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KONSTITUSI

WHEN EX-DRUG CONVICTS RUN FOR REGIONAL HEAD ELECTIONS

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CONSTITUTIONAL HISTORY CENTER

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Jl. Medan Merdeka Barat No. 6 Central Jakarta

Editor's Foreword

Candidates who have committed deviant behavior or disgraceful acts, such as gambling, drug users, drug dealers, and violators of decency, have been allowed to run for the Regional Head elections with the condition that it had passed five years after completing a prison sentence based on a court decision that has permanent legal force.

In addition, the candidates must be honest and open about their background as ex-convicts. Thus, the Constitutional Court Decision No. 2/PUU-XX/2022 concerning the material judicial review of Article 7 paragraph (2) letter i of Law Number 10 of 2016 on Regional Head Elections.

The Court believes that the Elucidation of Article 7 paragraph (2) letter i of Law No. 10/2016 creates legal uncertainty and injustice. The Court concluded that the Petitioner's petition was legally grounded in part.

As a result, in its ruling, the Court granted part of Hardizal's request. "grants the Petitioner's petition in part," said Deputy Chief Justice of the Constitutional Court Aswanto, reading out the Court's legal considerations at the ruling hearing on Tuesday, May 31, 2022.

The "Headline" of the May 2022 Edition of Konstitusi Magazine is about the [The Court] decision. In addition, as is customary, we present additional special rubrics. There are Editorials, Summary of Decisions, Courtroom, Classics Library, and others.

This is a brief introduction from the editor. Finally, we wish you happy reading!

KONSTITUSI

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30 ACTION

CONSTITUTIONAL JUSTICE MANAHAN MP SITOMPUL WAS A SPEAKER AT THE SPECIAL EDUCATION OF PROFESSIONAL ADVOCATE (PKPA) BATCH VI ON FRIDAY, MAY 20, 2022. THE EVENT WAS ORGANIZED BY THE WEST JAKARTA BRANCH LEADERSHIP COUNCIL (DPC) OF THE INDONESIAN ADVOCATES ASSOCIATION (PERADI) AND BINA NUSANTARA UNIVERSITY (BINUS).

SKCK FOR EX-CONVICTS OF DISGRACEFUL ACTS, THE CANDIDATES FOR REGIONAL HEADS

Regional Head requirements are being questioned once again, especially about never committing a disgraceful act and proven with a Police Record Certificate/Police Clearance Certificate (SKCK). This provision is contained in Article 7 paragraph (2) letter i of Law 10/2016. The Elucidation of the provisions reads, "What is meant by 'committing disgraceful acts' include gambling, intoxication, becoming a narcotics user/dealer, and adultery, as well as other violations of decency." This time, the phrase "as well as other violations of decency" were challenged before the Constitutional Court (MK). It was decided earlier through Decision Number 2/PUU-XX/2022.

In the past, the Constitutional Court had decided a case that also challenged the provisions through Constitutional Court Decision Number 99/PUU-XVI/2018. However, at that time, the phrase being questioned was "narcotics users." The decision against the phrase "narcotics users" in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 of the Constitutional Court excluded the requirements not to commit a disgraceful act for a narcotics user who used narcotics for health reasons; or ex-narcotics user who, because of their own conscience, reported themselves and has completed rehabilitation; or ex-narcotics user who is proven to be a victim and has been declared to have completed the rehabilitation.

In addition to asserting the provisions of the Elucidation, there are some interesting things in Decision Number 2/PUU XX/2022 regarding the Regional Head candidate requirements to be declared by the Constitutional Court. First, the requirement for never committing a disgraceful act, as evidenced by a police record certificate (SKCK), is actually an administrative one to prove that a person has or has never committed a disgraceful act. A police record certificate (SKCK) is not an indicator that concludes a regional head/deputy head candidate is a legal subject with a track record that might exclude them from a regional election. This is because one could commit a criminal act due to negligence, and the act could be an infraction/misdemeanor.

Second, there will be a disparity in the perspective of legal justice and constitutional rights justice if the perpetrators of criminal acts punishable by five years or more are allowed to run for the regional heads election as regulated in the norm of Article 7 paragraph (2) letter g of Law 10/2016 which has been interpreted by the Constitutional Court Decision Number 56/PUU-XVII/2019. At the same time, perpetrators of violations of decency that have been sentenced by the Court and served their sentence are barred from running for the election as regional heads and deputy regional heads, even if other conditions are met by the person concerned. In order to create legal certainty and a sense of justice, the Court has no other choice but to provide equal opportunities for perpetrators of disgraceful acts who have been sentenced by the Court and have completed their sentence to run for the election as regional heads and deputy regional heads.

Third, Regional Head candidates who have committed disgraceful acts that have obtained a court decision and have finished serving their sentence are also required to be honest and open to announcing their background as ex-convicts.

Fourth, for Regional Head candidates who have committed acts that violate the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 and have been sentenced by the Court and have completed serving their sentence must be exempted from being subject to SKCK requirements that are still associated with the act.

Fifth, the Constitutional Court ordered the election organizers, including the Police who are authorized to issue SKCK, must immediately design the SKCK format as required in the norms of Article 7 paragraph (2) letter i of Law 10/2016 by adjusting the essential spirit contained in this Constitutional Court decision.

In order to get a quality of the regional head, Decision Number 2/PUU-XX/2022 is important to be interpreted as a form of a requirement that contains more fairness to everyone who will become a candidate for the regional head, especially for regional head candidates who are former convicts of criminal acts punishable by five years or more, especially for perpetrators of disgraceful acts.

In addition to the legislators, to the regional heads candidates with the background of former convicts of disgraceful acts, an important message of the decision must also be understood to be implemented by the *addressat* of the decision, which the Constitutional Court explicitly mentions in the decision, namely the regional election organizers and the Police who are authorized to issue SKCK. This is important to pay attention to and oversee together to realize a fair and just election from the process to the result. Long live Constitution!

Window

INDONESIA

I D.G.Palguna

that my heart may leave my motherland but never my motherland out of my heart.

Remy Sylado – "Nationalism" in Poems of Remy Sylado Kerygma & Martyria (2004)

What connects June and August? Indonesia. It was almost ten years ago that Gunawan Mohamad (GM), through his side note entitled "Origami," which was published in the August issue of Tempo Magazine on August 17, 2012, wrote this: "Every August 17, I always remember this. That day has become an institution. We give it a name and celebrate it in a song ("Seventeenth August year four five, that's our independence day/ *Tujuh belas Agustus tahun empat lima, itulah hari kemerdekaan kita*..."). Some make it an indicator of a Revolution (with an "R") and talk about the "August Revolution." Make it a ritual in their surrounding: every 9 am, the Proclamation text with Bung Karno's hasty writing is reread... Humans need it: statues, rituals, and ceremonies. However, that's the reason why we see the past as a simplified form and dramatized—like origami. Behind the 17th of August as institutionalized memory, there are innumerable circumstances and work: youths with burning spirits and nervousness urged Bung Karno and Bung Hatta to disobey the Japanese authorities; Bung Karno and Bung Hatta patiently but anxiously followed the youth's demand–and drafted the final version of the proclamation text; some anonymous people who escorted the two leaders back from Rengasdengklok; people who prepared red and white flags, loudspeakers, recordings, simple ceremonies, and praying..."

GM is right. Behind the August 17 "origami" lies a fundamental question; without June 1, 1945, who is the "Indonesian nation" whose independence was proclaimed by Sukarno-Hatta on August 17, 1945? Isn't it that the statement, "We the people of Indonesia do hereby declare the independence of Indonesia," contains a claim that the Indonesian nation had existed before August 17, 1945, but it was not yet independent and was only liberated on August 17, 1945? This means that the Indonesian nation was born before the State of Indonesia (i.e., the Unitary State of the Republic of Indonesia). So, who is the Indonesian nation? Where does the Proclamation text refer to the meaning of the Indonesian nation? This is what June's "connection" and August meant at the beginning of this article.

In June—June 1, 1945, exactly—In his speech at the first session of the General Meeting of the Investigating Committee for Preparatory Work for Independence, Ir. Sukarno explained: the definition, or rather answered the question, who is the Indonesian nation? It's true that the recognition as one nation—the Indonesian nation, has been born in the Youth Pledge on

October 28, 1928. This means that the Indonesian nation was born at least on October 28, 1928. However, young Indonesian nationalists from various youth organizations at that time did not explain who the Indonesian nation was. They only acknowledge that they are Indonesians. However, that reason is not enough to prove that the Indonesian nation was born before the State of Indonesia was born—even though Indonesia never received recognition as a nation, pre-acceptance of recognition as a state. Even long before the pledge that sent shivers through the body and soul, evidence that the Indonesian nation had existed can be seen in many events. For example, on May 20, 1908, the day the Budi Utomo youth organization was founded. Isn't it for this reason that May 20 is commemorated as the Day of National Awakening?

Another example is in 1908, when Indonesian students, who were studying in the Netherlands, founded *Indische Vereeniging*—which was later changed to *Indonesische Vereeniging* (1922). Later, in 1925, it was changed again to the Indonesian Association *(Perhimpunan Indonesia*). However, none of the examples of the significant events explain who the Indonesian nation really is.

It was only on June 1, 1945, Ir. Sukarno (Bung Karno) discussed who the Indonesian nation was along with his commentary on the state foundation (if Indonesia became independent in the future). The discussion of the nation (and the Indonesian nation) is important because the state to be established is a national state—*a nationale staat*—that is, the Indonesian National State. However, *staat* in the Indonesian National State is not a narrow *staat.* Therefore, the first basis of the Nationale staat to be established is Indonesian Nationality. However, who is the Indonesian nation? To answer this question, Bung Karno started by citing the notion of "nation," which several scholars suggested. "Ernest Renan said," said Bung Karno, "the condition for the nation is '*le Desir d'etre ensemble'* means the will to unite. According to Ernest Renan, a nation is a group of people who want to unite and feel united." Bung Karno also quoted Otto Bauer, one of the leading thinkers of the Austrian Social Democratic Party who had served as Federal Minister for European affairs and international relations during the early days of the Austrian Republic—after the collapse of the Austro-Hungarian Empire. Bauer believes that a nation is a community of characters that has grown out of a common destiny (*Eine Nation ist eine aus Schiksals gemeinscaft erwachsene Charakter gemeinschaft*). Bung Karno criticized the two definitions of a nation from these two figures as *verouderd* (outdated) definitions. It is because, as Bung Karno said, the two definitions of the nation were born before the birth of a new science called Geopolitics. Renan and Bauer only see the person or the human being in defining a nation. They do not see or consider the earth, homeland, and the place where humans live. Therefore, in mentioning the Indonesian nation, the geopolitical condition mentioned is that the boundaries of the Indonesian motherland are a condition that cannot be removed other than the requirement for the will to unite and the requirement for the community of characters due to a common destiny. So, the Indonesian nation, said Bung Karno, "*Natie* Indonesia is not just a group of people who lives with a *'le desir d'etre ensemble'* over a small area, such as Minangkabau, or Madurese, or Yogya, or Sundanese, or Bugis. The Indonesian nation is all human beings who, according to geopolitics, have been chosen by Allah (SWT) to live in unity in all the islands of Indonesia from the northern tip of Sumatra to Irian! All of them!." According to Bung Karno, it's because all humans who inhabit the area mentioned already have a *le desir d'etre ensemble,* and there has been a community of characters (*charakter gemeinschaft).*

Therefore, the Indonesian nation is all humans who inhabit geopolitics called the Indonesian archipelago—regardless of ethnicity, religion, race, class, or social status—who wish to unite and have a community of character that has grown out of common destiny. The Indonesian nation, in this sense, is referred to as "We the people of Indonesia" in the Proclamation of Independence on August 17th, 1945—quoting Gunawan Mohamad's words, read by Ir. Sukarno in a hurry. So, Elisabeth Pisani's words are not entirely true—as I have been

quoted in the August 2021 edition of the Konstitusi Magazine Window—that when Sukarno proclaimed Indonesian independence, he's actually liberating a nation that didn't really exist, "imposing an imaginary union on an archipelago that has only a thin layer of shared history and little in common with culture," he said. Pisani's statement must be accepted merely as a kind of hyperbolism of a journalistic narrative—which is to some extent considered demand from a journalistic "credo" adhered to by a journalist (or the media in which he works).

As a journalist/writer whose work has lasted for a long time on the list of candidates to win the Baillie Gifford Prize for Non-Fiction and who had the opportunity to live in Indonesia for many years (as an epidemiologist and public health activist), it would be too thoughtless to say that he did not do an in-depth study before making a statement. This means that Pisani must have read Bung Karno's speech at the BPUPK general meeting on June 1, 1945; therefore, he actually knew who the Indonesian nation was meant by Bung Karno in the Proclamation of Indonesian Independence on August 17, 1945.

Part of the second sentence in the Proclamation of Independence reads, "Matters concerning the transfer of power and other matters will be executed in an orderly manner and in the shortest possible time," this is a statement that refers to and is a continuation of the first statement reads, "We the people of Indonesia do hereby declare the independence of Indonesia," which contains the will or determination of the Indonesian people who have declared their independence to establish a state. In other words, in the context of international law, the second part of the sentence is a statement regarding the occurrence of a succession of states: the existence of a "transfer of power" from the predecessor state—the Dutch East Indies, which was a colony to a successor state, who knows what form it will take (because it will be "executed in an orderly manner and in the shortest possible time"). However, it's apparent that it will be a newly independent state, the type of predecessor state which was later through the 1978 Vienna Convention on the succession of States in relation to International Treaties) expressly stated in Article 2 paragraph (1) letter (f), "For the purposes of the present Convention.... 'newly independent State' means a successor state the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible."

The form of the successor state that completed the independence of the Indonesian nationality became apparent after the enactment of the Constitution of the Republic of Indonesia on August 18, 1945 (1945 Constitution). In the fourth paragraph of the Preamble to the 1945 Constitution, the sentence reads, "Pursuant to which, in order to form a Government of the State of Indonesia that.... Indonesia's National Independence shall be laid down in a Constitution of the State of Indonesia, which is to be established as **the State of the Republic of Indonesia with the sovereignty of the people** and based on the belief in the One and Only God, on just and civilized humanity, on the unity of Indonesia and on a democratic rule that is guided by the strength of wisdom resulting from deliberation/representation, so as to realize social justice for all the people of Indonesia."

In fact, the short and simple text of the proclamation of independence—contained and documented not only who the Indonesian nation really was (which was liberated on August 17, 1945) but also what kind of country was "made" for the independent Indonesian nation. Hopefully, all the children of this nation have genuinely understood this matter. Amen. Swaha.

CONSTITUTIONAL COURT

HEARING PROTOCOLS

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

THE PARTIES CAN ATTEND THE HEARING THROUGH A VIRTUAL HEARING

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

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

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REFLECTION ON THE AMENDMENT TO THE LAW CONCERNING THE ESTABLISHMENT OF LEGISLATIONS

Bagus Hermanto, S.H., M.H.
(Observer, Researcher, and Activist of Constitutional Law at Faculty of Law of Udayana University)

Post-reform constitutional dynamics have become the talk, discussions, and even academic discourses that have entered various public spaces, including the shifting of the constitutional paradigm in a revolutionary way. One of them is the establishment of legislation. The emergence of the COVID-19 pandemic has caused global disruption, which resulted in various leaps and changes, which also impact the constitutional order, especially in the practical domain. This is due to the enactment of the Job Creation Law—commonly known as the "Omnibus Law," which is considered controversial, especially in relation to fundamental issues in the establishment of legislation. In this case, the philosophical side of the principles of the establishment of laws and regulations has deviated, the side of the legislation does not reflect participatory legislation, and the methodological side by transplanting the use of the omnibus method in the establishment of legislation. These things later became some things that underlie the Constitutional Court's attempt to try really hard to ensure that substantive justice is realized through the Constitutional Court Decision Number 91/PUU-XVIII/2020. This decision is the first formal decision granted by the Constitutional Court and a landmark decision in scientific developments and the practice of establishing the latest legislation. In particular, related to the follow-up by lawmakers in the form of amendments to Law Number 12 of 2011 in conjunction with Law Number 15 of 2019 concerning the Establishment of Legislation (UU PPP), which was approved on May 24, 2022, in the Plenary Session of the House of Representative of the Republic of Indonesia, with 19 amendments from 365 of the government's problem inventory list (DIM).

First, the mandate of the legal considerations of the a quo Constitutional Court Decision was followed up with meaningful participation—amendment to the Elucidation of Article 5 letter (g) of the Establishment of Legislation Law related to the definition of the principle of openness, the amendment to the Elucidation of Article 95 of the Establishment of Legislation Law to include the matter of persons with disabilities. Amendment to Article 95A regulates the monitoring and judicial review of laws and regulations, and amendments to Article 96 regulate community participation, including persons with disabilities. Concerning this first cluster, the revision of the provisions of the Establishment of Legislation Law seeks to realize actual public participation, realizing the inclusiveness of public involvement in a holistic, comprehensive, and tangible way in the process of establishing laws and regulations or public policies in Indonesia.

Second, the stipulation of recognition on the application of the omnibus legislation method—the supplement to the seventh section in Chapter IV of the Establishment of Legislation Law. The supplement to Article 42A of the Establishment of Legislation Law regulates the planning for the establishment of legislation using the omnibus method. The amendment to the provisions of Article 64 of the Establishment of Legislation Law regulates that the drafting of legislation can use the omnibus method. The supplement to the provisions of Article 97a of the Establishment of Legislation Law, which regulates the content of laws and regulations that use the omnibus method, and the amendment to general Elucidation, the amendment to Appendix I Section II letter D of the Establishment of Legislation Law regarding Academic Papers along with amendments to Appendix II of the Establishment of Legislation Law regarding the technique of drafting legislation, which in this case is based on the omnibus method. Concerning this second cluster, numerous academic studies and research have been carried out by various elements of society, practitioners, and academics at universities, which are principally divided into two groups: those who criticize the urgency of the omnibus transplantation method with their different arguments and those who assert that the justification of the omnibus method has historically been practiced. However, space is needed to structure the establishment of legislation oriented toward improving quality and simultaneously maintaining the quantity and its actual implications.

Third, the substance in the stages of establishing the legislation—the amendment to the provisions of Article 49 of the Establishment of Legislation Law, which regulates the amendment of the Bill and the Problem Inventory List of

the Bill. Amendments to Article 58 of the Establishment of Legislation Law regulate the harmonization, unanimity, and consolidation of the conception of the Regional Regulation Draft. Amendment to Article 72 of the Establishment of Legislation Law regulates the mechanism for technical improvement in the writing of the Bill after the Bill is jointly approved but submitted to the President. Amendment to the Elucidation of Article 78 of the Establishment of Legislation Law regulates the stipulation of the Draft of Provincial Regulation. Amendment to the provisions of Article 85 of the Establishment of Legislation Law regulates the legislation. Amendment to the provisions of Article 98 of the Establishment of Legislation Law regulates the participation of legal analyst positions, in addition to law drafters, and the amendment to the provisions of Article 99 of the Establishment of Legislation Law, which regulates the participation of functional positions of legislative analysts and experts in the establishment of legislation, provincial regulations, and regency/municipal regulations other than the legislation drafters. Concerning the third cluster, its relevance is in terms of structuring the process of establishing legislation at the national and local government levels and the involvement of legal analysts, legislative analysts, and experts in establishing legislation in Indonesia.

Fourth, the substance after the establishment of the legislation—the amendment to Article 9 of the Establishment of Legislation Law regulates the execution of the judicial review of legislation, and the supplement to Article 97b and Article 97c of the Establishment of Legislation Law, which regulates the establishment of electronic-based legislation, harmonization of draft laws within the government, and evaluation of regulations. Concerning the fourth cluster, this is one of the key aspects in improving the quality and structuring the quantity of legislation, considering that the realm of evaluation through executive institutions, evaluation through legislative institutions, and final evaluation through the judicial route is a channel of democratization and the realization of the dimensions of a democratic rule of law.

The basic thing is that the leap in the legal revolution, as referred to by (the late) Dr. Jazim Hamidi, becomes a necessity in the future, starting from a legal transplant, which has a disruptive impact on the establishment of national legislation. Furthermore, this opens a paradigmatic transition and legal breakthrough by paying attention to the corridors of procedural procedures and conformity in the future legal order.

Valuable lessons can be learned in the establishment of legislation to be **philosophically** subject to the principles of establishing interdependent laws and regulations between the material and formal contexts of a draft law. **Practically**, it is able to reflect the involvement of public participation in the actual realm as Sherry Arnstein in her 1969 article entitled A Ladder of Citizen Participation (in the Journal of the American Institute of Planners, Vol. 35, Iss. 4, p. 216-224) promote the realization of partnership, delegate power, and citizen power or as the ideal form of public involvement based on the degree of citizen power or the degree of power of the community as a whole. **Methodologically**, in making legal breakthroughs, it still requires limitations in the procedural framework to be stipulated in the reference law in the establishment of legislation to ensure the rule of law in a sustainable manner and can support efforts to accelerate legislative reform in Indonesia. **Evaluatively**, it takes carefulness and the independence of the judiciary in the material and formal judicial review, supported by the structuring of available mechanisms in the pre (preventive) and post (evaluative) stages of the legislation. **Substantively,** formal procedures that are in accordance with the boundaries of the principles of the establishment of legislation can effectively support the formulation of substances in the draft laws that are effective and can be implemented in accordance with the community's legal needs.

And yet, in order to ensure conformity between the context of the formal judicial review of the legislation with the context of the 1945 Constitution of the Republic of Indonesia—in this case, it becomes the realm of discourse—even though in this a quo Constitutional Court Decision it has been stated the existence of a "direct relations with the requested Act" in terms of legal standing by referring to the Constitutional Court Decision Number 27/PUU-VII/2009. However, the problem still appears in determining the boundary of the subject matter in the formal judicial review, whether it is only limited to using the Act or the 1945 Constitution of the Republic of Indonesia. The realm of discourse also appears in terms of conditional unconstitutional decisions, even though the existence of the Job Creation Law is understood as a strategic law. On the other hand, formal violations have also been proven in court facts that the process of establishing the Job Creation Law has deviated from the principles of establishing good laws and regulations.

Thus, the Job Creation Law as one of the monumental and controversial laws, on the one hand, brings benefits and is strategic in nature, but on the other hand, it breaks through and opens "shortcuts" in the framework of structuring legislation. Reflection on maintaining a democratic rule of law and order of the nation and state, realizing the establishment of effective, efficient, and implementable legislation becomes a necessity; by following salus publica lex suprema, strengthening the establishment of these legislations can accelerate the improvement of quantity and improve the quality of laws and regulations holistically.

WHEN EX-DRUG CONVICTS RUN FOR REGIONAL HEAD ELECTIONS

Ex-convicts who commit deviant behavior or disgraceful acts (gambling, intoxication, drug users/ drug dealers, and adultery) have the opportunity to run as candidates for regional heads. What are the conditions? So, what is the function of the Police Record Certificate/Police Clearance Certificate (SKCK)?

Petitioner's legal counsel, Harli, explained the subjects of his petition virtually at the preliminary hearing of the judicial review of Law No. 10 of 2016 on the Election of Governors, Regents, and Mayors, on Thursday, January 13, 2022, in the Court Room. Photo by: Public Relations/Ifa.

Once upon a time, Hardizal became a convict in a psychotropic case. On September 5, 2002, the Sungai Penuh District Court (PN) in its Decision No. 37/ PID.B/2002/PN.SPN sentenced him to 8 months imprisonment and a fine of IDR 750,000. Hardizal, who is a resident of Lawang Agung Village, Pondok Tinggi Subdistrict, Sungai Penuh City, Jambi Province, had completed his sentence.

Further, in the 2020 Sungai Penuh Mayor and Deputy Mayor Election, Hardizal had run as a candidate for Deputy Mayor. He had fulfilled the requirements as a candidate for deputy mayor. Candidates for Mayor and Deputy Mayor of Sungai Penuh on behalf of Ahmad Zubir and Hardizal had received a mandate letter from the Indonesian Democratic Party of Struggle (PDI-P), the United Development Party (PPP), and the Berkarya Party. These parties have fulfilled the requirement of 20% of

the seats in the Sungai Penuh DPRD as a requirement for candidacy.

However, on September 4, 2020, or two days before registration closed (6 September 2020), the Berkarya Party withdrew its support. The Berkarya Party then shifted its support to another candidate pair, Fikar Azami and Yos Ardini.

The Berkarya Party withdrew its support, citing Hardizal's criminal record as a drug user, which was based on his police clearance certificate (SKCK). Due to his previous criminal record proven by the SKCK, Hardizal is considered did not meet the requirement, which reads "has never committed any disgraceful acts" as stipulated in Article 7 paragraph (2) letter i and Elucidation of Article 7 paragraph (2) letter i of Law Number 10 of 2016 on the Second Amendment to Law Number 1 of 2015 on the Implementation of the Government Regulation in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors into Laws (Pilkada Law).

The police clearance certificate (SKCK) referred to is in the name of Hardizal with the Number SKCK/YANMAS/3079/IPP.2.3/IX/2020/INTELKAM dated September 2, 2020. In the SKCK, it is explained that Hardizal had been involved in criminal activities of Law Number 5 of 1997 concerning Psychotropics and had completed his sentence. He served his sentence from February 24, 2002, and was released on December 2, 2002, based on the decision of the Sungai Penuh District Court.

The Indonesian Democratic Party of Struggle (PDI-P), the United Development Party (PPP), and the Berkarya Party withdrew their support and gave it to another candidate pair. His dream to become a candidate for deputy mayor was dashed.

Complain to Constitutional Court

Hardizal (Petitioner) believes that the enactment of Article 7 paragraph (2) letter i and the Elucidation of Article 7 paragraph (2) letter i of Law Number No. 10 of 2016 on the Second Amendment to Law No. 1 of 2015 on the Stipulation of the Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents, and Mayors into Law (Pilkada Law) had violated his constitutional right. He took the constitutional route and challenged the provisions to the Constitutional Court (MK).

He filed his petition to the Constitutional Court on December 14, 2020. The Clerk of the Court registered this case on January 3, 2022, with Number 2/PUU-XX/2022. Hardizal revised the petition and submitted it online to the Registrar's Office of the Constitutional Court on January 25, 2022. In the petition, Hardizal requested a constitutional

The Constitutional Court held a petition revision hearing of the judicial review of the Pilkada Law for Case Number 2/PUU-XX/2022 on the Interpretation of "despicable acts" virtually in the Court Room Panel Session on Wednesday (26/1). Photo by: PR/BPE

ARTICLE 7 PARAGRAPH (2) LETTER I OF THE REGIONAL HEAD ELECTION LAW

Candidates Governor and Candidates for Vice Governor, Candidates for Regent and Vice Regent, and Candidates for Mayor and Vice Mayor, as referred to in paragraph (1), must meet the following requirements: (i) has never committed any disgraceful acts, proven by a police certificate...."

THE ELUCIDATION OF ARTICLE 7 PARAGRAPH (2) LETTER I OF THE REGIONAL HEAD ELECTION LAW

Letter i: "What is meant by 'committing disgraceful acts' include gambling, intoxication, becoming a narcotics user/dealer, and adultery, as well as other violations of decency."

review of the phrase "as well as other violations of decency," which is contained in the Elucidation of Article 7 paragraph (2) letter i of the Pilkada Law. The Petitioner believes that the phrase contradicts Article 1 paragraph (3), Article 18 paragraph (4), Article 28D paragraph (1), Article 28D paragraph (3), Article 22E paragraph (1), and Article 28I paragraph (4) of the 1945 Constitution.

Multiple Interpretations

Hardizal, in his petition, argues that the phrase "as well as other violations of decency" in the Elucidation of Article 7 paragraph (2) letter i of the Pilkada Law can be understood into a broad interpretation of "despicable acts," thus against the principle of legal certainty because it is easily interpreted for political interests by certain groups in the regional head election competition with a specific purpose. The legislators, in formulating laws, should prioritize two important things. First, the interpretation of despicable acts, especially regarding vague phrases, should be avoided. Second, the interpretation of despicable should be able to measure what the despicable act means.

The Petitioner believes that the phrase "as well as other violations of decency" in the Elucidation of Article 7 paragraph (2) letter i of the Regional Head Election Law contains multiple interpretations. The phrase "other violations of decency" is part of the interpretation of a despicable act, which is an attempt to erase legal certainty and the principle of legal justice, because the interpretation of a despicable act contains phrases and other acts of violating decency, especially the word "and," (means an addition) and the phrase "other acts of violating decency," do not have a strong legal basis, groundless, and disproportional. In addition, it is contrary to the principle of legal certainty for justice seekers and is contrary to the principle of the establishment legislation as regulated in Article 5 letter f of Law Number 12 of 2011 concerning the Establishment of Legislations. which states, "In establishing legislation must be carried out based on the principles of establishing good laws and regulations, which include clear formulation." Furthermore, the Elucidation of Article 5 letter f of Law Number 12 of 2011 reads, Letter f What is meant by "the principle of a clear formulation is that every legislation must meet the technical requirements of the preparation of Legislation, systematics, choice of words or terms, and legal language that is clear and easy to understand so as not to cause different interpretations in the implementation."

In addition, the Petitioner explained that the norms in Article 7 paragraph (2) letter i of the Regional Head Election Law, which declares disgraceful acts one of the accumulative prerequisites to the regional head candidacy, are inconsistent with Law No. 12 of 1995 on Corrections (Correctional Law). In fact, one law and another must comply with the prerequisites for the establishment of legislation—Article 5, Article 19 paragraph (3) of Law Number 12 of 2011 concerning Procedures for the Establishment of Legislation, as last amended by Law Number 15 of 2015 in conjunction with Article 15 of Presidential Regulation of the Republic of

Indonesia Number 61 of 2005 on Procedures for the Preparation and Management of National Legislation Programs, namely the existence of consistency between one law and another.

The restoration of the rights and freedoms of a person who has served a criminal sentence is also the goal of the correctional system based on Law Number 12 of 1995 concerning Corrections (Correctional Law).

The restoration of these rights and freedoms is intended so that those who have served their sentences can actively play a role in the development and normally live as good and responsible citizens. Article 1 paragraph (2), Article 2, and Article 3 of the Correctional Law, in essence, state that correctional facilities as a means or a place to build good behavior in society for the actions that have been done so that inmates can play their role again as free members of society. In other words, the convicts who have completed their sentences can return to the community and participate in the development, and their rights are equal to other citizens, physically, mentally, and socio-politically. Therefore, they can return to carrying out their socio-political functions in the life of society, nation, and state. Inmates who have completed their sentences must be treated like other free citizens.

SKCK Requirement

According to Hardizal, the police record certificate (SKCK) as one of the considerations that restrict the candidacy of regional heads in Article 7 paragraph (2) letter i, and its Elucidation can be interpreted as justification arbitrarily by the state. The phrase "as well as other violations of decency" can be interpreted by the implementers of the Act in various categories and different perceptions, for example, whether it is based on legal norms, religious norms, social norms, norms of courtesy, and norms made by the authorities, all depending on the will of the ruling power, which is not based on law and does not have the meaning of legal certainty.

These norms are associated with SKCK as an accumulative requirement to become a candidate for a regional head in the case of the phrase disgraceful acts, which can be interpreted as an arbitrary act because it can be carried out according to the needs of power and not based on law. Thus, the SKCK requirement is used as an additional requirement to restrict the regional head candidates. The Petitioner believes that the provision has violated the basic principles of *The Universal Declaration of Human Rights*, in Article 9 and Article 11 paragraph (2), which states: *"No one shall be subjected to arbitrary arrest, detention or exile."* Furthermore, Article 11 paragraph (2) states: *"No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed."*

He argues that the SKCK issued by the Police can be interpreted as an arbitrary act of the authorities that has no legitimacy in the 1945 Constitution and international law. Not to mention state institutions that are not institutionally part of the others because in exercising power, they adhere to the principle of separation or division of powers.

Equal Treatment

Perpetrators of corruption who harm state finances and have

> "Inmates who have completed their sentences must be treated the same as other free citizens."

served their sentences are treated differently from drug convicts who also completed their sentences. Ex-corruption convicts are still allowed to exercise their rights to run for important positions in this country.

While those convicted of drug use are restricted for life. In fact, the Petitioner believes that in order to respect the political rights of the perpetrators of criminal acts, after serving all the sentences, one's political rights should only be restricted by a court based on a court decision. The Petitioner's political rights are not completely restricted by the decision of the Sungai Penuh District Court.

People's Sovereignty

In its legal considerations, the Court stated that Indonesia is a democratic state of law or a democratic state based on the rule of law. This is stated in Article 1 paragraph (2) and paragraph (3) of the 1945 Constitution, which vested sovereignty in the people and implemented pursuant to the Constitution. If sovereignty is vested in the people, then the purpose of that power is for the people. This is where the concept of the rule of law cannot be separated from the concept of democracy. The law will regulate and limit power, while the power or government makes laws based on the will of the people

In order to create a democratic country based on the rule of law, therefore, the implementation of democratic elections, as well as regional head and deputy regional head elections that are free, honest, and fair, will be a logical consequence. One form and mechanism of democracy in the regions is the implementation of regional head and deputy regional head elections, as mandated in Article 18 paragraph (4) of the 1945 Constitution, which stipulates that the Governor, Regent, and Mayor each heading respectively the administration of the province, district, and city shall be elected democratically.

Legislators through Government Regulations In lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors as amended by Law Number 10 of 2016 (Perppu 1/2014), have chosen a direct popular vote for the Governor, Regent, and Mayor. This choice was taken to respect the sovereignty of the people as well as the democracy of the people, by the people, and for the people. Therefore, with a direct election system, the participation of the citizens who have met the requirements to be elected and vote in the election process is very open.

Restriction of Rights to be Elected

The Court's legal Considerations also stated that the right to vote and be elected is a constitutional right. However, the state may restrict the right to vote and be elected as stipulated by law. This is for the sole purposes of guaranteeing the recognition and respect of the rights and liberties of other people and of satisfying a democratic society's just demands based on considerations of morality, religious values, security, and public order in a democratic society, as stated in Article 28J paragraph (2) of the 1945 Constitution. Restrictions on the right to vote are also known in Article 25 of the Covenant on Civil and Political Rights, which states that every citizen has the right and opportunity without discrimination as referred to in Article 2 and without unreasonable restrictions, one of which is to vote and be elected in the general election. In order to create a quality of elections is not only determined by the quality of the organization, but also the candidates who will be chosen to be leaders must also be qualified. One way to maintain the quality of the election is to provide restrictions so that those who will participate in the regional heads and deputy regional heads' elections are candidates with integrity.

In the context of the right to be elected and the right to vote, the state provides limits on who can be categorized as eligible voters and as candidates to be elected. In terms of restriction of constitutional rights, this does not mean the constitutional rights of voters and candidates chosen to be violated. Restrictions are still needed to create an orderly electoral system and produce a government led by the best candidates elected by the people, who will provide services to the community and create welfare for the people. Therefore, voters who will have the right to vote are also restricted by conditions.

Likewise, for candidates for regional heads and deputy heads, there are conditions stipulated by law. One of them is the condition that they have never committed a disgraceful act, which is the subject of the Petitioner's petition. At least twenty requirements cumulatively determine the candidate requirements

in Article 7 of the regional head election Law. All requirements are intended to be an initial filter to get the best candidate, who the people will vote to become a regional leader after fulfilling the requirements.

Restrictions on human rights with candidate requirements must be viewed not only from the perspective of the individual candidate but also from the perspective of the local community, which is looking for a regional leader. With the direct election system, the people directly vote without an election committee, as in other elections. Therefore, the twenty requirements in Article 7 of the regional head election Law are an initial filter that can produce qualified candidates to be elected by voters. Thus, the Court believes that requirements for candidates were necessary in the election system of regional heads and deputy regional heads in order to realize essential democracy—a democracy that is not only based on the majority of votes but that embodies the noble goal of realizing a prosperous society led by leaders with integrity and quality resulting from an electoral process involving their constituents.

Meaning of Not Convicted as Requirement

Although the Court believed that the requirements for candidates for the election system of regional heads and deputy regional heads are important for initial selection, it has also ruled that some requirements stipulated by the law could be unconstitutional and must be interpreted. In Decision Number 4/PUU-VII/2009, dated March 24, 2009, the Court stated that the requirement of never having been a convict of a crime punishable by imprisonment of 5 years or more is unconstitutional as long as it does not meet the requirements as follows: (i) does not apply to elected officials; (ii) is valid for a limited period of 5 (five) years after the ex-convicts have finished serving their prison sentence ; (iii) exemptions for ex-convicts who honestly or publicly announce their background as a former convict; (iv) not being a repeat offender. Since Decision No. 4/PUU-VII/2009, the Court has also interpreted the requirement of never being convicted of crimes several times in its decisions, most recently in Decision No. 56/PUUXVII/2019, dated December 11, 2019.

The Court also gives legal considerations against the requirements of never committing a disgraceful act, as evidenced by SKCK. In this regard, the Court considered it in its Decision Number 99/PUU-XVI/2018. The Court stated the phrase "narcotics users" in the Elucidation of Article 7 paragraph (2) letter i of the Pilkada Law as a constitutional norm, but in its legal considerations, it interpreted that disgraceful character was inappropriate if it's attached to a narcotics user who uses narcotics for health reasons as proven by a statement from a doctor who treats the user in question; or an ex-narcotics user who, because of their own conscience, reported themselves and has completed rehabilitation; or an ex-narcotics user who is proven to be a victim and based on court order/decision ordered to undergo rehabilitation and has been declared to have completed the rehabilitation as evidenced by a certificate from a state agency that has the authority to declare a person having completed rehabilitation.

Opportunities for Ex-Convicts

The Court has several times decided cases regarding ex-convicts who were subject to imprisonment of five years or more and had held the opinion that former convicts who had completed their sentence could run for election as regional heads and deputy regional heads for as long as five years have passed since they completed their sentence and they honestly or openly announce their background as a former convict and are not repeat offenders.

Therefore, in Decision No. 56/PUU-XVIII/2019, the Court has given candidates who are former convicts sentenced to five years or more the opportunity to participate in the election as regional heads and deputy regional heads as long as they meet the requirements specified in Article 7 paragraph (2) letter g of Law 10/2016 since the final assessment of those candidates falls in the hand of the constituents.

SKCK is Administrative

Further is related to the requirements for regional head and deputy regional head candidates as stipulated in Article 7 paragraph (2) letter i of the regional head election Law and its Elucidation. The Court, in its Decision Number 99/PUU-XVI/2018, has also excluded the requirements not to commit a disgraceful act for a narcotics user who used narcotics for health reasons; or ex-narcotics user who,

because of their own conscience, reported themselves and has completed rehabilitation; or ex-narcotics user who is proven to be a victim and has been declared to have completed the rehabilitation.

"Therefore, if one meets other requirements, they can participate in the election as a candidate for regional head and deputy regional head without being categorized as having committed a disgraceful act as referred to in the Elucidation to Article 7 paragraph (2) letter i of Law No. 10 of 2016," Justice Suhartoyo said. He reads out the legal considerations of Decision Number 2/PUU-XX/2022 in a hearing held on Tuesday (31/05/2022) in the Plenary Courtroom of the Constitutional Court.

He added that the following question to answer was how about other ex-convicts outside of Article 7 paragraph (2) letter g of the Regional Head Election Law as interpreted by the Constitutional Court Decision No. 56/PUU-XVIII/2019 and those who have finished serving their sentence for committing disgraceful acts as contained in the Elucidation to Article 7 paragraph (2) letter i of the Regional Head Election Law such as gambling, intoxication, adultery, and narcotics dealing, including other violations of decency? Are the perpetrators of criminal acts or other acts referred to in the Elucidation to Article 7 paragraph (2) letter i of the Regional Head Election Law who has been sentenced by the Court and has completed their sentence ineligible to run for election?

Regarding this matter, the Court stated that the requirement for never committing a disgraceful act, as evidenced by a police record certificate (SKCK), was only an administrative one to prove that one has or has never committed a disgraceful act. A police record certificate (SKCK) is not an indicator that concludes a regional head/deputy head candidate is a legal subject with a track record that might exclude them from a regional election. This is because one could commit a criminal act referred to in the Elucidation to Article 7 paragraph (2) letter i of the Regional Head Election Law due to negligence and the act could be infractions/misdemeanors as well as may be classified as mild/moderate in contrast to the crimes stipulated in Article 7 paragraph (2) letter g of the Regional Head Election Law.

Therefore, according to the Court, there will be a disparity in the perspective of legal justice and constitutional rights justice if the perpetrators of criminal acts punishable by five years or more are allowed to run for the regional heads election as regulated in the norm of Article 7 paragraph (2) letter g of Law 10/2016 which has been interpreted by the Constitutional Court Decision Number 56/PUU-XVII/2019. At the same time, perpetrators of violations of decency contained in the Elucidation of Article 7 paragraph (2) letter i of the Regional Head Election Law that have been sentenced by the Court and served their sentence are barred from running for the election as regional heads and deputy regional heads, even if other conditions are met by the person concerned.

Thus, in order to fulfill legal certainty and a sense of justice, the Court has no other choice but to provide equal opportunities for perpetrators of disgraceful acts who have been sentenced by the Court and have completed their sentence to run for the election as regional heads and deputy regional heads. Thus, even though the SKCK requirement referred to in Article 7 paragraph (2) letter i of the Regional Heads Election Law still apply to those candidates, it must not restrict them from running for the election of regional head and deputy regional head even though the candidates concerned have committed a disgraceful act as long as the candidates concerned have obtained a court decision and have finished serving their sentences and they have met other requirements.

"In other words, for candidates for regional heads and deputy heads who have committed acts that violate the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 and have been sentenced by the court and have completed their sentences must be excluded from being subject to the SKCK requirements that are still associated with their actions," Justice Suhartoyo said. In short, the SKCK requirement does not apply to those candidates.

Information on the Ex-Convicts' Identity

The Court also argues that the opportunity to be able to run for regional head and deputy regional head should not erase information about the identity of each candidate. Therefore, in interpreting the Elucidation of Article 7 paragraph (2) letter i of the Regional Head Election Law, it is also obligatory for regional heads and deputy

regional heads candidates who have committed disgraceful acts and have received court decisions and have completed their sentences required to be honest and open to announcing their background of identity as former convicts as required in Article 7 paragraph (2) letter g of the Regional Head Election Law, which has been interpreted by the Constitutional Court Decision Number 56/PUU-XVII/2019.

The Constitutional Court ordered the election organizers, including the Police authorized to issue SKCK, to immediately design the SKCK format as required in the norms of Article 7 paragraph (2) letter i of Law 10/2016 by adjusting the essential spirit contained in this decision.

Partial Grant

The Court believes that the Elucidation of Article 7 paragraph (2) letter i Law 10/2016 creates legal uncertainty and injustice. The Court concluded that the Petitioner's request was legally grounded in part.

As a result, in the decision, the Court granted part of Hardizal's request. "grants the Petitioner's petition in part," said Deputy Chief Justice of the Constitutional Court Aswanto reading out the Court's decision Number 2/PUU-XX/2022 in the ruling hearing at the Plenary Courtroom of the Constitutional Court on Tuesday, May 31, 2022.

The Court stated that the Elucidation of Article 7 paragraph (2) letter i of the Regional Head Election Law was contrary to the 1945 Constitution and is not legally binding as long as it is not interpreted, "except for perpetrators of disgraceful acts who have obtain a court decision that has permanent legal force and have completed serving a criminal sentence, and honestly or openly announces their background as ex-convicts." ■

NUR ROSIHIN ANA.

Source:
Decision Number 2/PUU XX/2022.
Minutes of Court Case Number 2/PUU-XX/2022.

The parties took part in the ruling hearing of the material judicial review of Law No. 10 of 2016 on the Election of Governors, Regents, and Mayors, on Tuesday, May 31, 2022. Photo by: Public Relations/Ifa.

THE EXCERPT OF DECISION NUMBER 2/PUU-XX/2022

Decision in the case of Judicial Review of Law Number 10 of 2016 on the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors to become Laws against 1945 Constitution of the Republic of Indonesia.

PETITIONER

Name: Hardizal, S.Sos., M.H.

OBJECT OF JUDICIAL REVIEW

Elucidation of Article 7 paragraph (2) letter i of the Regional Head Election Law.

Article 7 paragraph (2) letter i of the Regional Head Election Law:
"Candidates Governor and Candidates for Vice Governor, Candidates for Regent and Vice Regent, and Candidates for Mayor and Vice Mayor, as referred to in paragraph (1), must meet the following requirements: (i) has never committed any disgraceful acts, proven by a police certificate…."

Elucidation of Article 7 paragraph (2) letter i of the Regional Head Election Law:
"What is meant by 'committing disgraceful acts' include gambling, intoxication, becoming a narcotics user/dealer, and adultery, as well as other violations of decency."

THE VERDICT

1. Granting the Petitioner's petition in part;
2. Stipulate that the Elucidation of Article 7 paragraph (2) letter i of Law Number 10 of 2016 on the Second Amendment to Law Number 1 of 2015 on Stipulation of Government Regulation in Lieu of Law Number 1 2014 concerning the Election of Governors, Regents, and Mayors to become law (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to the State Gazette of the Republic of Indonesia Number 5898) is contrary to the 1945 Constitution of the Republic of Indonesia and is not legally binding as long as it is not interpreted, "except for perpetrators of disgraceful acts who have obtain a court decision that has permanent legal force and have completed serving a criminal sentence, and honestly or openly announces their background as ex-convicts."
3. Ordering this decision to be published in the State Gazette of the Republic of Indonesia as it is;
4. Reject the Petitioner's petition other than and the rest.

JUDICIAL REVIEW DECISIONS IN JUNE 2022

No.	Case Number	Case Subject	Petitioners	Decision	Date	Decision Link
1	90/PUU-XVIII/2020	Formal and Material Judicial Review of Law Number 7 of 2020 on the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court against the 1945 Constitution	Allan Fatchan Gani Wardhana	Unacceptable	June 20, 2022	Click Decision
2	96/PUU-XVIII/2020	Material Judicial Review of Law Number 7 of 2020 on the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court against the 1945 Constitution	Dr. Ir. Priyanto, S.H., M.H., M.M	Grant the Petitioner's request partially	June 20, 2022	Click Decision
3	100/PUU-XVIII/2020	Formal Judicial Review of Law Number 7 of 2020 on the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court against the 1945 Constitution	Raden Violla R.H., S.H., M. Ihsan Maulana, S.H., Rahmah Mutiara M, S.H., et al.	Unacceptable	June 20, 2022	Click Decision
4	29/PUU-XX/2022	Material Judicial Review of Law Number 15 of 2006 concerning Audit Board of the Republic of Indonesia (BPK)	Marselinus Edwin Hardhian and Boyamin	Unacceptable	June 20, 2022	Click Decision
5	30/PUU-XX/2022	Material Judicial Review of Law Number 39 of 1999 concerning Human Rights	Dr. Achmad Kholidin, S.H,. M.H. and Tasya Nabila	Grant the Petitioner's request partially	June 20, 2022	Click Decision
6	56/PUU-XX/2022	Material Judicial Review of Law Number 7 of 2020 on the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court against the 1945 Constitution	Ignatius Supriyadi, S.H., LL.M.	Grant the Petitioner's request partially	June 20, 2022	Click Decision

THE IMPORTANCE OF ASSESSMENT TEAM INTEGRATION OF THE HIGHER EDUCATION WITH THE MINISTRY IN THE SELECTION OF PROFESSORS

The constitutionality of the provisions for the professor's appointment and confirmation as stated in Article 50 paragraph (4) of Law Number 14 of 2005 on Teachers and Lecturers (Teachers and Lecturers Law) is questioned. The petition was filed by Sri Mardiyati, an FMIPA (Faculty of Mathematics and Natural Sciences) lecturer at the University of Indonesia (UI).

In Case Number 20/PUU-XIX/2021, the Petitioner believes that her constitutional rights were guaranteed by Article 28D of the 1945 Constitution due to the enactment of Article 50 paragraph (4) of the Law on Teachers and Lecturers, which reads, "Further provisions regarding the selection as referred to in paragraph (2) and the appointment and confirmation of certain levels of academic positions as referred to in paragraph (3) shall be determined by each higher education unit in accordance with statutory regulations."

The Petitioner, who had become a permanent lecturer at The Faculty of Mathematics and Natural Sciences at the University of Indonesia (FMIPA UI) since 1981, has been considered to have met the criteria to be recommended as a professor. The Petitioner followed a long selection process to become a professor, including academic paper assessment by an External Assessment Team appointed by the Faculty of Mathematics and Natural Sciences UI Professorship Council. In May 2019, the rector of the University of Indonesia sent a recommendation to the Minister of Education and Culture to appoint the Petitioner as a professor.

"However, the recommendation was rejected by the Minister of Education and culture, specifically the Directorate General of Higher Education, because her paper(s) didn't meet requirements when UI has approved of [them] and have approved the validation of the Petitioner's paper(s)," said the Petitioner's legal counsel, S. F. Marbun in the preliminary hearing that was held on June 16, 2021.

The Petitioner argues that according to Article 50 paragraph (4) of the Law on Teachers and Lecturers, the appointment and confirmation of certain levels of academic positions, including a professorship, is the authority of the higher education unit or the university or the rector. However, due to the minister-assigned 2019 Operational Guidelines for Credit Score Assessment, such an authority falls on the Directorate General of Higher Education.

The Petitioner believes that is because Article 50 paragraph (4) of the Law on Teachers and Lecturers mentions the phrase that each higher education unit carries out the appointment and confirmation of professors following statutory regulations.

"The phrase is multi-interpretive because the Ministry of Education

and Culture then made a regulation that grants itself the authority, which violates the substance or intention of Article 50 paragraph (4)," Marbun said before the panel led by Constitutional Justice Arief Hidayat.

According to the Petitioner, in its practice, Article 50 paragraph (4) of the a quo law is interpreted by Article 70 of the Law on Teachers and Lecturers. It is as if the appointment and confirmation of certain levels of academic positions, including a professorship, are under the minister and not the higher education unit. Therefore, the Petitioner requested that the Court declare Article 50 paragraph (4) of the Teacher and Lecturer Law is contrary to the 1945 Constitution or unconstitutional and not legally binding insofar as not interpreted that "the confirmation of certain levels of academic positions falls under the authority of the rector as the head of the higher education unit, without the minister's intervention." She also requested that the norm be declared conditionally unconstitutional in UI specifically, insofar as not interpreted as "the appointment and confirmation of certain levels of academic positions as referred to in paragraph (3) is determined by each of the higher education unit pursuant to statutory regulations" not complying with the Government Regulation No. 68 of 2013 on the Statute of Universitas Indonesia.

No Need for Review

After going through nine hearings, the Court decided to reject the Petitioner's petition in its entirety. In the decision that was read out on March 29, 2022, the Court asserted in its legal consideration that the subject of the petition challenged by the Petitioner was groundless according to law.

Although the petition is rejected, in its legal considerations, the Court emphasizes that there is no need for a review by reviewers of universities and/or ministries. This is based on the legal considerations read out by Constitutional Justice Enny Nurbaningsih, who conveyed the requirements for publication in reputable international journals. The Court believes that if this condition continues, the works published in reputed international journals do not require any more review by the university and/or ministry as long as they are published in reputable journals whose list has been determined by the ministry and the list is updated regularly. "So, this is a very decisive requirement that will be assessed carefully and translated into credit points (KUM)," said Enny.

Assessment Team Integration

Furthermore, regarding the Assessment Team, the Court emphasized the need for integration between the Higher Education Assessment Team and the Ministry Assessment Team. Enny stated that the Court did not intend to assess the legality of Permendikbud Number 92/2014, which basically determines that the assessment of academic promotions for state university lecturers is carried out by the Academic Position for Lecturer Assessment Team of Higher Education determined by the Rector/Chairman/Director. While for private university lecturers, it is carried out by the Academic Position for Lecturer Assessment Team of Higher Education Service Institutions determined by the Head/Chairman of Higher Education Service Institutions; and for non-Ministerial higher education lecturers, it is carried out by the Institutional Assessment Team determined by the head of the relevant institution concerned. Meanwhile, for assessing the academic positions of Head Lecturers and Professors, it is the authority shared by higher education units and the Ministry.

Enny said that the head of universities, with the approval of the academic senate, proposes the determination of credit points into the position of Professor or rank within the scope of these positions to the Director General. The process is carried out by the college/university in tiers starting from the study program, the faculty, and the university and submitted to the Directorate General of Higher Education, Research, and Technology.

"In order to avoid the possibility of any discrepancy assessment between universities and ministries, it is necessary to integrate the assessment team between the university/higher education assessment team and the ministry assessment team. In addition to maintaining the quality of lecturers who can be appointed as professors, such integration is also intended to simplify the stages or the nomination process," said Enny. (Lulu Anjarsari P.)

JUDICIAL REVIEW OF PROVISION ON REGIONAL HEAD TERM

THE CONSTITUTIONAL Court (MK) held a judicial review hearing of Law No. 10 of 2016 on the Second Amendment to Law No. 1 of 2015 on the Stipulation of the Government Regulation in Lieu of Law No. 1 of 2014 on the Election of Governors, Regents, and Mayors into Law (Pilkada Law) on Thursday, May 19, 2022. The case No. 55/PUU-XX/2022 was filed by Perkumpulan Maha Bidik Indonesia.

At the hearing chaired by Constitutional Justice Saldi Isra, accompanied by Constitutional Justice Suhartoyo and Constitutional Justice Wahiduddin Adams, Faturohman, as the legal bureau of the Perkumpulan Maha Bidik Indonesia, said that Article 71 paragraph (2) of the Regional Head Election Law especially the phrase "shall be prohibited from replacing officials 6 (six) months before the date of the stipulation of the candidate pairs" insofar it is interpreted null and void or not legally binding for governors/vice governors, regents/vice-regents, and mayors/vice mayors whose term end in 2022 and 2023, since the next regional head elections will take place in 2024. "So, the 6 (six) month time before the date of the stipulation of the candidate pairs is against Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution," he said.

Faturohman explained that the term of the governor and vice governor of Banten would end in May 2022 or six weeks after the hearing. However, the government of Banten Province would rotate and transfer echelon II officials as there has been a recommendation from the KASN (State Civil Apparatus Commission) based on Letter No. B-959/JP.00.01/03/2022.

The Petitioner believed that the provisions of Article 71 paragraph (2) of the Regional Head Election Law on the phrase "shall be prohibited from replacing officials 6 (six) months before the date of the stipulation of the candidate pairs" is interpreted as null and void or not legally binding for governors/vice governors, regents/vice-regents, and mayors/vice mayors whose term end in 2022 and 2023 since the next regional head elections will take place in 2024. So, the six-month time before the date of the stipulation of the candidate pairs would not be met and, thus, there would be inequality between citizens in law and government, which is against Article 27 paragraph (1) of the 1945 Constitution and lead to legal uncertainty and unfair treatment before the law, which is against Article 28D paragraph (1) of the 1945 Constitution. Therefore, in the petitum, the Petitioner requested that the Court declare the a quo norm contrary to the 1945 Constitution or unconstitutional and not legally binding insofar as the phrase in question be interpreted to not apply to regional leaders whose term end in 2022 and 2023. (Utami Argawati)

THE ISSUE OF SOUTH KALIMANTAN CAPITAL CITY RELOCATION

BANJARBARU City has officially replaced Banjarmasin City as the capital city of South Kalimantan Province since the enactment of Law No. 8 of 2022 on the South Kalimantan Province (South Kalimantan Province Law) on February 15, 2022. The relocation received pros and cons, which ultimately led to a petition being filed to the Constitutional Court (MK). On Monday, May 23, 2022, the Panel of Judges chaired by Constitutional Justice Saldi Isra held a preliminary hearing for three cases questioning the South Kalimantan Law.

Case Number 58/PUU-XX/2022 was filed by the Banjarmasin City Chamber of Commerce and Industry (Petitioner I) and several individual Petitioners affiliated with the Banjarmasin City Communication Forum (Petitioner II, III, IV). The Petitioners formally challenged the South Kalimantan Law. The petitioners also filed case No. 59/PUU-XX/2022 and materially challenged Article 4 of the South Kalimantan Law. Meanwhile, case No. 60/PUU-XX/2022 was filed by the Mayor of Banjarmasin Ibnu Sina and the Chairman of the South Kalimantan DPRD (Regional Legislative Council), Harry Wijaya. The three cases question the South Kalimantan Provincial Law, which is contrary to the 1945 Constitution.

The Petitioners for Case Number 58/PUU-XX/2022, represented by Muhammad Pazri as legal counsel, explained that the South Kalimantan Provincial Law had harmed them (petitioners) since its formation had not involved the community regarding the South Kalimantan City relocation. Pazri said that the Law had harmed the entrepreneurs within the Banjarmasin City Chamber of Commerce and Industry (Petitioner I) because the provincial capital city relocation would impact the economic sector, especially those in the accommodation, culinary businesses, and construction sectors that would hinder the development of supporting infrastructure in Banjarmasin City. As for Petitioners II, III, IV, and V, Pazri stated that the ambiguity of the underlying factor of the relocation could harm them [the petitioners] because the people's welfare wouldn't be a priority amid the economic turmoil due to the COVID-19 pandemic, rising prices of basic needs, and re-allocation of the provincial budget (APBD) to the new capital city.

Further, the Petitioners of Case Number 59/PUU-XX/2022, in their argument, stated Article 4 of the South Kalimantan Law, which reads, "The capital city of South Kalimantan Province shall be located in Banjarbaru," was against Article 1 paragraphs (2) and paragraph (3), Article 28D, Article 28F, Article 28H paragraph (1), Article 18B paragraphs (1) and (2) of the 1945 Constitution. Historically, they added, Banjarmasin City had an important role in the development of the South Kalimantan province since the 1500s, when it first became a government center. Changing its position is the same as changing history. Therefore, the article is unconstitutional and contradicts the 1945 Constitution because there was no justice in disrespecting the history of Banjarmasin—a region full of traditional rights of Banjarmasin that is still developing today as the capital city of South Kalimantan Province.

Meanwhile, the Petitioners for Case Number 60/PUU-XX/2022, through legal counsel Lukman Fadlun stated that the process of forming the law had not involved the general public and that the House of Representatives (DPR) had not come to Banjarmasin in person to hear the people's aspirations. In addition, it also had not paid attention to the harmony of the central-regional government relations. This is evidenced by the South Kalimantan DPRD at its plenary session had not decided to relocate the provincial capital from Banjarmasin to Banjarbaru, and the local government of Banjarmasin City had not been involved in the harmonization, conciliation, and stabilization of the legal conception until it became a draft of the bill. (Sri Pujianti)

JUST AND PROSPEROUS PEOPLE'S PARTY QUESTIONS PROVISION ON POLITICAL PARTY VERIFICATION

THE JUST and Prosperous People's Party (Prima) filed a judicial review petition of Article 173 paragraph (1) of Law No. 7 of 2017 on General Elections (Election Law) to the Constitutional Court (MK). The preliminary hearing for case No. 57/PUU-XX/2022 was chaired by Constitutional Justices Saldi Isra, Wahiduddin Adams, and Enny Nurbaningsih. It was held on Tuesday, May 24, 2022, in the Panel Courtroom of the Constitutional Court.

Article 173 paragraph (1) of the Election Law reads, "Political Parties Contesting in an Election are political parties that have passed the verification process by the KPU." One of the Petitioner's legal counsels, Fitrah Awaludin Haris, said the article was contrary to the 1945 Constitution or unconstitutional because the provisions for factual verification imposed on non-parliamentary political parties to meet the verification stage of political parties participating in the 2024 Election were unfair.

Meanwhile, another legal counsel, R. Elang Y. Mulyana, said the political parties that had passed the minimum vote acquisition threshold for political parties (parliamentary threshold) in the 2019 General Election were established and relatively superior in terms of structure, infrastructure, and finances to non-parliamentary ones such as the Just and Prosperous People's Party. Such special treatment, he added, led to different preparedness among political parties. Therefore, in its petitum, the Petitioner requested the Court to review and correct the article by stating Article 173 paragraph (1) of the Election Law unconstitutional as long as it is not interpreted as "Political Parties Contesting in the Election are Political Parties with legal entities and have passed the administrative verification by the KPU." (Sri Pujianti)

DEEMED RESTRICTIVE, THE CRIMINAL PROCEDURE CODE (KUHAP) QUESTIONED BY ADVOCATES

THE PRELIMINARY hearing of the judicial review of Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP) was held by the Constitutional Court (MK) on Tuesday, May 24, 2022. Case No. 61/PUU-XX/2022 was filed by Octolin H. Hutagalung and 11 other petitioners.

The advocates challenge Article 54 of the Criminal Procedure Code (KUHAP). The Petitioners were represented by legal counsel Janses E Sihaloho and conveyed the subjects of the petition virtually. They believe that in the process of a criminal case, advocates are often hired to assist someone, either in their capacity as a reporter, the reported, a witness, a suspect, or a defendant.

According to Petitioners, the enactment of Article 54 of the Criminal Procedure Code has led to legal uncertainty for advocates in performing their profession since there are no provisions in the Criminal Procedure

Code that regulates the rights of a witness or a person of interest to legal aid and assistance from a legal counsel in testifying to investigators in the police, the prosecutor's office, or the KPK (Corruption Eradication Commission).

The Petitioners argue that in the pre-trial investigation/research stage, a witness may help determine whether a crime has occurred or not. The purpose of an investigation is to collect pieces of evidence to ensure several things, including determining whether the act being investigated constitutes a crime, who committed it, whether the act has met the conditions of a crime, and so on.

However, in its practice, the petitioners reveal that investigators often prohibit legal counsels from assisting their clients and allow them only to participate in the examination passively. Any comments or inputs from the legal counsel to their client, who acts as a witness, are often returned with a warning or request that the legal counsel leaves the examination room. Therefore, in its petitum, the Petitioners requested that the Court declare Article 54 of the Criminal Procedure Code conditionally constitutional insofar as it is interpreted to include the witness and the person of interest. (Nano Tresna A.)

QUESTIONING THE PHRASE "NOT A RESIDENCE" IN CONDOMINIUM LAW

THE CONSTITUTIONAL Court (MK) held a preliminary hearing of the material judicial review of Law No. 20 of 2011 concerning Condominium on Wednesday, June 8, 2022. Case No. 62/PUU-XX/2022 was filed by the Condotel Owners (condominium-hotel), including Rini Wulandari (Petitioner I), Hesti Br Ginting (Petitioner II), Ir. Budiman Widyatmoko (Petitioner III), and Kristyawan Dwibhakti (Petitioner IV). The petitioners argued that Article 50 of the Condominium Law reads, "The use of multi-story buildings shall be carried out in accordance with the function: a. residence; or b. mix-use is against the 1945 Constitution.

At the hearing chaired by Constitutional Justice Daniel Yusmic P. Foekh and panel members, the Petitioners' legal counsel Aulia Khasanofa said the Petitioners owned a condominium in the form of a condotel unit. The Condominium Law, she added, stipulates that condotels not be used for residential or mixed purposes; thus, the Petitioners cannot form a Condominium Owner and Tenant Association (PPPSRS) to deal with the interests of the owners and residents in terms of management, ownership, and occupancy. This led to the property (the multi-story unit complete with communal parts, objects, and land) not being owned by the Petitioners but by the developer.

In their petition, the Petitioners argued that the provisions on the use of condominiums only for residential and mixed functions, which are regulated expressis verbis in Article 50 of the Condominium Law, were detrimental to their constitutional rights. So, based on those reasons, they requested the Court declare Article 50 of the Condominium Law conditionally against the 1945 constitution or unconstitutional and not legally binding as long as it is not interpreted as including "not a residence." (Utami Argawati)

Constitutional Justices Talks about Legal Understanding for Students, University Students, and Advocates

Constitutional Justice Manahan MP Sitompul was a speaker at the Special Education of Professional Advocate (PKPA) Batch VI on Friday, May 20, 2022. The event was organized by the West Jakarta Branch Leadership Council (DPC) of the Indonesian Advocates Association (Peradi) and Bina Nusantara University (Binus).

Constitutional Justice Wahiduddin Adams was a speaker in a public lecture on "The Constitution, Constitutional Rights, and the Constitutional Court" for the Faculty of Law, University of Muhammadiyah North Sumatra (UMSU) in the faculty's auditorium on Saturday, May 21, 2022, in Medan.

Chief Justice of the Constitutional Court Anwar Usman was a keynote speaker at the public lecture on "The Internalization of Pancasila Ideology in the Digital Era among Millennials" at the Faculty of Social and Political Sciences of Sebelas Maret University (FISIP UNS) of Surakarta on Wednesday, May 25, 2022.

Constitutional Justices Manahan M. P. Sitompul and Daniel Yusmic P. Foekh gave a public lecture on "The Position of the Constitution as the Foundation to the Government Administration" at Amiek Sumindriyatmi 3rd Building of the Faculty of Law of Sebelas Maret University (FH UNS) on Wednesday, May 25, 2022, in Solo, Central Java.

Constitutional Justices Suhartoyo and Saldi Isra were speakers at public lectures on "The Constitutional Court in the Dynamics of the State Administration" on Wednesday, May 25, 2022, at the Faculty of Law of the University of Muhammadiyah Surakarta (FH UMS).

Constitutional Justice Enny Nurbaningsih and Constitutional Justice Wahiduddin Adams attended the Constitutional Court's public lecture on "Understanding the Constitution in the State" at FKIP UNS on Wednesday, May 25, 2022. The event was a collaboration between the Constitutional Court and FKIP UNS.

Constitutional Justice Arief Hidayat in a public lecture organized by the Constitutional Court (MK) and the PGRI University of Yogyakarta (UPY) on Friday, May 27, 2022.

The Constitutional Court (MK) and the Postgraduate Program of the Faculty of Law of the Islamic University of Indonesia (FH UII) held a public lecture for postgraduate students of the Faculty of Law on Friday, May 27, 2022, at the faculty's hall in the Integrated Campus of UII, Sleman, Yogyakarta. Constitutional Justice Suhartoyo and Saldi Isra attended the event.

The Constitutional Court (MK), in collaboration with the Faculty of Law of Satya Wacana Christian University (FH UKSW), held a public lecture on "The Constitutional Law Challenges Amid the COVID-19 Pandemic" at the faculty's hall, Salatiga, Central Java on Friday, May 27, 2022. Constitutional Justices Daniel Yusmic P. Foekh and Manahan M. P. Sitompul were the speakers at the event.

Constitutional Justice Enny Nurbaningsih and Constitutional Justice Wahiduddin Adams were speakers in a Public Lecture. The event was a collaboration between the Constitutional Court (MK) and the Faculty of Law of Widya Mataram University (FH UWM) of Yogyakarta on Friday, May 27, 2022.

Deputy Chief Justice of the Constitutional Court Aswanto gave a public lecture at the APMD Village Community Development College, Yogyakarta, on Friday afternoon, May 27, 2022.

Constitutional Justice Suhartoyo was a speaker on the tenth day of the Special Education of Professional Advocate (PKPA) Batch V organized by the National Leadership Council (DPN) of the Indonesian Advocates Association (Peradi) and the University of Pamulang (Unpam) on Monday, May 30, 2022.

Chief Justice of the Constitutional Court (MK) Anwar Usman in a Public Lecture on "The Constitutional Court as the Guardian of Pancasila and the Constitution" organized by Widya Mandira Catholic University (Unwira) in Kupang, East Nusa Tenggara on Thursday, June 2, 2022.

Constitutional Justice Daniel Yusmic P. Foekh was a speaker at Inspiration Class on "Find Your Passion, Plan Your Future." This event was held at SMAN I Kupang, East Nusa Tenggara (NTT), on Thursday, June 2, 2022.

Constitutional Justice Daniel Yusmic P. Foekh was a speaker in a public lecture at Artha Wacana Christian University, Kupang, East Nusa Tenggara, on Friday, June 3, 2022.

Constitutional Justice Enny Nurbaningsih was a speaker at the Studium Generale of the Faculty of Law of the Islamic University of Malang (FH Unisma) on "The Problems in Appointing Acting Heads of Regions in the 2024 Simultaneous Regional Election" on Friday, June 3, 2022.

Chief Justice of the Constitutional Court (MK) Anwar Usman was a keynote speaker and Constitutional Justice Enny Nurbaningsih was a speaker in a public lecture on "Inculcating Pancasila & the Constitution to Produce Constitutionally Aware Millennials" organized by the Maulana Malik Ibrahim Islamic State University of Malang (UIN Malang) on Saturday, June 4, 2022.

Constitutional Justice Suhartoyo was a speaker at the Special Education of Professional Advocate (PKPA) Batch V organized by the West Jakarta Branch Leadership Council (DPC) of the Indonesian Advocates Association (Peradi) in collaboration with IBLAM Higher School of Law (STIH) on Sunday, June 5, 2022, virtually.

Technical Guidance (Bimtek) for Understanding Constitutional Rights

As a constitutional judicial institution, the Constitutional Court plays a role in providing an understanding of the constitutional rights of citizens in every society. Not only legal practitioners, but the Constitutional Court also provides constitutional education to organizations, teachers, communities, and other community groups.

Deputy Chief Justice of the Constitutional Court Aswanto officially opened the Activities for Increasing Understanding of the Constitutional Rights of Citizens (HKWN) for Muhammadiyah Youth Management and Members on Monday (6/6/2022) at the Pancasila and Constitutional Education Center, Cisarua, Bogor

Chief Justice of the Constitutional Court Anwar Usman was present as a keynote speaker at the same time opening the activities for Increasing Understanding of Citizens' Constitutional Rights (PPHKWN) on Monday - Thursday (13-16/6/2022) at the Pancasila and Constitutional Education Center (Pusdik MK), Bogor for the Indonesian National Student Movement (GMNI).

Constitutional Justice Arief Hidayat was a speaker in the activity of Increasing Understanding of Citizens' Constitutional Rights for Management and Members of the Alumni Association of the Indonesian National Student Movement (GMNI). The activity was held by the Constitutional Court (MK) through the Pancasila and Constitutional Education Center (Pusdik), on Wednesday (6/15/2022)

Constitutional Court in Agendas

The Constitutional Court as a state institution does not only stand alone in its work. Institutional cooperation with various institutions, both local and foreign governments are carried out in the synergistic performance of institutions. From May to mid-June 2022, the Constitutional Court signed a memorandum of understanding and various other activities to increase the value of the institution.

The Constitutional Court (MK) and the Pancasila Ideology Development Agency (BPIP) signed a memorandum of understanding in the context of increasing the understanding of citizens' constitutional rights as well as internalizing and institutionalizing Pancasila values. The signing of the memorandum of understanding was carried out by the Secretary General of the Constitutional Court M. Guntur Hamzah and the Deputy for Inter-Institutional Relations, Socialization, Communication, and Prakoso Networks in the presence of the Chief Justice of the Constitutional Court Anwar Usman and the Head of BPIP Yudian Wahyudi on Tuesday (5/31/2022) in the Multipurpose Room Flores University, Ende, East Nusa Tenggara.

Chief Justice of the Constitutional Court Anwar Usman, Deputy Chief Justice of the Constitutional Court Aswanto, and Constitutional Justice Arief Hidayat attended the Extraordinary Meeting of the Bureau of the World Conference on Constitutional Justice (WCCJ), on Tuesday (6/7/2022) online from the Constitutional Court of the Republic of Indonesia (MKRI).

Chairman of the Constitutional Court (MK) Anwar Usman accompanied by Secretary General of the Constitutional Court M. Guntur Hamzah received an audience from the Constitutional Forum (FK) on Wednesday (6/15/2022) on the 15th floor of the Constitutional Court Building. The eight figures of the Constitutional Forum who attended were Pataniari Siahaan, Jakob Tobing, Valina Singka Subekti, Zain Badjeber, Gregorius Seto Harianto, Ali Hardi Kiaidemak, Harjono, Ali Masykur Musa, and Rully Chairul Azwar.

Constitutional Justice Arief Hidayat together with Constitutional Justice Suhartoyo and Constitutional Justice Enny Nurbaningsih provided briefing materials to the participants of the 2022 Inter-Lurah/Village Head Constitutional Speech Contest, on Friday (6/17/2022) at the Faculty of Law, Sebelas Maret University. Solo. Public Relations/Hamdi's photo.

Head of Slogoretno Village, Wonogiri on behalf of Suparmanto SM; Popongan Village Head, Karanganyar on behalf of Jalu Setio Bintoro; and the Head of Kepatihan Wetan, Surakarta, on behalf of Sutrisno, won 1st, 2nd, and 3rf place in the Constitutional Speech Contest for the Inter-Lurah/Village Heads of All Solo Raya 2022, on Saturday (6/18//2022). The activity was held by the Constitutional Court (MK) in collaboration with the Faculty of Law, Sebelas Maret University, Surakarta in the Amiek Sumindriyatmi Hall, Building III, Faculty of Law, UNS.

Catalog

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HAKIKAT KONSTITUSI: Dasar Pemikiran, Kewenangan, dan Perbandingan dengan Negara Lain

Penulis : J. D. O. Pelgrim
ISBN : 978-602-7995-20-0
Ukuran : 14,8 x 21 cm
Tebal : 403 halaman
Terbit : 2018

Harga : Rp112.000

Catatan Hukum Maria Farida Indrati

Editor : Allen Fawrby & Achmad Edi Subiyanto
ISBN : 978-602-7995-19-3
Ukuran : 14,8 x 21 cm
Tebal : 312 halaman
Terbit : 2018

Harga : Rp97.000

Dinamika Negara dan Islam dalam Perkembangan Hukum dan Politik di Indonesia

Penulis : Muhamad Ali Safaat
ISBN : 978-602-7995-23-0
Ukuran : 14,8 x 21 cm
Tebal : 280 halaman
Terbit : 2018

Harga : Rp108.000

Living and Evolving Constitution of Indonesia

Penulis : Jimly Asshiddiqie, I Dewa Gede Palguna, Muhamad Siddiq, Saldi Isra
ISBN : 978-602-7995-22-3
Terbit : 2018
Tebal : 344 hlm
Ukuran : 14 x 21,5 cm

Harga : Rp280.000

Cultural Constitution and Constitutional Culture

Penulis : Prof. Dr. Jimly Asshiddiqie, S.H.
ISBN : 978-602-7995-21-6
Terbit : 2018
Ukuran : 14,8 x 21 cm
Tebal : 296 hlm

Harga : Rp125.000

Hukum Sengketa Pemilu

Mekanisme Penyelesaian Sengketa di Mahkamah Konstitusi

Penulis : Raffy Harun
ISBN : 978-602-7995-24-4
Terbit : 2019
Ukuran : 14,8 x 21 cm
Tebal : 222 hlm

Harga : Rp74.000

Hukum Acara Sengketa Pemilukada Dinamika di Mahkamah Konstitusi

Penulis : Dr. Hasi Wakda, S.H., M. Hum.
ISBN : 978-602-7995-18-9
Terbit : 2018
Tebal : 368
Ukuran : 14,8 x 21 cm

Harga : Rp95.000

Berhukum di Indonesia

Penulis : Dr. Tundjung Herning Sitabuana, S.H., C.N., M.Hum.
ISBN : 978-602-7995-17-8
Terbit : 2017
Tebal : 312 hlm
Ukuran : 15 x 23 cm

Harga : Rp83.000

Bung Karno, Islam, dan Pancasila

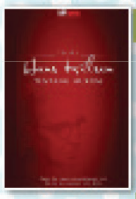
Penulis : Dr. Ahmad Basarah
ISBN : 9786027995161
Terbit : Cetakan ke-1, Juni 2017
Tebal : 250 hlm
Ukuran : 14,0 x 21 cm

Harga : Rp54.000

Mengawal Konstitusionalisme

Penulis : Hamdan Zoelva
ISBN : 9786027995147
Terbit : Cetakan ke-1, Juli 2016
Tebal : 333 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp60.000



Teori [illegible] tentang Hukum

Penulis : Prof. Dr. Jimly Asshiddiqie, S.H. dan Dr. M. Ali Safaat, S.H., M.H.
ISBN : 978-979-99999-4-1
Terbit : Cetakan Pertama, Juli 2012
Tebal : 186 halaman
Ukuran : 15 x 22 cm

Harga : Rp50.000

Konsep Hukum [illegible]

Penulis : Dr. M. Ali Safaat
ISBN : 9786027995154
Terbit : Cetakan ke-2, Agustus 2016
Tebal : 231 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp60.000

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Penulis : Rita Triana Budiarti
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Terbit : Cetakan ke-1, 2014
Tebal : 310 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp60.000

Perkembangan Pembentukan Undang-Undang di Indonesia

Penulis : Dr. Bayu Dwi Anggono, SH, MH
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Terbit : Cetakan ke-1, Agustus 2014
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Ukuran : 14,8 x 21 cm

Harga : Rp65.000

Penyelesaian Masalah Diskriminasi Terhadap Etnis Cina

Penulis : Dr. Tundjung Herning Sitabuana, S.H., C.N., M. Hum.
ISBN : 9786027995559
Terbit : Cetakan ke-1, Desember 2014
Tebal : 332 hlm
Ukuran : 15,5 x 23 cm

Harga : Rp90.000

Kontroversi Mahfud MD Jilid 1

Penulis : Rita Triana Budiarti
ISBN : 978-602-18834-3-0
Terbit : Cetakan Pertama, Desember 2012
Tebal : 270 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp55.000

Kontroversi Mahfud MD Jilid 2

Penulis : Rita Triana Budiarti
ISBN : 978-602-18834-4-7
Terbit : Cetakan ke-1, Juli 2014
Tebal : 312 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp59.000

Biografi Mahfud MD: Terus Mengalir

ISBN : 978-602-18834-8-5
Penulis : Rita Triana Budiarti
Terbit : Cetakan Pertama, Maret 2013
Halaman: 412 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp80.000

Politik Hukum Agraria

Penulis : Prof. Adrian Sutedi, SH
ISBN : 9786027995504
Terbit : Cetakan Pertama, Juli 2014
Tebal : 348 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp58.500

Hukum Pemilu dalam Yurisprudensi Mahkamah Konstitusi

Penulis : Janedjri M. Gaffar
ISBN : 978-602-7995-05-8
Terbit : Cetakan ke-1, 2014
Tebal : 264 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp48.000

Demokrasi dan Pemilu di Indonesia

Penulis : Janedjri M. Gaffar
ISBN : 978-602-7995-03-4
Terbit : Cetakan ke-1, 2014
Tebal : 312 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp45.000

Demokrasi Konstitusional Praktik Ketatanegaraan Indonesia setelah Perubahan UUD 1945

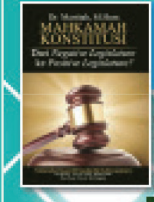
ISBN : 978-602-18834-1-6
Terbit : Cetakan Pertama, Oktober 2012
Tebal : 280 hlm
Ukuran : 14 x 21,5 cm

Harga : Rp49.000

Politik Hukum Pemilu

Penulis : Janedjri M. Gaffar
ISBN : 9786028963420
Terbit : Cetakan Pertama, Oktober 2012
Tebal : 312 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp53.000



Mahkamah Konstitusi, dari Negative Legislature ke Positive Legislature

Penulis : Dr. Harrison
ISBN : 9786028963887
Terbit : Cetakan Pertama, Agustus 2013
Tebal : 342 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp57.000

Pembentukan Peraturan Perundang-Undangan yang Responsif

Penulis : Ahmad Yani, SH, MH
ISBN : 978-602-7995-02-1
Terbit : Cetakan ke-1, September 2013
Tebal : 404 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp55.000

Politik Hukum Pembentukan Undang-Undang Pasca Amandemen UUD 1945

Penulis : Dr. Fatkhan Sahnan
ISBN : 978-602-18834-0-9
Terbit : Cetakan Pertama, Oktober 2012
Tebal : 630 hlm
Ukuran : 15 x 22 cm

Harga : Rp72.500

Reformasi Birokrasi dan Isu-isu Investasi

Penulis : Taufik Effendi
ISBN : 978-602-18834-7-8
Terbit : Februari 2013
Tebal : 338 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp59.000

Mahfud MD: Hakim Aktivis

Penulis : Jeryanto
ISBN : 978-602-7995-09-5
Terbit : Cetakan Pertama, Maret 2013
Tebal : 420 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp71.500

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REVIEWING STATE INSTITUTIONS BASED ON THE CONSTITUTIONAL PERSPECTIVE

Artha Debora Silalahi, S.H., M.H.
Constitutional Journal Manager P4 MK

BOOK TITLE:
LEMBAGA NEGARA (KONSEP, SEJARAH, WEWENANG, DAN DINAMIKA KONSTITUSIONAL

AUTHOR NAME: Saldi Isra
ISBN: 978-623-231-512-9
NUMBER OF PAGES: 377 pages

This *book entitled Lembaga Negara (Konsep, Sejarah, Wewenang, dan Dinamika Konstitusional)* examines state institutions that are often associated with State Institutional Law—in the aspect of constitutional law studies, especially regarding the position, function, and authority of each state institution. In reviewing state institutions, it can't be separated from the context of constitutional changes in Indonesia which are increasingly developing. The partial mindset which states that the study of Constitutional Law in static construction is explored through this book. Construction aspects of the study of constitutional law, such as the study of state institutions, are not only focused on legal aspects but also include the overall structure and coherence of state institutions in one unit. The target audience for the publication of this book is not only limited to legal academics or legal activists who study and study law but includes various readers. Each form of explanation in the discussion of this book begins with a basic concept and is most commonly known by the readers.

The state institutions discussed in this book include all state institutions which are implicitly regulated and stated in the 1945 Constitution of the Republic of Indonesia. The

instruments and institutional structures of each state institution that are reviewed and described in this book are not limited to the arrangements in the constitution and its derivative regulations. Changes in state administration began to experience their peak during the period of Constitutional Reform in the period 1999 – 2002.

The changes came from the constitutional text which gradually underwent significant changes. These changes have now had a very broad effect on the scope of Constitutional Law study in the constitutional dynamics of citizens' lives. The dynamics in this book are viewed from the other side which is still often ignored by some experts in Constitutional Law by presenting a historiographical series of developments in state institutions in Indonesia. This historical study is packaged by photographing authority including changes in the position, function, and authority of state institutions in the transition period of Indonesian society towards a democratic society.

In addition, the study related to the authority of state institutions in this book is packaged by the author through the connection with the decisions of the Constitutional Court. The decision of the Constitutional Court becomes a pendulum of change in the existence of state institutions. The change in state institutions referred to in this case is the interpretation of the Constitutional Court on the relationship between state institutions which is very close and cannot be separated from one another. This close relationship is the basis for the presence of the constitutional dynamics of relations between state institutions. The presence of this book has positioned the Constitutional Court as one of the actors of judicial power who has the right to decide and declare the unconstitutionality of a law formed by the people's representative institutions (House of Representatives and Regional Representative Council). In line with this, in the content of Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which implicitly regulates the existence of judicial power in Indonesia, it has been stated that the provisions of this article are the basis for constitutional dynamics in relations between state institutions.

Tracing the history of the constitution as well as the history of the establishment of a state institution can't be separated from every detail of the discussion in this book. This tracking is clear evidence that in examining state institutions the historical portrait of the authority and dynamics of state institutions is an important part, especially in the post-reform period to the present. The relevance of this historical portrait has led to a constitutional study of Constitutional Law within the scope of state institutions that is not barren and is not merely guided by applicable regulations. Long stories of history should be able to connect the relevance of the existence of state institutions in the present to the future. History can't be separated from learning the responsiveness of each party to be able to realize the ideals of the past in the present and the future.

In each section, the explanation of the contents of the book describes the composition and process of filling positions in the structure of state institutions referring to the Constitutional Court Decision accompanied by constructive criticism and suggestions for improving state institutions in the future. This book also includes charts and tables of supporting information from the studies discussed in a structured and easy-to-understand manner. The context of the discussion of state institutions which is only limited to the scope of state institutions according to the constitution is not monotonous to be enjoyed by audiences of readers across generations. Each chapter in the book provides information regarding the author's study of each state institution in the 1945 Constitution of the Republic of Indonesia starting from the classification of state institutions before the amendment and after the amendment to the 1945 Constitution of the Republic of Indonesia.

The chapter in this book begins with a discussion of the people's representative institutions as a branch of legislative power that has the authority to form laws and regulations including the House of Representatives (DPR) packed with a brief history, functions, rights, and obligations including the powers and duties of the DPR accompanied by DPR equipment. The discussion continued on the Regional Representative Council (DPD) which was presented with an explanation of the overall structural and functional organization of the DPD in practice. Then this book explains the existence of the People's Consultative Assembly (MPR) institution accompanied by complete information on filling and dismissing MPR members, including the legal products of the MPR in the dynamics of its changes.

The discussion of each chapter regarding the people's representative institutions is accompanied by quotes from the decisions of the Constitutional Court as a guide in tracing the traces of changes in each component of the people's representative institutions. It is just a shame that at the end of each chapter explanation, the author's comments and recommendations for improvement from each of the state institutions studied have not been included.

The next chapter describes state institutions in the executive branch of power, namely the President and Vice President which are regulated and contained through the provisions of Article 4 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia in a single study. It focuses on explaining the power of the President as an inseparable power from the power of the Vice President. Generally, it is assumed that executive power is only associated with the President, but in this book, it is emphasized that the power to administer the government is not only in the hands of the President but between the President and the Vice President, they are an integral and inseparable organ. Both complement and complement each other in carrying out their duties, functions, and authorities for the administration of government without deviating from the applicable constitutional guidelines.

This book also emphasizes the examination authority in the audit of state finances held by the Supreme Audit Agency of the Republic of Indonesia (BPK), which is regulated through the provisions of Article 23 E of the 1945 Constitution of the Republic of Indonesia about changes or after the amendment to the 1945 Constitution of the Republic of Indonesia. Changes in the institutional design of the BPK have implications for the existence of the BPK in examining the management and responsibility of state finances. Also, the addition of the phrase "free and independent" in the 1945 Constitution of the Republic of Indonesia has implications for the relationship between BPK and state institutions, one of which is the House of Representative of the Republic of Indonesia in the state financial audit report, which can't be interfered with each other. Both carry out their respective duties and roles within the corridors of the constitution.

The last 2 chapters of this book describe the branch of judicial power which includes the Supreme Court (MA) and the Constitutional Court (MK). The two institutions are implicitly contained in the provisions of Article 24C Paragraph (1), Paragraph (2), to Paragraph (3) of the 1945 Constitution of the Republic of Indonesia which implicitly regulates and affirms that the existence of the Supreme Court and the Constitutional Court is very meaningful for the development of law in Indonesia. The development of the law intended to be related to the achievement of the principles of certainty, benefit, and justice can be felt by all Indonesian people. The two judiciary institutions serve as channels and connectors for the needs of the community, both legally literate and not legally literate, to submit applications or complaints related to legal products and policies that have harmed them. In each chapter, both the explanation of the Supreme Court and the Constitutional Court is accompanied by a brief historical portrait, position, and authority including filling and dismissal of Supreme Court Justices and Constitutional Justices. Each judicial authority is explained comprehensively and supported by data evidence from the recapitulation of the implementation of the testing authority that has been successfully carried out by both in the last 5-10 years period. The audience of readers becomes fully aware of the implementation of the powers of the two judiciaries in a real and fact-based manner based on the results of the author's well-structured and well-systematized research.

This book is highly recommended for legal and non-law academics, including students in preparing their final assignments (Thesis, Master Degree Thesis, Dissertation, and journal articles/papers), students, and millennials who want to know and care about the condition of the beloved nation and country of the Republic of Indonesia. The portraits packaged in this book are made in a language that is easy to understand and reaches all Indonesian people with various intellectual and communal backgrounds.

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The Presidential Legitimacy Polemic

LUTHFI WIDAGDO EDDYONO
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In the context of enriching the material for amendments to the 1945 Constitution, the People's Consultative Assembly also invited many experts to provide academic views regarding the substance of the changes to the constitution later. One of them is Prof. Muchsan, known as an expert in political science and state administration. Joined in the Expert Team, Prof. Muchsan was asked to answer many questions from members of PAH I BP MPR precisely on May 15, 2001.

Previously, at the 14th PAH I BP MPR Meeting on May 10, 2001, the Expert Team had indeed produced the formulation of Article 6A regarding the Presidential election. This formulation was read and explained by the Head of the Political Expert Team Maswadi Rauf. According to Maswadi, the draft formulation of Article 6A is different from Article 6A of the results of BP MPR as attached to MPR Decree No. IX/MPR/2000. The Joint Team of Experts in the Legal and Political Fields agrees with alternative 1, variant 2, from the results of the BP MPR which are three paragraphs. However, the Expert Team later confirmed the provisions in the three paragraphs.

As described in the Comprehensive Manuscript of Amendment to the 1945 Constitution of the Republic of Indonesia, Background, Process, and Discussion Results 1999-2002, Book V General Elections, (Jakarta: Secretariat General and Registrar of the Constitutional Court; Revised Edition, July 2010), Prof. Muchsan said that he relied on four thoughts to answer the questions from the members of the Assembly. The first rationale of Prof. Muchsan is the presidential system in Egypt, mainly related to the recruitment and accountability of the President; second, is related to the package system; third, thinking to avoid a second round and; fourth, the idea that the President must gain strong legitimacy from the people. Regarding these matters, Prof. Muchsan describes as follows:

> "In connection with this thought, the Expert Team believes that the President and Vice President were elected in one package directly by the people from two packages of candidates. Thus, we argue that the direct election by the people is from two packages of candidates. There are four reasons why each package includes the President and the Vice President. Meanwhile, the candidate package will be proposed by the two political parties that get the combined votes, with the most combined seats in the DPR and DPD. So, most of both in the House of Representatives and the Regional Representative Council are combined. This is to fulfill an avoidance of the second round because with this nomination it is hoped that the most votes will be elected as President. The second is also to fulfill the idea that the President will get legitimacy from the people. It will be strong with that legitimacy."

Regarding the provisions of the President being elected for the sake of legitimacy, Muchsan said that more stringent requirements were needed. Here's the description:

> "Regarding the nomination, the President and the Vice President are one package that will be declared elected if they meet the following requirements. First or more than 50% of the voter votes, 50% plus 1 means the most votes. Second, the President and Vice President have at least 20% of the votes each at the provincial level. So, 50% plus 1 is still given a fairly heavy requirement, namely at least 20% of the votes for each province from two-thirds of the provincial electoral districts throughout Indonesia. Thus, 20% of each province of the twenty-three provincial constituencies throughout Indonesia. It is quite heavy and this is solely to gain legitimacy from the people of all Indonesia."

Second Stage of Presidential Election

If these conditions are not met, then according to Prof. Muchsan, it will be held in the second phase of the Presidential Election. In this election, the two candidates with the most votes will be contested.

> ". . . If it is not met, it means that there are no candidates who meet the requirements as mentioned in the previous paragraphs, a second stage of Presidential and Vice-Presidential elections will be held. However, this election will only be followed by two candidates or two candidates who obtain the most votes in the first stage of the election. Thus, a second round is held if it is absolutely necessary that nothing is fulfilled and it will be carried out by whatever term, there is a National Assembly. In fact, it is a combination of the House of Representatives and the Regional Representative Council. Once again, this accommodates a dynamic within the state. Whether this is a long-term one or a short-term one, at least the 2004 election may have been used."

Furthermore, the procedure for the election of the President and Vice President will be further regulated in the law. The interesting thing in the presentation of Prof. Muchsan is the President's term of office, is only for five years and after that, he can be re-elected in the same office, limited to one term. Here's the description.

"For completeness, the Expert Team gives the opinion that the method of electing the President and Vice President will be further regulated in the law. Even though I heard about the Presidential Law, which is the President's initiative right, it does not yet contain details on how to elect the President. Maybe it will be completed later. While the term of office of the President, we set for five years, and after that can be re-elected in the same office, limited to one term. So, we only serve two terms, do not know any additional."

Regarding the matters that were conveyed by Prof. Muchsan, in the end, the provisions of Article 6A of the 1945 Constitution after four amendments read:

1) The President and Vice President are elected in one pair directly by the people.
2) Pairs of candidates for President and Vice President are proposed by a political party or coalition of political parties participating in the general election before the implementation of the general election.
3) Pairs of candidates for President and Vice President who get more than fifty percent of the votes in the general election with at least twenty percent of the votes in each province spread over half the number of provinces in Indonesia are inaugurated as President and Vice President
4) If no pairs of candidates for President and Vice President are elected, the two pairs of candidates who receive the first and second most votes in the general election are elected directly by the people and the pair that receives the most votes is appointed as President and Vice President.
5) The procedure for the implementation of the Presidential and Vice-Presidential elections is further regulated by law.

Article 7 of the 1945 Constitution then stipulates, "The President and Vice President hold office for five years, and they can be re-elected in the same office, only for one term.

Is it Informal Constitutional Change?

In its development, this provision was also affected by the decision of the Constitutional Court, in particular Decision 50/PUU-XII/2014 which examines the condition if there are only two pairs of candidates in the Presidential/Vice-Presidential Election. In the decision, according to the Court, although there is no confirmation that Article 6A paragraph (3) of the 1945 Constitution is intended if there are more than two pairs of candidates for President and Vice President but it is related to the context of the birth of Article 6A of the 1945 Constitution, it can be concluded that the discussion at that time related to the assumption that there are more than two pairs of candidates for President and Vice President.

In addition, the Constitutional Court also based on grammatical interpretations and systematic interpretations of the overall meaning of Article 6A of the 1945 Constitution which is very clear that the meaning contained in Article 6A paragraph (4) of the 1945 Constitution which states, "If there is no pair of candidates for President and Vice President elected, the two pairs of candidates who obtained the first and second most votes in the general election ..." concerning the number or at least more than two pairs of candidates for President and Vice President who took part in the election in the previous round as contained in Article 6A paragraph (2) of the 1945 Constitution The sentence "If no pairs of candidates for President and Vice President are elected, the two pairs of candidates who get the first and second most votes ..." clearly indicate that meaning if it is related to the provisions in paragraphs (2) and (3) before. If from the beginning there were only two pairs of candidates, why is it stated in paragraph (4), "In the circumstance that no pair of candidates for President and Vice President is elected, the two pairs of candidates who get the first and second most votes ...". If there is an assumption that there are only two pairs of candidates for President and Vice President who took part in the previous election, there is no need for an affirmation of "the two pairs of candidates who get the first and second most votes ..." because with two pairs of candidates, one of them must get the most votes. first or second. Thus, the meaning of Article 6A paragraph (4) of the 1945 Constitution must be read in a series with the overall meaning of Article 6A of the 1945 Constitution.

The confirmation of this decision, according to the Constitutional Court, is in the direct election policy of the President in the 1945 Constitution containing a fundamental objective in the context of implementing people's sovereignty as mandated by Article 1 paragraph (2) of the 1945 Constitution. The President of the Republic of Indonesia is the President who has strong support and legitimacy from the people. In this case, the most important principle is the sovereignty of the people, thus, the elected President is the President who gains strong legitimacy from the people. To achieve this goal, various alternatives were discussed during the amendment of the 1945 Constitution, among others, there was a proposal that two pairs of candidates for President and Vice President be elected directly by the people: elected by the MPR or proposed by the political parties winning the first and second winners in the general election for people's representative council.

According to the Constitutional Court, it is within the framework of a democratic process based on people's sovereignty. If there are only two pairs of candidates for President and Vice President who are proposed by a combination of several political parties that are national, according to the Court at the stage of candidacy of pairs of candidates for President and Vice President has fulfilled the principle of representative representation of all regions in Indonesia. It is because the presidential candidate has been supported by a coalition of national political parties that represent the population throughout Indonesia. Thus, the objective of the presidential election policy that represents all the people and regions in Indonesia has been fulfilled.

Constitutional Conventions in Indonesia

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What is a constitutional convention? To know for sure about the existence of constitutional conventions in the system in Indonesia, let's look at the decision of the Constitutional Court which mentions this in its consideration.

As stated in Decision Number 51-52-59/PUU-VI/2008, such constitutional conventions are indeed equated with the constitution. In the decision, the Constitutional Court considered issues related to the simultaneous implementation of general elections. At that time, there was Article 3 paragraph (5) of Law 42/2008 reads, "The Presidential and Vice-Presidential Elections are held after the elections for the House of Representative, Regional People's Representative Assembly, and Regional Representative Council."

At last, concerning Article 3 paragraph (5) of Law 42/2008, the Court believes that this is a method or procedural issue which in its implementation often focuses on an illogical sequence based on common experience. According to the Constitutional Court, what is called law is not always the same and congruent with understanding according to legal logic, let alone general logic. Therefore, experience and habits can also become law.

"For example, Article 3 paragraph (5) reads, "The Presidential and Vice-Presidential Elections are held after the House of Representative, Regional People's Representative Assembly and Regional Representative Council elections". The experience that has been running is that the Presidential Election is held after the House of Representative, Regional People's Representative Assembly, and Regional Representative Council elections, because the President and/or Vice President are appointed by the People's Consultative Assembly [Article 3 paragraph (2) of the 1945 Constitution] so that the House of Representative and Regional People's Representative Assembly elections take precedence so that a People's Consultative Assembly can be formed. This institution then inaugurates the President and Vice President, therefore it must be established first. In fact, there has been a so-called *desuetudo* or habit (**constitutional convention**) that has replaced legal provisions, which is something that often happens both in practice in Indonesia and in other countries. This is the truth that "the life of the law has not been logic it has been experienced". Because such custom has been accepted and implemented, it is considered not contrary to the law. Thus, the position of Article 3 paragraph (5) of Law 42/2008 is constitutional.

Besides the Constitutional Court which later differed in subsequent opinions, the mention of the application of *desuutude* or custom which became a constitutional convention is quite important to be studied. Before the amendment to the 1945 Constitution, the existence of constitutional conventions was quite strong and recognized.

In the Elucidation of the 1945 Constitution, it is stated that "constitution, part of the basic law of the Constitution of a country is only part of the basic law of that country. The constitution is a written basic law, while in addition to it, the unwritten basic law also applies, namely the basic rules that arise and are maintained in the practice of state administration even though they are not written down. Indeed, to investigate the constitution (*droit constitution nel*) of a country, it is not enough to study only the articles of its constitution (*loi Constituttionelle*), but one must also investigate how

it is practiced and what is the spiritual atmosphere (*geistlichen Hintergrund*) in the constitution.

The constitution of any country can't be understood if only the text is read. To truly understand the meaning of the Constitution of a country, we must also study how the text came about, must know the explanations, and must also know in what circumstances the text was made. Thus, we can understand what the law means. We learn what school of thought is the basis of that law."

However, after the amendment to the 1945 Constitution, the explanation was no longer contained and the legal basis for the constitutional convention was lost. Nevertheless, Nike K. Rumokoy in the article "ROLE OF STUDENTIAL CONVENTIONS IN THE DEVELOPMENT OF INDONESIAN CONSTITUTIONAL LAW" reviews quite a lot of constitutional conventions that are important to be maintained.

According to Nike K. Rumokoy, constitutional conventions can be interpreted as all basic constitutional habits or actions (with the content of the constitution), which are carried out in the administration of the state, both those that have not been regulated or which may deviate from the basic law (constitution) and other regulations administrations, to complement or improve constitutional provisions of a fundamental nature or as a factor in dynamizing the implementation of the constitution.

Furthermore, according to him, the functions of constitutional conventions in the administration of the state can be in the form of complementing/adding or reducing meaning, as well as dynamizing the implementation of the constitution; filling in the blanks of other constitutional rules; streamlining the roles and functions of state institutions following development needs; and facilitate the running of the wheels of state administration.

However, there is a major obstacle to implementing constitutional conventions. It is the absence of sanctions that requires state institutions/officials to always comply with applicable constitutional habits. Nike K. Rumokoy believes that violations of constitutional conventions can't be enforced by or through the courts. Such characteristics do resemble constitutional law, in which many things are not followed by strict sanctions. Therefore, it is often called the *lex imperfecta*, which is a law that has no sanctions.

The interesting part in Nike K. Rumokoy's view is the constitutional conventions that apply to constitutional practice in Indonesia. Some of them have been practiced since the beginning of independence, while there are also new things that have started to become constitutional conventions. In addition to those that have been and are being transformed into constitutional conventions, there are not a few suggestions of constitutional law experts who want the formation of constitutional conventions because they are considered to overcome the needs of state life. Not all of the ideas that propose the establishment of a constitutional convention are new phenomena, but there are also old phenomena that are intended to be used as constitutional conventions.

In fact, constitutional conventions can indeed be intertwined with informal changes to the constitution through the decisions of the Constitutional Court. The constitutional convention has changed its form into a documented law.

THE CONSTITUTIONALITY OF A FORMER PRISON TO NOMINATE FOR REGIONAL HEAD

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Sovereignty is in the hands of the people and is implemented according to the Constitution. The form of people's sovereignty as a democratic country, implemented through elections is the most important thing as a form of people's participation in choosing candidates and parties that will truly bring aspirations and interests in the form of policy formulation in the future. The implementation of democracy is also carried out in regional head elections (pilkada). Regional head elections which is a manifestation of sovereignty and confirmation that voters are local people. Thus, as regulated in the provisions of the norm of Article 28D paragraph (3) states, "Every citizen has the right to have equal opportunities in government". Hence, as a democratic country, in the implementation of regional head elections, the constitution stipulates that every citizen has the right to have the same opportunity to nominate himself and be nominated as a regional head candidate as long as he fulfills the requirements, among others: "never committed a disgraceful act as evidenced by police record certificate" [Article 7 Review paragraph (2) letter i of Law Number 10 Year 2016]. In the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 it is stated that, "What is meant by "committing a disgraceful act" includes gambling, drunkenness, drug users/dealers, and adultery, as well as other acts of violating decency".

Furthermore, concerning the revocation of the right to vote and the right to be elected as regulated in the provisions of Article 35 paragraph (1) number 3 of the Criminal Code, the right to vote and the right to be elected can only be revoked by a judge's decision. Thus, the revocation of the right to nominate and the right to vote can't be carried out by law. The law can only provide restrictions as regulated in the provisions of Article 28J paragraph (2) of the 1945 Constitution, which states "In exercising his rights and freedoms, everyone is obliged to comply with the restrictions stipulated by law for the sole purpose of guarantee the recognition and respect for the rights and freedoms of others and to fulfill just demands following considerations of morals, religious values, security and public order in a democratic society."

Regarding the problems above, it is regulated that if a former convict has met certain conditions, that person should no longer be punished except by a judge if he repeats his actions. If the law restricts the right of a former convict and is unable to nominate himself as a regional head, it means that the law has given additional punishment to the person concerned, while the 1945 Constitution prohibits discrimination against all citizens.

Meanwhile, in the Decision of the Constitutional Court Number 4/PUU-VII/2009, it determines the conditions for someone who will fill a public office or political position whose filling is through elections, namely: (1) Not valid for elected officials; (2) Valid for a limited period only for 5 (five) years after the convict finishes serving his sentence; (3) Exceptions are made for former convicts who openly and honestly state to the public that they are former convicts; (4) Not as a repeat offender.

Furthermore, a person who has served a sentence and is released from prison or a correctional institution is basically a person who has regretted his/her actions, has repented, and promised not to repeat his actions again. Therefore, an ex-convict who has repented is not appropriate if he/she is given another sentence by law as stipulated in Article 7 paragraph (2) letter i of Law 10/2016. However, if the court's decision states that a person is punished by revocation of the right to vote and the right to vote, then this is regulated. Regarding the candidacy of ex-convicts as regional heads, a judicial review has been submitted to the Constitutional Court and has been decided by the Constitutional Court through Constitutional Court Verdict Number 2/PUU-XX/2021, dated 31 May 2022.

Constitutional Court Verdict Number 2/PUU-XX/2022

In the Verdict of the Constitutional Court Number 2/PUU-XX/2022, on May 31, 2022, filed by Petitioner Hardizal, S.Sos., M.H., an Indonesian citizen who is a former convict of a psychotropic case based on the Decision of the Sungai Full District Court Number 37/ PID.B/2002/PN.SPN. The Petitioner has completed carrying out all decisions of the Sungai Penuh District Court, both imprisonment and fines based on the Certificate of the Head of the Class IIB Sungai Full Correctional Institution, dated February 11, 2003, as evidenced by a release letter and a Letter of Receipt for Payment of Fines dated February 11, 2003, issued by the Head of the Class IIB Sungai Penuh Penitentiary. The Petitioner once ran as a Candidate for Deputy Mayor of Sungai Full in Jambi Province in the 2020 Election of Mayor and Deputy Mayor of Sungai Penuh, which was promoted by the Central Leadership Council of the Indonesian Democratic Party of Struggle (DPP PDIP), the Central Leadership Council of the United Development Party (DPP PPP), and the Central Executive Board of the Berkarya Party (DPP Party Berkarya), but at the end of the registration period for the 2020 Sungai Penuh City Regional Head Election, the political party in question revoked its recommendation, due to a note in the Police Record Certificate (SKCK) which explained that the person concerned was involved in criminal activities as stated in Law 35 of 1997 on Psychotropics.

According to the Petitioners, their constitutional rights protected by Article 18 paragraph (4), Article 28D paragraph (1), Article 28D paragraph (3), and Article 28I paragraph (4) of the 1945 Constitution have been impaired by the application of the phrase "and other acts of violating decency" in Elucidation of Article 7 paragraph (2) letter i of Law 10/2016, because the norm has provided conditions that prevent the Petitioner from running for Deputy Mayor of Sungai Penuh because of the Petitioner's status as a former convict of a psychotropic case. According to the Petitioners, with the conditions that prevent former psychotropic convicts from running for regional heads and deputy regional heads, the convicts are sentenced to two times.

This creates legal uncertainty because all the sentences handed down by the Petitioner have been completed in 2003, but the right of the Petitioner to submit himself and be elected as regional head or deputy regional head is still lost.

The Petitioner argued that the phrase "as well as other acts of violating decency" contained in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016, contradicts Article 18 paragraph (4), Article 28D paragraph (1), and paragraph (3), Article 28I paragraph (4) of the 1945 Constitution. The constitutional losses suffered by the Petitioners are as follows:

The phrase "as well as other acts of violating decency" in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 can be interpreted as "despicable acts" which are broad, uncertain, and cannot be measured. This is against the principle of legal certainty because it is easily interpreted for political purposes by certain groups in the competition for the election of regional heads and deputy regional heads with certain objectives. In addition, it also contradicts the principle of the formation of good laws and regulations because the formulation is not clear so that it can lead to various interpretations in its implementation;

1. The phrase "and other acts of violating decency" in the Elucidation of Article 7 paragraph (2) letter i of

Law 10/2016 causes the Petitioner who is a former convict of a psychotropic case to be equated with a convict in a narcotics case. This has resulted in the general public, political party officials, or rights holders in nominating the Candidate Pair for Governor/Regent/ Mayor, equating narcotics and psychotropic convicts. As the Petitioner experienced when he became a candidate for Deputy Mayor of Sungai Penuh, where a political party gave a nomination recommendation to the Petitioner, but then the recommendation was revoked because the Petitioner was deemed guilty of storing psychotropic substances, due to a note in the Police Records Certificate (SKCK) which explained "that the person concerned engaging in criminal activities as stated in Law 35/1997 on Psychotropics";

2. The formulation of the norms of Article 7 paragraph (2) letter i of Law 10/2016 and its explanation are not in line or inconsistent with the Correctional Law which stipulates that criminal offenders who have served their sentences are given the restoration of their rights and freedoms;
3. SKCK as a nomination requirement is a form of arbitrariness by the authorities. In addition, the requirement "never commit a disgraceful act" that must be fulfilled by prospective regional heads and deputy regional heads is contrary to Article 18 paragraph (4) of the 1945 Constitution because sovereignty should be in the hands of the people.

In its legal considerations, the Court has considered that the right to vote and to be elected is a constitutional right, but the state may carry out restrictions stipulated by law solely to ensure recognition and respect for the rights and freedoms of others and to fulfill fair demands following considerations of morals, religious values, security, and public order in a democratic society [vide Article 28J paragraph (2) of the 1945 Constitution]. Restrictions on the right to vote are also known in Article 25 of the Covenant on Civil and Political Rights which states that every citizen has the right and opportunity, without the distinction as referred to in Article 2 and without unreasonable restrictions, one of which is to vote and be elected in general elections. To create a quality election, it is not only determined by the quality of the organization but also the candidates who will be elected as leaders must also be qualified. One way to maintain the quality of the election is to provide boundaries so that those who will participate in the election of regional heads and deputy regional heads are candidates with integrity.

Still, in its legal deliberations, the Court considers, both in the context of the right to be elected and the right to vote, the state sets limits on who can be categorized as eligible as voters and as candidates to be elected. In the case of such limitation of constitutional rights, it does not mean that the constitutional rights of the electorate and the elected candidate have been violated. Restrictions still need to exist to create an orderly electoral system and will produce a government led by the best candidates elected by the people who will then provide services to the community and create welfare for the people. Therefore, voters who will have the right to vote are also limited by conditions, namely voters who can account for their choices, which in the electoral system requires voters to be residents who are at least 17 years old or have/ have been married (see Article 1 number 6 of Law 1/2015). Voters are also required to be registered as evidenced by an Identity Card. Likewise, for people who want to nominate themselves as regional heads and deputy regional heads, there are conditions stipulated by law, one of which is the condition that they have never committed a disgraceful act which is the subject of the Petitioner's petition. The candidate requirements in Article 7 of Law 10/2016 are cumulatively determined by some 20 (twenty) conditions, all of which aim to become the initial filter to get the best candidate who after fulfilling the requirements will be chosen by the community to become regional leaders.

The limitation of human rights with candidate requirements must be seen not only from the perspective of the individual candidates who want to run for office but also from the perspective of the local community who is looking for their regional leader, whereas with the direct election system the people directly vote without a selection committee as in the election of positions. other positions. Therefore, the twenty requirements required by Article

7 of Law 10/2016 are an initial selection that can produce quality candidates to be chosen by voters. Thus, according to the Court, the requirements for candidates are needed in the election system for regional heads and deputy regional heads to realize essential democracy, namely democracy that is not only based on the majority of votes but which has the essence of the noble goal of realizing a prosperous society led by leaders with integrity and quality. resulting from an election process involving the people they lead.

Although the Court considers that the requirements for candidates for regional head and deputy regional head are important for the initial selection, the Court has also ruled in its decision that the conditions stipulated by the law are unconstitutional and must be given meaning. As stated in the Constitutional Court Decision Number 4/PUU VII/2009, on March 24, 2009, which decided that the requirement of never being sentenced to a criminal offense punishable by imprisonment of 5 years or more is unconstitutional as long as it does not meet the following requirements: (i) does not apply to public positions held elected (elected official); (ii) is valid for a limited period of only 5 (five) years after the convict finishes serving his sentence; (iii) exceptions are made for former convicts who openly and honestly state to the public that they are former convicts; (iv) not as a repeat offender.

Since the Constitutional Court Decision Number 4/PUU-VII/2009, the Court has also interpreted this condition of never being convicted several times in its last decision with the Constitutional Court Decision Number 56/PUU-XVII/2019, on December 11, 2019, namely candidates for regional heads and deputy regional heads. must meet the following conditions: (i) has never been 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, except for the convict who commits a criminal act of negligence and a political crime in the sense of an act declared as a criminal act in positive law only because the perpetrator has a different political view from the regime in power; (ii) for former convicts, a period of 5 (five) years has passed after the former convict has finished serving his prison sentence based on a court decision that has permanent legal force and honestly or openly announces his background as a former convict; and (iii) not being a repeat offender.

Furthermore, the requirement for never committing a disgraceful act as evidenced by SKCK, as regulated in Article 7 paragraph (2) letter i of Law 10/2016, although the Court has considered it in the Constitutional Court Decision Number 99/PUU XVI/2018, the Court only considers the phrase "narcotics users" in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016, whereas for the phrase "narcotics users" in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 the Court states as a constitutional norm, However, in legal considerations, it gives the meaning that a despicable character becomes inappropriate if it is attached to a person:

a. Narcotic users for health reasons are proven by a statement from a doctor who treats the user in question; or
b. ex-narcotics users who, because of their consciousness, reported themselves and had completed the rehabilitation process; or
c. ex-narcotics user who is proven to be a victim based on a court order/ decision ordered to undergo rehabilitation and has been declared to have completed the rehabilitation process as evidenced by a certificate from a state agency that has the authority to declare a person has completed the rehabilitation process.

According to the Court regarding the issue of the constitutionality of norms, Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 disputed by the Petitioner is as long as it is related to the phrase "as well as acts of other decency violations" contrary to the 1945 Constitution or as long as the phrase "and other acts of violating decency" equated with storing psychotropic substances without rights contrary to the 1945 Constitution and not legally binding conditionally (conditionally unconstitutional), as long as it is not interpreted, "except for former Psychotropic Convicts who have finished serving a prison sentence and a fine and have a five-year lag since the judge's decision has permanent legal force ".

The Petitioner considers the phrase in a quo norm to cause a quo explanation to be interpreted that the Petitioner who has served

a prison term and paid a fine for using psychotropic substances still can't fulfill the requirements of never committing a disgraceful act as required by Article 7 paragraph (2) letter i of Law 10/2016. Thus, they are prevented from running for regional head and deputy regional head.

The Court in its previous decision regarding former convicts who were threatened with imprisonment of 5 (five) years or more has held the opinion that former convicts who have finished serving their criminal period can nominate themselves as regional heads and deputy regional heads as long as they meet the requirements that have passed 5 (five) years and honestly or openly announce the background of his identity as a former convict, and not a repeat offender. Therefore, for candidates for regional heads and deputy regional heads who have qualifications as former convicts with a criminal penalty of 5 (five) years or more, the Court has confirmed by allowing the person concerned to be able to participate in the election of regional head and deputy regional head as long as fulfilling the requirements specified in Article 7 paragraph (2) letter g of Law 10/2016 as defined in the Constitutional Court Decision Number 56/PUU-XVIII/2019. This is because the final assessment of former convict candidates who participate in the contestation in the election of regional heads and deputy regional heads is the choice of the community/voters to determine them.

Concerning the requirements for candidates for regional heads and deputy regional heads as stipulated in Article 7 paragraph (2) letter i of Law 10/2016 and its Elucidation, the Court in the Constitutional Court Decision Number 99/PUU-XVI/2018 has also excluded the application of the condition not to commit disgraceful acts for narcotics users for health reasons; or ex-narcotics users whose awareness report themselves and have completed the rehabilitation process; or former narcotics users who are proven to be victims and who have been declared to have completed the rehabilitation process. Therefore, if he fulfills other requirements, he can nominate himself as a candidate for regional head and deputy regional head without being categorized as having committed a disgraceful act as referred to in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016.

Hence, the next question that must be answered is what about other former convicts who are not included in the provisions of Article 7 paragraph (2) letter g of Law 10/2016 as interpreted by the Constitutional Court Decision Number 56/PUU XVIII/2019 and former convicts who have completed their criminal period for committing disgraceful acts as contained in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 such as gambling, drunkenness, adultery, and drug dealers, including other acts of violating decency. Whether the perpetrators of criminal acts or other acts, as set out in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 who have been sentenced for their actions by the court and have completed their criminal period, are considered not eligible to nominate themselves as candidates for regional heads and deputy regional heads. Whereas, according to the Court, the condition for never committing a disgraceful act as evidenced by an SKCK is only administrative to prove that a person has or has never committed a disgraceful act. However, in this case, if it is related to the spirit contained in the norms of Article 7 paragraph (2) letter i of Law 10/2016 and its explanation, the SKCK is not the only parameter that someone who will run for regional head and deputy regional head is a legal subject who has a track record which can immediately be concluded that he does not meet the requirements as a candidate for regional head and deputy regional head. Because, it could be someone who commits an act as stated in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 due to negligence or negligence, in addition to the nature of the act which, even though it is a criminal act, could be classified as mild/ being compared with the perpetrators of criminal acts as regulated in Article 7 paragraph (2) letter g of Law 10/2016. Therefore, according to the Court, there will be disparities in the perspective of legal justice and constitutional rights justice if the perpetrators of criminal acts punishable by 5 (five) years or more are given the opportunity to nominate themselves as regional heads as stipulated in the norms of Article 7 paragraph (2) letter g of Law 10/2016 which has been interpreted by the Constitutional Court Decision Number 56/PUU-XVII/2019, while for perpetrators of acts that violate decency as stated in the Elucidation of Article 7 paragraph (2) letter i of Law

10/2016 and has been sentenced by the court and has finished serving the criminal period, the opportunity to run for regional head and deputy regional head is closed even if other conditions are met by the person concerned.

Hence, to fulfill legal certainty and a sense of justice, the Court has no other choice but to provide equal opportunities for perpetrators of disgraceful acts who have been sentenced by the court and have completed their criminal period to be able to nominate themselves in the contestation for the election of regional heads and deputy's heads. area. Thus, even though the requirements for attaching the SKCK as required in the norms of Article 7 paragraph (2) letter i of Law 10/2016 are still applied to every candidate for regional head and deputy regional head, whatever the model or format of the SKCK is, it should not be a barrier for candidates. the regional head and deputy regional head concerned to be able to participate in the contestation for the election of regional head and deputy regional head even if the person concerned has committed a disgraceful act as long as the person concerned has obtained a court decision and has finished serving his criminal period, and as long as other conditions are met. In other words, for candidates of regional heads and deputy regional heads who have committed acts that violate the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 and have been sentenced by the court and have completed their criminal period, they must be excluded from being subject to criminal charges. SKCK requirements are still associated with the act.

Because the requirements to become candidates for regional heads and deputy regional heads are made strictly to obtain candidates for regional leaders with integrity, even though candidates for regional heads and deputy regional heads who have been sentenced by the court and have completed their criminal period for committing actions regulated in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 are allowed to be able to nominate themselves as regional heads and deputy regional heads and consideration of choices is left to the voters/ community. However, this must not eliminate information about the identity of each candidate for regional head and deputy regional head. Therefore, as also applies to the provisions of Article 7 paragraph (2) letter g of Law 10/2016, to achieve the same goal, namely to provide complete information about the identity of each candidate for regional head and deputy regional head, then In interpreting the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016, it is also obligatory for candidates for regional heads and deputy regional heads who have committed disgraceful acts who have obtained a court decision and have completed their criminal period, to honestly or openly announce about the background of his identity as a former convict. It is also required in Article 7 paragraph (2) letter g of Law 10/2016, which has been interpreted by the Constitutional Court Decision Number 56/ PUU-XVII/2019.

With the confirmation from the Court above, the organizers of the election of regional heads and deputy regional heads, including in this case the Police who are authorized to issue SKCK, must immediately formulate the form/ format of the SKCK as required in the norms of Article 7 paragraph (2) letter i of Law 10 /2016 by adjusting the spirit contained in a quo decision. Therefore, the Court believes that it can accept the Petitioner's argument as long as it states that the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 creates legal uncertainty and injustice, as well as the Petitum of the Petitioner which asks to declare it conditionally unconstitutional. Thus, the Court concluded that the Petitioner's petition was legally grounded in part and did not have binding legal force as long as it was not interpreted, "except for the perpetrators of disgraceful acts who have obtained court decisions that have permanent legal force and have finished serving their criminal period, and honestly or openly announce the background of his identity as a former convict". Meanwhile, the arguments and other matters are not considered because they are deemed irrelevant and therefore must be declared unreasonable according to law.

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