the UK (PPI UK), that was attended by 73 Indonesian student participants in various countries. This activity is a direct question and answer forum on various issues that are currently hot in Indonesia without the panelists’ material exposure.

In this activity, Constitutional Justice Saldi Isra answered various questions when he was a panelist for political and legal discussions. For example, the issue of post-amendment to the 1945 Constitution. Saldi said that one of the problems faced



Constitutional Justice Saldi Isra was the speaker of the Constitutional School event held virtually, on Saturday (07/10). Photo: Public Relations/lfa.

by the Indonesian nation after the constitutional amendment was the problem of building a balance between the holders of executive power and those of legislative power. Saldi added that what was conducted during the amendment to the 1945 Constitution was to draft a new design in the constitution, which raised the holders of legislative power, especially the DPR, so that they could be more balanced with the President.

Saldi continued, executive and legislative power holders need to be aware and understand that the constitutional design actually provides space for them to always build the principle of checks and balances. But on the way later, he continued, the two powers collaborated with the formation of a grand coalition.

Saldi revealed that whatever the government’s agenda—in this case the President—could not ignore the two major powers in parliament. There are political parties that at times support the government and at times shift into opposition.

“This is what was not formed, so that the existing political parties prefer to join the government rather than defend themselves as institutions that are under the control of the government,”

said Saldi, who also explained political parties as one of the new sources of power generated by the amendment to the 1945 Constitution.

In addition, Saldi answered the problem of hyper regulation that are very much in Indonesia, the existence of overlapping regulations. Saldi questioned the argument for hyperbole at the legal level. Due to the fact, legislators only produce dozens of laws in a year. He emphasized that hyper regulation is actually more common in regulations under the law.

According to Saldi, talking about hyper regulation in Indonesia, it is actually very simple to solve. Regarding hyper regulation, said Saldi, actually the President has very strong authority to manage it. That the President is given by the constitution to administer the regulations.

The Democracy in presidential System

Constitutional Justice Enny Nurbaningsih was a speaker for the 2021 Abbreviated Forces Education Program (PPSA) organized by the National Resilience Institute (Lemhannas) on Friday (7/16/2021). Enny presented the material “Democracy in a Presidential System”.



Constitutional Justice Saldi Isra was a speaker in an online Panel discussion organized by the Indonesian Student Association, Saturday (07/10). Photo: Public Relation/Bayu.



Constitutional Justice Enny Nurbaningsih was a speaker for the Force Abbreviation Education Program which was held virtually by the National Defense Institute, Friday (07/16). Photo: Public Relations/Banji.

Constitution when then the principles of democracy can be put into it. Then when implemented, a country will appear democratic in the administration of its government. In this regard, at the time of the amendment to the 1945 Constitution, the affirmation of this matter had been raised in such a way. Especially in Article 1 of the 1945 Constitution which states that Indonesia is a state of law.

The concept of democracy based on law and the constitution that is also known as constitutional democracy, said Enny, has developed in such a way. Even the current discussion has led to a state based on the constitution, which is considered as something that is very idealized at this time.

Human Rights in Service Forum of Dinode GMIT SoE

Constitutional Justice Daniel Yusmic P. Foekh was a guest speaker at the GMIT Synod Service Forum (Muspel), SoE, East Nusa Tenggara, on Friday (16/7/2021) virtually. In this activity, Daniel delivered material on "The Constitutional Court and the Protection of Human Rights in Indonesia".

Starting the conversation, Daniel said that the Constitutional Court's authority is regulated in Article 24C Paragraphs (1) and (2) of the 1945 Constitution and Article 10 paragraphs (1) and (2) of the Constitutional Court Law. However, in its development, continued Daniel, in addition to the original authority regulated in the 1945 Constitution, the Constitutional Court also has 2 (two) additional powers, namely the Constitutional Court to examine government regulations in lieu of law and adjudicate disputes over election results until the establishment of a special judicial body. Then when viewed from its function, Daniel said that the Constitutional Court has 6

Talking about democracy, said Enny, it can't be separated from the teachings of popular sovereignty, that requires that community are actually the highest source of power in a democratic country.

"We can see that in terms of democracy, it is now formally something that has been adopted by many countries. Including social, political and other organizations that make democracy one of the principles in the organization," said Enny.

Democracy of Constitutional

For a country, matters related to democracy have been enshrined in constitutional principles. Currently democracy is claimed to be the best in running an organization. Enny said that when it comes to democracy, conceptually, there have been many developments, including the addition of attributes in it.

Enny revealed that the Constitution does not always require the word 'democracy' in it. The most important thing is the elaboration of the



Constitutional Justice Daniel Yusmic was a guest speaker at the Synod Men's Service Deliberation, on Friday (07/16) virtually. Photo: Public Relations/Bayu.

functions, namely as the guardian of the constitution, the final interpreter of the constitution, the guardian of democracy, the protector of citizen's constitutional rights, the protector of human rights and the guardian of state ideology.

Talking about the human rights, continued Daniel, there is a difference between constitutional rights and legal rights. Constitutional rights are a set of rights guaranteed in and by the Constitution. In the Indonesian context, this is contained in Article 28A – Article 28J of the 1945 Constitution. Meanwhile, legal rights arise based on the guarantee of the law and the legislation under it (subordinate legislations). In addition, there are also the terms citizen's rights and resident/resident rights. The rights of citizens are inherent because legally a person has citizenship status in a country.

Daniel further explained that the regulation regarding human rights is also contained in articles which were the original text of the 1945 Constitution before the amendment, such as Article 27 paragraphs (1) and (2), Article 28, and Article 29 paragraph (2). Although it is not explicitly mentioned in the articles of the 1945 Constitution, through constitutional interpretation, the Constitutional Court affirms that the right to obtain legal assistance is a constitutional right.

Procedure Act of Constitutional Court

Constitutional Justice Saldi Isra was the keynote speaker in the public lecture "Procedural Law of the Constitutional Court" that was held by the Faculty of Law, University of Pancasila virtually through the zoom application, on Monday (19/7/2021) morning. This activity is part of a series of Merdeka Learning programs: Merdeka Campus (MBKM) and the Merdeka Campus Competition Program (PKKM).

Saldi explained the development of law globally and the judicial review that arises from the practice of the United States of America. Saldi said that in the case of Marbury vs Madison,

if you read the US constitution, you can't find a single clause that gives the Supreme Court an explicit authority to judge whether a law is contrary to the Constitution or not. According to Saldi, the practice of judicial review in the US arises because of the paradigm of judicial activism.

Meanwhile, in Indonesia, continued Saldi, from the beginning of the debate since the Law was drafted and when formulating the judicial power, there was an idea that the Supreme Court or the Constitutional Court should be given the authority to assess and test the validity or validity of laws against the constitution. Saldi explained that Article 24 of the 1945 Constitution affirms that judicial power is an independent power to administer justice to uphold law and justice. The Constitutional Court is one of the actors of judicial power as referred to in the 1945 Constitution.

On the same occasion, Saldi also revealed the flow of constitutional judges in working. When the application has been registered, it is sent by the clerk to the Chief Justice of the Constitutional Court. Then the Chief Justice of the Constitutional Court decided that the case would be handled by a panel of judges. ■

SRI PUJIANTI/NANO TRESNA ARFANA/UTAMI ARGAWATI/ LULU ANJARSARI P/NUR R



Constitutional Justice Saldi Isra was the key speaker for the Public Lecture organized by the Faculty of Law, University of Pancasila, on Monday (07/19) online. Photo: Public Relations/Ifa.



Secretary General of the Constitutional Court M. Guntur Hamzah was the speaker of the talk show organized by the cooperation between the House of Representatives and the Pancasila Ideology Development Agency, Monday (06/21) at the Constitutional Court Building. Photo: Public Relations/Bayu.

THE CHALLENGE OF INTERNALIZING PANCASILA VALUES

SECRETARY General of the Constitutional Court M. Guntur Hamzah was the speaker of the Talk show “Internalization of Pancasila Values in Legislation” on Monday (21/6/2021) afternoon in Jakarta. This activity was held in collaboration with the House of Representatives and the Pancasila Ideology Development Agency (BPIP).

“The internalization of Pancasila values in legislation is essentially how we apply the principles of good government regulation, which basically leads to how we make good laws and regulations. In this case, one of the main components is to as much as possible internalize the values of Pancasila in all laws and regulations

in our country,” explained Guntur who delivered an online presentation.

Speaking of Pancasila values in the products of legislation, said Guntur, the Indonesian nation already has many attributes related to Pancasila. Some say that Pancasila is the soul of the nation, the nation’s view of life, and others. Guntur indicates that Pancasila is so noble and charismatic that Pancasila must be revealed in a more practical level.

On this occasion, Guntur focused on discussing aspects to ground Pancasila at the level of legislation and regulation. Since the stage of forming the law, it must be adaptive to Pancasila values. Then at the stage of

applying the law, it must also contain the values of Pancasila. After that, at the law enforcement stage, it must also contain the values of Pancasila.

“At this stage of law enforcement, it does not mean imposing sanctions. However, law enforcement in the sense of review is carried out by the Constitutional Court and by the Supreme Court,” explained Guntur.

Another and no less important thing, continued Guntur, in the context of accelerating the internalization of Pancasila values into laws and regulations is to apply the technology of information and communication. Especially if you have used artificial intelligence technology to detect the extent to which the values of Pancasila have been contained in the products of laws and regulations in Indonesia.

Guntur added, in the Society 5.0 era as a response to civilization’s attitude towards the Indushearing Revolution 4.0, technology was played to ‘humanize humans through technology’ and not vice versa, ‘technology colonizes humans’. The challenge of internalizing Pancasila values in laws and regulations will be increasingly complex. The challenge faced is in the form of contemporary interpretation of Pancasila as an open ideology that is compatible with the current situation. (Nano Tresna Arfana/Nur R.)



Secretary General of the Constitutional Court M. Guntur Hamzah gave an explanation in the Socialization of the Bureaucratic Reform Policy in 2021 and the Evaluation of the Bureaucratic Reform of the Constitutional Court in 2020 which took place online and offline, Tuesday, (22/06/2021). Photo: Public Relations/Ilham WM.

SOCIALIZATION OF BUREAUCRATIC REFORM POLICY IN 2021

THE CONSTITUTIONAL Court (MK) held a "Socialization of the 2020-2021 Bureaucratic Reform Policy" on Tuesday (22/6/2021). This activity was held to formulate accountability for institutional performance in optimizing the functions of the internal Bureaucratic Reform (RB) team, assessors, and internal assessment teams in monitoring and evaluating the implementation of bureaucratic reform within the Registrar's Office and the Secretariat General of the Constitutional Court. A total of 139 people participated in this activity, consisting of the Central RB Team, Work Unit RB Team and Work Unit Assessors, as well as officials and staff related to the MK RB work scope.

Secretary General of the Constitutional Court M. Guntur Hamzah in the opening presentation reported that the RB Index of the Constitutional Court in 2020 was

75.24 with the "BB" category or very good, according to the Letter of the Ministry of Administrative and Bureaucratic Reform No. B/86/M. RB.06/2021 dated March 31, 2021 Regarding the Evaluation Results of the Implementation of Bureaucratic Reform in 2020. In addition, the results of the 2020 Constitutional Court service perception survey showed an index of 3.62 out of a scale of 4. This figure, continued Guntur, was slightly higher than national average.

In addition, Guntur revealed that the results of the survey on the perception of the Court's services experienced a slight increase from the previous year's figure of 3.61. The results of this survey indicate that there is a slight increase in stakeholder perceptions of satisfaction with the services provided by the Constitutional Court.

In order to obtain direction and input on the performance and assessments that have been obtained by the institution, the Court presented a resource person from the PAN RB Ministry, Ronald Andrea Annas. In his explanation regarding the Opportunities for Improvement of Bureaucratic Reform, the Assistant Deputy for Policy Formulation for Bureaucratic Reform, Apparatus Accountability, and Supervision of the Ministry of PAN-RB said that if an institution wants to achieve a performance, it needs to look at the internal and external environment. There is a SWOT analysis that must be carried out at an early stage by prioritizing the strengths and weaknesses approach. This needs to be done, in order to find the best opportunity to achieve optimal performance. (Sri Pujianti/ Nur R.)



Constitutional Court Inspector Budi Achmad Djohari held an online Anti-Corruption Cultural Socialization activity for all employees, Wednesday (06/23) at the Constitutional Court Building. Photo: Public Relations/ifa.

SOCIALIZATION OF ANTI-CORRUPTION CULTURE

SOCIALIZATION of Anti-Corruption Culture for all employees of the Constitutional Court (MK) was held on Wednesday (6/23/2021) afternoon. Dion Hardika Sumarto as Head of the Task Force for Regulation, Renbang and Corruption Prevention Network Application from the Directorate of Gratification and Public Services at the Corruption Eradication Commission was present as an online speaker.

The material discussed is about gratification control, including regulations and reporting processes. At the beginning, Dion mentioned the existence of Article 12B paragraph (1) and paragraph (2) of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (UU Tipikor), which is known as the gratification article.

Regarding gratuities, Dion explained the mechanism for reporting gratuities. "Reporting mechanisms can be used to facilitate those who have

good faith to maintain their integrity when receiving something. Maybe, they are worried about threatening their life or career, so a gratification reporting mechanism is provided," added Dion.

Furthermore, Dion also revealed that efforts to prevent gratification in institutions and organizations can be through an educational approach so that all employees are aware of gratification reporting and apply an anti-gratification culture in their organizations. In addition, the gratification report can be a management tool in the context of conducting risk assessments and identifying vulnerable points. Also, together with the Gratification Control Unit (UPG) in the agency, they implement an anti-gratification culture through inspection activities.

The last part, Dion explains about the Whistle Blowing System (WBS) or Community Complaint Management. Dion expressed, the understanding in various institutions about WBS is

very diverse. Most WBSs are defined as applications. Second, there are parties who define WBS as a reporting medium. Then the third, WBS is defined as reporting and handling. In addition, WBS is defined as a place for people to report.

"What does WBS actually mean? We define WBS as a set of procedures designed to receive and handle information on suspected violations that are followed up in a professional, transparent, accountable and confidential manner. So don't just report. If you report it but it is not handled professionally, it is not followed up, it is not WBS," said Dion, who also mentioned that the WBS principles include confidentiality, easy and fast access, professionalism in management, monitoring and evaluation on a regular basis. (Nano Tresna Arfana/Lulu Anjarsari P.)



Secretary General of the Constitutional Court M Guntur Hamzah together with the Heads of Bureau took part in the virtual submission of the 2020 Central Government Financial Report on Friday (06/25) at the Constitutional Court Building. Photo: Public Relations/Ifa.

REPORTING AN INSPECTION REPORT (LHP) ON THE 2020 GOVERNMENT GOODS AND SERVICES PROCUREMENT POLICY AGENCY (LKPP) VIRTUALLY

SECRETARY General of the Constitutional Court M. Guntur Hamzah attended the submission of the 2020 Central Government Financial Report (LHP LKPP) and the 2020 Semester II Examination Results Summary (IHPS) as well as the virtual submission of the 2020 Semester II Examination Report (LHP) Friday (25/6/2021).

The President of the Republic of Indonesia, Joko Widodo, in his remarks at this activity, stated that when state revenues decline, state institutions must jointly bear the burden in order to maintain the country's economic stability. In the midst of a situation that has not yet fully recovered, the President gave appreciation to the Supreme Audit Agency of the Republic of Indonesia (BPK RI) for the timely inspection of this report.

"That the WTP obtained by the Government is not an achievement that is the ultimate goal, but rather an effort to ensure that every rupiah is spent properly for the full benefit of the people. So, the Government is very careful in managing existing finances," said President Joko Widodo who attended with Indonesian Vice President Ma'ruf Amin at the State Palace, Jakarta.

The Chairman of Financial Supervisory Agency RI Agung Firman Sampurna read the summary of the 2020 LHP LKPP directly. Through this report, Agung also explained the problems related to the Covid-19 Handling Program and the National Economic Recovery (PCPEN), including the distribution of public business loan interest subsidies (KUR) and other

non-KUR expenditures which were considered not to have taken into account the readiness of program implementation. As a result, there is a remaining 6.77 trillion rupiah of activity funds that have not been disbursed. Regarding the problems contained in the Government's 2020 LHP LKPP, Financial Supervisory Agency provides recommendations to follow up by improving the management and accountability of the State Budget in the coming year. "The results of the review on the implementation of fiscal transparency show that the Government has met most of the criteria for the pillars of fiscal transparency with the achievement of an Advance level of 19 criteria," said Agung. (Sri Pujianti/ Nur R.)



SOCIALIZATION OF MERIT SYSTEM AND TALENT MANAGEMENT

Sri Hadiati Wara Kustriani as Commissioner for Supervision for the Implementation of the Merit System and Talent Management Socialization activity, Monday (07/12). Photo: Public Relations/Ifa's photo.

THE CONSTITUTIONAL Court held a Socialization of the Merit System and Talent Management on Monday (12/7/2021). This activity is in the context of the Clean and Serving Bureaucratic Area (WBBM) for the work unit of the Public Relations and Protocol Bureau, the Information and Communication Technology Center, as well as the Pancasila and Constitutional Education Center within the Registrar's Office and the Secretariat General of the Constitutional Court.

The Commissioner for Supervision of the Implementation of the Merit System Region I at the State Civil Apparatus Commission (KASN), Sri Hadiati Wara Kustriani, presented the material on the Merit System: Efforts to Create Professional ASN. Sri started by

explaining Indonesia's position in several global indicators.

Talking about the merit system, the professionalism of the State Civil Apparatus or ASN in our bureaucratic environment, like it or not, these indices will show the position of our nation in the international world. "This will be a determining factor for investments that will enter Indonesia," said Sri at the event which was attended by structural and functional officials of the Constitutional Court as well as employees of the Constitutional Court.

Sri explained that the 2019 corruption perception index (indicator) of Indonesia's position was ranked 85 that showed a decline from the previous year. Sri hoped that in 2020, Indonesia's ranking would be better.

Indonesia's corruption perception index lags far behind Singapore, which was in 4th place. However, the corruption perception index in Indonesia is better than the Philippines at 113th place, Thailand at 101st place. This is a task for Indonesia, said Sri.

Sri explained that the merit system is a policy and management of State Civil Apparatus based on qualifications, competence, and performance in a fair and reasonable manner without distinguishing between political, religious, racial and ethnic factors. The merit system affects several indices. This can be seen from the correlation between meritocracy and various indices. (Nano Tresna Arfana/Nur R.)

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