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E-MAGAZINE

KONSTITUSI

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CONSTITUTIONAL HISTORY CENTER

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Editor's Foreword

New political parties registering for the 2024 Simultaneous Elections do not have the right to nominate presidential candidates. Article 222 of the Election Law states that only political parties with at least 20% (twenty percent) of the total seats in the House of Representatives or 25% (twenty-five percent) of the valid votes nationally in the previous House of Representatives member election can nominate a presidential candidate. Partai Kebangkian Nusantara (PKN) has also tested this provision materially. The hearing process related to Case Number 16/PUU-XXI/2023 can be read in the Main Report section this time.

In addition, there are many other rubrics that readers can refer to, including Opinions, News Flash, Khazanah, Milestones of Constitution, and others. Happy reading!

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TABLE OF CONTENTS

10 HEADLINE NEWS

RIGHTS TO NOMINATE PRESIDENTIAL CANDIDATES FOR NON-PARLIAMENTARY PARTIES

Partai Kebangkitan Nusantara (PKN) questioned discrimination against political parties nominating the presidential and vice-presidential. PKN has also tested the constitutionality of Article 222 of Law Number 7 of 2017 concerning General Elections (Election Law).

34 CONSTITUTIONAL DOCUMENTATION

INTERNATIONAL SYMPOSIUM THEMED PROTECTION OF HUMAN RIGHTS AND FREEDOM

CONSTITUTIONAL COURT STANDING FOR ARTICLE 222

The upcoming 2024 elections will be attended by 18 political parties and 6 local parties. In a simple understanding, these political parties can be divided into two groups of political parties participating in the elections. First is old political parties, in the sense that they have participated in previous elections (2019 Election). Second is new political parties that have never participated in elections before.

In this regard, provisions regarding the nomination of presidential and vice-presidential candidates in the 2024 Presidential-Vice Presidential Election as stipulated in the Election Law are often questioned about their constitutionality by the political parties participating in the election at the Constitutional Court (MK). Why? Because there is an assumption that the political parties participating in the election feel that they have the same rights and/or authority to nominate presidential and Vice-Presidential candidates. In addition, political parties feel that they have the most direct interest in the mechanisms and procedures for proposing presidential and vice-presidential candidates.

It seems striking because of the frequency with which Article 222 of Law Number 7 concerning General Elections (Election Law) which regulates the issue of presidential threshold requirements, both with the allocation of seats and valid votes, is tested by the Constitutional Court. No less than 23 cases were filed to test the constitutionality of this norm. The entire case has been decided by the Constitutional Court. The petitioners are various. There are individuals and political parties. Some political parties have participated in previous elections. Some political parties have not participated in the previous elections.

For political parties, the norm of Article 222 is considered to seize and eliminate rights, or to become an obstacle to the implementation of political party functions as mandated by the constitution, especially to nominate presidential-vice presidential candidates. It is also for new political parties, who feel they have lost their constitutional rights because they cannot use either the percentage calculation based on seat allocation or based on the percentage of valid votes from the previous election.

In short, concerning the existence of Article 222, what is often requested is that matters relating to the nomination of presidential and vice-presidential pairs are returned to the meaning of the Constitution, namely that all must be treated equally, fairly, and not discriminatory, both political parties participating in elections that have or have not participated in elections. previous period. At this point, concerning the division of old or new political parties, in Decision Number 16/PUUXXI/2023, the Constitutional Court once again emphasized its stance as has also been stated through various previous decisions.

First, parties who have the legal standing to apply for a review of the norms of Article 222 are (i) political parties or a combination of political parties participating in the election; and (ii) individual citizens who have the right to be elected and supported by a political party or a coalition of political parties participating in the General Election to nominate themselves or be nominated as a presidential-vice presidential pair or include supporting political parties to submit applications jointly.

Second, Article 222 is intended to regulate the minimum number (minimum threshold) of votes acquired as a condition that applies to political parties or combinations of political parties participating in elections that have taken part in the previous election in proposing pairs of candidates for President and Vice President. Third, in other words, Article 222 applies to political parties that have participated in elections and have obtained certain votes.

Fourth, Article 222 does not impede the constitutional rights of new political parties to participate in nominating the presidential-vice presidential pair in the upcoming elections after the 2024 elections. It is because new political parties can still join political parties or coalitions of other political parties that have met the threshold requirements for the candidacy of the President. and Vice President.

The Constitutional Court's decision with all its standing must now be grasped, guided by, and used as a guideline for all. Regardless of certain assumptions, like or not, agree or disagree with it. Thus, even if other parties want to test the norms of Article 222, it is very good if you first consider the four points above. After all, it is possible to have pocketed a 'weapon' in the form of a new argument to challenge. Greetings Constitution!

Window

DISSENTING OPINION

I D.G.Palguna

"Never be afraid to raise your voice for honesty and truth and compassion against injustice and lying and greed. If people all over the world ... would do this, it would change the earth "

William C. Faulkner, penerima Nobel Sastra 1949.

Radhabinol Pal should not be forgotten by any educator of international law, especially when discussing the legal issue of the (limited) inclusion of individuals or individuals as subjects of (public) international law. Judge Radhabinol Pal is the only judge at the International Military Tribunal for the Far East (IMTFE or often also called the Tokyo War Crimes Tribunal) who expressed a dissenting opinion that acquitted all the accused from all charges. Part of his dissenting opinion which is agreed upon by many legal experts, in particular, is his argument that the exclusion of the issue of Western colonialism and the bombings of Hiroshima and Nagasaki from the list of crimes and the absence of judges from vanquished nations sitting on the IMTFE shows "the failure of this

Court to give the victors anything but an opportunity to exact revenge."

The IMTFE was formed based on a special proclamation by General Douglas MacArthur, Supreme Commander of the Allies in World War II, dated January 19, 1946, after the end of World War II and marked by Japan's unconditional surrender to the Allies (Allied Forces). On the same day, General MacArthur also approved the Charter of the International Military Tribunal for the Far East which contained how the IMTFE was formed, what crimes must be considered, and how it (IMTFE) worked or exercised jurisdiction. This charter was made following the model used in its "twin court", namely the International Military Tribunal (IMT) in Nuremberg (Germany) which was formed to try the leaders of Nazi Germany on charges consisting of three groups of crimes related to the events of World War II: such as war crimes, war against peace, and crimes against humanity.

As was the case with its "twin trial" at Nuremberg (IMT), at EMTFE the charges brought against individuals from the Empire of Japan deemed responsible for crimes committed during World War II were also similar, consisting of three classes or groups:

class A (crimes against peace); class B (conventional war crimes);

and class C (crimes against humanity). However, unlike the trials at Nuremberg (IMT), at IMTFE accusations of crimes against peace are a prerequisite for prosecution – only those who were accused of crimes which included crimes against peace can be on trial in IMTFE. There were eleven countries involved in IMTFE – both as judges, prosecutors, and staff – namely countries that fought against Japan in World War II: the United States, Britain, the Soviet Union, France, China, Canada, Australia, Netherlands, Zealand Baru, Philippines, and India. There were 28 high-ranking Japanese officers and political leaders on trial at the court, including the reigning former prime minister and scores of former prime ministers, foreign ministers, and military commanders. However, Emperor Hirohito and members of his family were exonerated because the United States believed they were needed to maintain order in postwar Japan.

The IMTFE began to work on April 29, 1946. After the prosecution opened the case by reading out its indictments on May 3, 1946, the trial continued for more than two and a half years. There were 419 witnesses whose testimonies were heard as well as 4,336 pieces of evidence, including statements and written statements (affidavits) from 779 other people. In his indictment, the prosecution accused the defendants of having concocted a scheme or plan for the subjugation which contained "Planning and execution of... killings, acts which cause maiming and ill-treatment of prisoners of war and civilian prisoners... forced employment of prisoners of war and civilians under unfavorable conditions. inhumane ... looting of public and private property, the deliberate destruction of cities, towns, and villages without any justifiable military reason ... murder, rape, looting, robbery and mass torture and other barbaric atrocities against the population helpless civilians from occupied countries."

regarding the prosecution's indictment, the defendants represented by 100 lawyers (of which, apart from those from Japan, a quarter of whom were well-known lawyers from the United States) in their defense first "attacked" the existence of IMTFE. They stated that this court (IMTFE) seriously hesitated about its legality, fairness, and impartiality. Furthermore, the defendants rejected the prosecution's indictment by stating that "crimes against peace, and in particular, the lack of definition of conspiracy and aggressive warfare, have not been recognized as crimes under international law. Thus, the defendants went on to say, "the IMTFE was contradicting accepted legal procedure by trying the defendants retroactively for violating laws which had not existed when the alleged crimes had been committed". In addition, the defendants also firmly stated that there is no basis in international law for holding individuals accountable for actions committed on behalf of the state. The defendants also attacked the notion of "negative criminality" in which the defendants were tried because they were deemed to have failed to prevent violations of law and war crimes committed by other people, which had absolutely no basis in international law. The defendants also requested that the Allies' violations of international law be investigated.

There is one interesting and important thing to underline in the defense of one of the accused, namely the former Minister of Foreign Affairs Shigenori Tōgō. He insisted that Japan had no other choice but to enter the war for self-defense purposes. This is because the existence of the "Hull Note", Tōgō, was felt to have encouraged Japan to go to war or commit suicide. The "Hull Note" referred to by the former foreign minister - whose official name is Outline of Proposed Basis for Agreement Between the United States and Japan,

the last proposal given by the United States to the Empire of Japan before the attack on Pearl Harbor (7 December 1941) and the declaration

of war declared by Japan approximately seven and a half hours after the attack. The "Hull Note", which refers to the name of the US Secretary of State at that time, Cordell Hull, is a diplomatic note that contains a repetition of the United States demands that Japan withdraw from the territories it occupies, namely China and areas in Indochina controlled by France.

After the trial for more than two and a half years, the IMTFE passed its decision which took nine days because it was 1,781 pages. Through this decision, seven people were sentenced to death by hanging, sixteen people were sentenced to life imprisonment, one person was declared mentally unhealthy so that he could not be tried, and because of that the charges against him were withdrawn, two people died of natural causes during the trial so that the charges against him declared invalid. In that decision, five of the eleven judges expressed a dissenting opinion, namely Judge William Webb (Australia), Judge Delfin Jaranilla (Philippines), Judge Henri Bernard (France), Judge Bert Röling (Netherlands), and Judge Radhabinod Pal (India). Judge Webb stated that Emperor Hirohito should also be tried as a constitutional monarch who indirectly approved the acts committed by the defendants. Judge Jaranilla filed for dissenting because he considered the fine imposed by IMTFE to be too light. Meanwhile, Judge Bernard also considered that Emperor Hirohito's non-participation in the trial of Emperor Hirohito was a defect in the IMTFE and the lack of sufficient in-depth study by the judges. Meanwhile, Judge Röling in his dissenting opinion stated that it was almost impossible to define accurately and comprehensively the concept or understanding of "initiating or waging a war of aggression". In addition, Judge Röling also stressed that not only must the judges at IMTFE be neutral, but there should also be judges from Japan.

Of the five judges who stated their dissenting opinions, the dissenting opinion stated by Judge Radhabinod Pal attracted the most attention (and at the same time was considered controversial) because, in his dissenting opinion, Judge Pal stated "I would hold that each one of the accused must be found not guilty of each one of the charges in the indictment and should be acquitted on all those charges". Not only did Judge Pal acquit all of the accused from all charges, but he also questioned the idea of an international criminal court and the nature of the international legal order that was formed after the two world wars passed. Judge Pal called IMTFE and its ruling "victor's justice".

It is not easy to have the courage to express a different opinion in a situation of extraordinary trauma and horror caused by the atrocities of the world war which allegedly claimed more than 68 million lives. Meanwhile, the opinion that developed in (or rather developed by) the war-winning countries was that the criminals who came from the losing countries were the cause of the cruelty and horror. That was the situation that Judge Pal was in. Because of this, Judge Radhabinol Pal's dissenting opinion was not without criticism. Some called him an outspoken defender of Japanese imperialism. This criticism seemed to obtain justification when Hakim Pal's opinion was often quoted by right-wing groups who justified Japanese aggression in that period. However, Sumedha Choudhury in his writing in the Asian Journal of International Law (April 23, 2021) called Hakim Pal's dissenting opinion an opinion that "offers an understanding of international order which is being shrouded by clouds of unequal power structures and Western hegemony." Because of this, it cannot be included in a particular school of thought because it is the product of a specific period in history that witnessed the horrors of colonial expansion and the struggle for independencethataccompaniedit.*****

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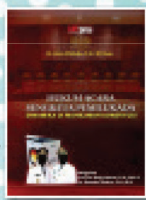

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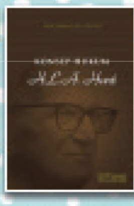

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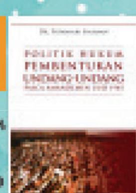

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Mahfud MD: Hakim Mbeling

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Luthfi Widagdo Eddyono
Expert Assistant of the Constitutional Court

THE ESTABLISHMENT OF CITIZENS' CONSTITUTIONAL RIGHTS AND ELECTIONS

General Election (Election) is the best means for the change of power. Therefore, besides having to be routine, it must also be based on the principles of directness, generality, freedom, confidentiality, honesty, and fairness. However, it is appropriate that the holding of elections should not only be based on these practical principles. There are principles of human rights and constitutional rights of citizens that should be used as an official reference in the holding of elections.

In fact, the two models of rights have been openly enshrined in the 1945 Constitution. The Indonesian written constitution is indeed the highest state document as a form of general agreement based on the principle of people's sovereignty. The constitution, which etymologically comes from the word "to constitute" (to form), is the highest law in the life of the nation and state (Gaffar, 2013).

Based on the principle of constitutionalism, it is necessary to understand which constitutional norms are constitutional rights of citizens and are related to the election process. Article 27 (1) states that all citizens have the same position before the law and government and are obliged to uphold that law and government without exception. Article 28 stipulates freedom of association and assembly, expression of thoughts orally and in writing, and so on. These two rights are intertwined with the norms of human rights in Chapter XA Human Rights, particularly in Article 28C (2), Article 28D (1), Article 28D (3), Article 28E (2) and (3), and Article 28I (1) UUD 1945.

In the conception of rights, it is clear that constitutional rights or human rights related to holding elections are part of civil and political rights. Such rights are attached to the status of citizens. Therefore, the state should protect so that these rights can be used, and not reduced.

The Protector of Citizens' Constitutional Rights

The Third Amendment to the 1945 Constitution has given a new thing to state administration. The Constitutional Court is very central in upholding the Constitution as the highest law. Its authority to review laws against the 1945 Constitution and decide disputes about general election results is very relevant to creating ideal conditions for holding elections. Thus, the function of the Constitutional Court can be considered to be the guardian of democracy, the protector of the citizen's constitutional rights, and the protector of human rights.

However, there are other main functions carried out by the Constitutional Court, namely as the guardian of the Constitution and the sole interpreter of the Constitution. It is called the Guardian of the Constitution because the Constitution must be guarded by its enforcement and used as the main reference in every policy-making. If

not, the Constitution will only be written on paper or what is known in terms of law in a book, not law in action. It only legitimizes government actions.

The Constitutional Court is also the main interpreter of the Constitution, which does not mean that other state institutions cannot interpret the Constitution. In the principle of checks and balances, all state institutions are equal and use the constitution as the basis for administering the state. Of course, other state institutions provide interpretations of constitutional norms that are still abstract known as the principle of departmentalism. However, there must be a final determinant for each of these interpretations, so that the administration of the state becomes effective and efficient, and is not debated protractedly.

In the context of holding elections, the existence of the Constitutional Court as part of the electoral justice system is also the final determinant of election results. Election dispute resolution does contain the principle that election complaints must be filed during the election period when the actions being contested occurred. Therefore, actions or decisions that are not challenged during a certain period are final and can no longer be disputed.

The Protection of Citizens' Rights

Abraham Lincoln coined the famous jargon, "Democracy is the government of the people, by the people, for the people." The important core of procedural democracy is of course in the holding of elections. Elections are the main means of determining the people's representatives and the president (politician) which correlates with the recruitment of leaders of other state institutions both in the executive, legislative and judicial spheres.

Since its establishment in 2003, one of the pieces of legislation that has often been tested at the Constitutional Court is the law related to the holding of elections. In 2022, Law Number 7 of 2017 had been tested 25 times, most of the laws being questioned about their constitutionality that year. Approaching the 2024 Election, it is certain that this year will also be occupied with testing laws related to the holding of elections.

Judging from the flashback of the journey of democracy that has been guarded by the Constitutional Court. There have been many decisions of the Constitutional Court that are landmark decisions in the field of elections, both national and local (Pilkada). Among these are the right to vote for former PKI members, the use of ID cards in elections, equal rights for submitting Regional Head Election candidates, individual candidates for Regional Head Election, the right to vote and be elected by former convicts, conditions for resignation of incumbent candidates, determination of elected candidates based on majority vote in legislative elections, protection of a sense of security in exercising their right to vote, the right to nominate themselves, the right to vote for the Indonesian National Armed Forces/Indonesian National Police, the recognition of voting based on customary law, the equalization of the electoral and local election regimes, as well as the ministerial requirements to become a presidential candidate.

Gustav Radbruch once mentioned, "It is the professional duty of the judge to validate the law's claim to validity, to sacrifice his own sense of the right to the authoritative command of the law, to ask only what is legal and ask not if it is also just." Various decisions of the Constitutional Court clearly convey the meaning that the essence of constitutionalism is legal decisions over practical political decisions. Soetandyo Wignjosoebroto once mentioned that the characteristic of constitutionalism is the concept of a rule-of-law state which states that the authority of law universally overcomes state power. In such a connection, law will control politics (and not vice versa). Soetandyo also explained another essence of constitutionalism is the rights of citizens.

Elections are not just a normal procession of changing power, but also the fulfillment of citizens' constitutional rights. The concept of constitutional democracy that the 1945 Constitution aspires to does not merely regulate the constitutional rhythm so that it is stable without ripples, but is still based on constitutional law and justice, and prioritizes the individual rights of citizens, especially in the process and final results of elections.

This writing is a personal opinion

RIGHTS TO NOMINATE OF PRESIDENTIAL CANDIDATES FOR NON-PARLIAMENTARY PARTIES

PETITIONER FOR CASE NUMBER 16/PUU-XXI/2023 TESTED ARTICLE 222 OF THE ELECTION LAW, IN THE PRELIMINARY EXAMINATION SESSION WHICH WAS HELD ON WEDNESDAY (2/15/2023),

Partai Kebangkitan Nusantara (PKN) questioned the existence of discrimination against political parties nominating the presidential and vice-presidential pair. PKN has also examined the constitutionality of Article 222 of Law Number 7 of 2017 concerning General Elections (Election Law).

In the preliminary examination session that was held on Wednesday (2/15/2023), the PKN who was registered as the Petitioner for Case Number 16/PUU-XXI/2023 tested Article 222 of the Election Law. According to PKN, this article contradicts Article 6A paragraph (2), Article 22E paragraph (1), Article 27 paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution.

Article 222 of the Election Law states, "Candidate pairs are nominated by political parties or coalitions of political parties participating in the election, who meet the requirements for obtaining seats of at least 20% (twenty percent) of the total seats in the House of Representatives or obtain 25% (twenty-five percent) of the votes valid nationally in the previous election for members of the House of Representatives".

Rio Ramabaskara as PKN's attorney in the hearing said that it was better if the participation of political parties (partpol) in each election period should be read differently even though the majority of participants are the same. This means that every political party election period must re-register, both the political parties participating in the previous election as well as new election participants or adhering to the active list system. Thus, if a political party does not register, then the political party concerned cannot take part in the next election even though at this time it has representatives in the national parliament.

As an illustration, in the 2019 election, 14 political parties were participating in the national election which was determined by the General Election Commission (KPU). Also, there were Acehnese local parties namely Parta Aceh, SIRA Party, Aceh Regional Party, and Nangroe Aceh Party. Furthermore, Eko Prabowo as the other Petitioner's attorney stated that in the upcoming 2024 Election based on KPU Decree Number 518 of 2022, 17 parties participating in the election had been determined. Furthermore, it was followed by Partai Ummat and several Acehnese local political parties. With this list, there are differences in participation between the 2019 Election and the 2024 Election. Continued Eko, the political parties participating in the election at each stage and period of the election are not the same but must go through the stages that have been determined simultaneously. According to the Petitioner, this matter was confused when the simultaneous election had to completely enforce the requirements of the previous election as a requirement, particularly in nominating the presidential and vice-presidential candidates.

"The principle of participation in each election is preceded by registration at the General elections commission. Any political party that does not register cannot participate in the stages of the election process, even if it has seats and votes. So, all political parties must go through the same mechanism, registration, verification, and then determination to become a political party participating in the election," said Eko.

According to the Petitioner, with simultaneous election decisions, Legislative Elections, and Presidential Elections at the same time, of course, it would be strange and incongruous to have calculations based on different voter data for the implementation of one Election period.

The requirements for registering

the candidacy of the Presidential and Vice-Presidential candidates using the old voter basis, however for the election using the new voter basis. This becomes anomalous and inconsistent. Even though the voter count is essential in elections.

Consequences of simultaneity according to the Petitioner should be returned to the essence and substance of Article 6A paragraph (2) of the 1945 Constitution. It authorizes the political parties participating in the election to nominate pairs of presidential and vice-presidential candidates without any additional requirements. Meanwhile, Article 222 of the Election Law regulates the matter of candidate threshold requirements for the president and vice president both with the allocation of seats and valid votes, and the court considered this as an open law policy. Thus, this regulation should also not revoke and eliminate the constitutional rights of other political parties participating in the election which cannot choose between the two requirements.

From the provisions of Article 6A paragraph (2) and the 1945 Constitution and related to the provisions of Article 222 of the Election Law, there is a void in norms that results in the loss of the constitutional rights of some political parties participating in legitimate elections. In the 2024 election, the political parties whose constitutional rights have been lost are the Petitioner (Kebangkitan Nusantara Party/PKN), Gelora Party, Buruh Party, and Ummat Party. Meanwhile, the other 14 political parties participating in the election can nominate candidates for President and Vice-President using a percentage calculation based on seat allocation or based on the percentage of valid votes from the previous election. However, the other four political parties participating in the election cannot use the two methods of proposing as stipulated in the provisions of Article 222 of the Election Law.

The decision of the Constitutional Court Number 14/PUU-X12013 and Decision Number 55/PUU-XVII/2019 which led to simultaneous elections should not have eliminated the constitutional rights of all political parties participating in the election but instead had to provide more guarantees of certainty and legal justice for all political parties participating in the election. The Court's decision must also provide a constitutional guarantee that there is no loss or elimination of the rights of political parties participating in the election due to the simultaneous choice.

In the petitum, the Petitioner asked the Court to declare Article 222 of the Election Law contrary to Article 6A paragraph (2), Article 22E paragraph (1), Article 27 paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution, conditionally as long as they are not interpreted, "For political parties approved by the General Elections Commission (KPU) as election contestants in that election period, who do not yet have seats and do not have valid national votes from the previous election, they are declared to be able to nominate presidential and vice-presidential candidates, either individually or in a combination of political parties, without any requirements. the meaning of this provision.

"Declaring that the Petitioner, both alone and together with a combination of other election participating political parties, has the right to propose/nominate, submit and register Presidential and Vice-Presidential candidates for the 2024 Election with the General Elections Commission," said the Petitioner's attorney, Dian Farizka.

Not Applicable For New Political Parties

On Thursday (3/30/2023), the Court decided not to accept the Petitioner's petition. In the

legal considerations read out by Constitutional Justice Wahiduddin Adams, the Court considered that the limitations/provisions in Article 222 Law 7/2017 could not be applied to the Petitioner. This is because the Petitioner is a political party that has never participated in a General Election in the previous Election and has just become a participating political party that will take part in the General Election in 2024. Meanwhile, the norms contained in Article 222 of Law 7/2017 apply to political parties that have taken part in elections and have obtained certain votes.

In addition, the provisions of Article 222 of the Election Law are intended to regulate the minimum threshold for vote acquisition as a condition that applies to political parties or coalitions of political parties participating in elections that have taken part in previous elections in nominating pairs of candidates for President and Vice President. Meanwhile, political parties that have never taken part in general elections in the previous election and have just become participating political parties that will take part in the 2024 general election, include the Petitioner.

Wahiduddin made it clear that this provision questions the requirements for nominating pairs of candidates for President and Vice President based on the acquisition of seats in the House of Representatives or valid votes nationally in the previous House of Representatives member elections. Therefore, this does not imply that it impedes the constitutional rights of the Petitioner as a new political party to participate in nominating the presidential and vice-presidential candidate pairs in the upcoming General Election. It is because the Petitioner can still join a political party or coalition of other political parties that have met the threshold requirements for the nomination of President and Vice President.

"Based on the assessment of the facts and law, the Court concluded that the Court has the authority to hear a quo petition. The Petitioner has no legal standing to submit a quo petition and the principal of the Petitioner's petition has not been considered," said Chief Justice of the Constitutional Court Anwar Usman in reading the conclusion of the case petition accompanied by Deputy Chief Justice of the Constitutional Court Saldi Isra along with seven other constitutional judges.

PKN is the Election Contesting Party

In response to this petition, Deputy Chief Justice of the Constitutional Court, Saldi Isra, had a dissenting opinion regarding the legal position of the Petitioner in submitting the petition. According to him, the Petitioner is a party that has a direct interest in the process and procedures for proposing the nomination of president and vice president. Based on the Decree of the General Elections Commission Number 518 of 2022 concerning Determination of Political Parties Participating in the General Election of Members of the People's Representative Council and Regional People's Representative Council and Local Aceh Political Parties Participating in the General Election as Members of the Aceh People's Representative Council and Regency/City People's Representative Council Year 2024, on December 14, PKN has been designated as one of the political parties participating in the 2024 General Election.

"Thus, constitutionally, there is not enough reason to declare the Petitioner does not meet the requirements as stipulated in the provisions of the norms of Article 6A paragraph (2) of the 1945 Constitution. That is, as a political party participating in the 2024 General Election, there is no hesitation for the Petitioner to submit an assessment of the unconstitutionality norm of Article 222 of Law 7/2017," said Saldi.

Furthermore, Saldi also stated factually, regarding the legal position of the Petitioner in assessing the constitutionality of the norms of Article 222 of the Election Law, for example, the Court in the Decision of the Constitutional Court Number 52/PUU-XX/2022 in Paragraph [3.6.2], among other things considered, " Therefore, it becomes clear that the Court's stance regarding parties who have the legal standing to apply for a review of the norms of Article 222 of the Election Law are (i) political parties or coalitions of political parties participating in general elections; and (ii) individual citizens who have the right to be elected and supported by political parties or coalitions of political parties participating in general elections to nominate themselves or be nominated as candidates for president and vice president or include supporting political parties jointly submitting an application". "Thus, every political party that has been declared as a participant in the general election has the constitutional right to apply for a review of the norms of Article 222 of Law 7/2017," said Saldi. ■

(LULU ANJARSARI P.)

LIST OF DECISIONS

JUDICIAL REVIEW DECISIONS

No.	Case Number	Case Subject	Petitioners	Decision	Date	Decision Link
1	6/PUU-XXI/2023	Formal and Material Judicial Review of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection against the 1945 Constitution of the Republic of Indonesia	Confederation of All Indonesian Trade Unions (KSBSI), in this case, represented by Elly Rosita Silaban (President) and Dedi Hardianto (Secretary General).	Withdrawn	April 14, 2022	Click Decision
2	70/PUU-XX/2022	Formal Testing of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation	Hasrul Buamona, et al	Unacceptable	April 14, 2022	Click Decision
3	14/PUU-XXI/2023	Formal Testing of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation	The National Trade Union Federation, et al.	Unacceptable	April 14, 2022	Click Decision
4	22/PUU-XXI/2023	Formal Testing of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation	PP FSP KEP SPSI, et al.	Unacceptable	April 14, 2022	Click Decision
5	18/PUU-XXI/2023	Material Judicial Review of Law Number 33 of 2014 concerning Guarantees for Halal Products and Government Regulations in lieu of Law Number 2 of 2022 concerning Job Creation	Rega Felix	Unacceptable	April 14, 2022	Click Decision

6	89/PUU-XX/2022	Material Judicial Review of Law Number 26 of 2000 concerning the Human Rights Court	Marzuki Darusman, et al.	Denied in its Entirety	April 14, 2022	Click Decision
7	108/PUU-XX/2022	Material Judicial Review of Law Number 27 of 2022 concerning Personal Data Protection	Leonardo Siahaan	Denied in its Entirety	April 14, 2022	Click Decision
8	110/PUU-XX/2022	Material Judicial Review of Law Number 27 of 2022 concerning Personal Data Protection	Dian Leonardo Benny	Denied in its Entirety	April 14, 2022	Click Decision
9	111/PUU-XX/2022	Material Judicial Review of Law Number 14 of 2005 concerning Teachers and Lecturers	Gunawan A.Tauda (Petitioner I) and Abdul Kadir Bubu (Petitioner II)	Denied in its Entirety	April 14, 2022	Click Decision
10	19/PUU-XXI/2023	Material Judicial Review of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes	Nandang Rakhmat Gumilar (Petitioner I), Bayu AlHafizh Nurhuda (Petitioner II), Achmad Rizki Zulfikar (Petitioner III), Muhammad Alfian (Petitioner IV), and Sofyan Hadimawan (Petitioner V)	Denied in its Entirety	April 14, 2022	Click Decision
11	20/PUU-XXI/2023	Material Review of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia	Hartono	Granted the request in its entirety	April 14, 2022	Click Decision
12	24/PUU-XXI/2023	Material Judicial Review of the Criminal Code	Risky Kurniawan (Petitioner I) and Michael Munthe (Petitioner II)	Unacceptable	April 14, 2022	Click Decision
13	25/PUU-XXI/2023	Material Judicial Review of Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Information and Electronic Transactions	Tedy Romansah	Unacceptable	April 14, 2022	Click Decision

EXPERIENCED IN A CASE OF ALLEGED DEFAMATION, A PRIVATE EMPLOYEE TESTED ITE LAW

The Constitutional Court (MK) held a Preliminary Examination Session on the application for Law Number 11 of 2008 as amended by Law Number 19 of 2016 Concerning Information and Electronic Transactions (UU ITE), on Thursday (16/3/2023) in Room MK Panel Session. The application, which was registered by the Constitutional Court with Number 25/PUU-XXI/2023, was filed by a private employee named Tedy Romansa.

The Petitioner questioned the norm of Article 27 paragraph (3) which was considered to be contrary to the 1945 Constitution. In a hearing chaired by Constitutional Justice Arief Hidayat, the Petitioner, represented by his attorney, Irfandi said that at first, the Petitioner clarified his biological mother regarding issues developing in society related to the relationship between biological mother The Petitioner and Dadang Kurniadi on July 31, 2022. Mrs. Karsah as the Applicant's mother, admitted that she had given IDR 200,000,000 (two hundred million rupiahs) in cash to Dadang Kurniadi on June 23, 2022. The money was for the purchase of a house and land area of 40 Bricks in the Ciomas area based on proof of receipt dated July 18, 2022.

Furthermore, on 18 February 2023, Irfandi continued, the Petitioner was summoned for questioning by the Kuningan Police at the Harda Sat Reskrim Unit of the Kuningan Police based on Letter Number B/103/II/2023/Reskrim dated 16 February 2023. On that date, the Petitioner is accompanied by an attorney If the law complies with the invitation for a request for information, the attorneys have discussed with investigators regarding the Joint Decree of the Minister of Communications, the Attorney General, and the Chief of Police Number 229 of 2021, Number 154 of 2021 and Number KB/2/VI/2021 concerning Guidelines for the Implementation of Certain Articles in Law 19/2016.

However, this rule was ignored and complaints of defamation and insults continued to be followed up. Even though it is clear that the Petitioner only received the recording and then sent it back to his relative privately, not spreading it in an open group as stipulated in the Joint Decrees of the Minister of Communication, the Attorney General, and the Chief of Police Number 229 of 2021, Number 154 of 2021 and Number KB/2/VI/ 2021 concerning Guidelines for the Implementation of Certain Articles in Law 19/2016 letter K the implementation section. It states that "It is not an offense of insult and or defamation in terms of content being spread through the means of closed or limited conversation groups such as family conversation groups, close friendship groups, professional groups, office groups or educational institutions". Irfandi said, the ITE Law contains many rubbery articles and each of these articles must be revised immediately so that it does not have the potential to undermine the values of justice and truth contained in the 1945 Constitution. The Petitioner did not obtain legal guarantees and certainty as a result of the enactment of Article 27 paragraph (3) and 45 paragraph (1945). 3) ITE Law.

The impact of the entry into force of this article is not only for the Petitioner but also for society in general. Moreover, the ITE Law is currently the main focus for the President of the Republic of Indonesia and other Government Officials including the Chief of Police. It is because the ITE Law has rubber articles that can be detrimental to many people, especially Indonesian citizens. There were also instructions from the President of the Republic of Indonesia regarding the ITE Law. Thus, the National Police Chief issued Circular Number SE/2/11/2021 concerning Ethical Cultural Awareness to create a clean, healthy, and productive Indonesian digital space. Hence, in their petitum, the Petitioners requested that the articles under review be declared contrary to the 1945 Constitution.

Responding to this request, Constitutional Justice M. Guntur Hamzah asked the Petitioner to add to the Constitutional Court Regulation Number 2 of 2021 (PMK 2/2021) to the authority of the Constitutional Court and to elaborate on its legal position. Meanwhile, Constitutional Justice Arief Hidayat asked the Petitioner to clarify the description of his legal position. Furthermore, strengthening and making arguments that can convince the Constitutional Court (Utami Argawati/Lulu Anjarsari P./Raisa Ayudhita).

TESTING THE CONSTITUTIONALITY OF ORGANIZATIONAL DEVELOPMENT RULES IN THE TAX COURT

The Constitutional Court (MK) held a hearing to review Article 5 paragraph (2) of Law Number 14 of 2002 concerning the Tax Court (Tax Court Law), on Monday (27/3/2023) in the MK Panel Courtroom. This application, which was registered with Number 26/PUU-XXI/2023, was filed by Nurhidayat, who is an advocate specializing in handling tax cases.

During the hearing, the Petitioner represented by Viktor Santoso Tandiasa said that the requirements to become a legal representative in a tax court that must be met, apart from those stipulated in the Tax Court Law, were stipulated by the Minister. Even though the requirements for becoming a Legal Counsel at the Tax Court are supposed to be as stipulated in Article 34 of the Tax Court Law, namely that you must have a Special Power of Attorney, be an Indonesian citizen, and have extensive knowledge and expertise regarding the regulation of tax legislation. However, in Article 34 paragraph (2) letter c of the Tax Court Law, there are other requirements stipulated by the Minister.

This is of course the impact of the Minister of Finance's authority over the organizational development, and administration of the Tax Court as stipulated in Article 5 paragraph (2) of the Tax Court Law. Thus, the Minister of Finance also has the authority to regulate the area of the advocate profession which can make it difficult for the Petitioner by changing the requirements that the Petitioner has actually fulfilled to become a legal representative in the tax court. In carrying out his duties and profession, of course, the Petitioner feels disadvantaged because the tax court where the Petitioner fights for the interests of his clients is still gripped by executive power.

With the application of the provisions of Article 5 paragraph (2) letter an of the Tax Court Law, the Petitioner is unable to obtain fair legal certainty because the provisions of a quo norm do not guarantee that the process of fighting for justice is not free from the intervention of the executive power. With the granting of the petition, the constitutional loss as argued by the Petitioner will no longer occur or will not occur in the future. Viktor also explained that Article 5 paragraph (2) of the Tax Court Law had already been submitted for review to the Constitutional Court and had been decided through Decision Number 10/PUU-XVIII/2020 and Decision Number 57/PUU-XVIII/2020.

Responding to the petition, the Panel of Judges provided suggestions for improving the petition. Constitutional Justice Wahiduddin Adams asked the Petitioner to describe the constitutional loss because the Petitioner was incomplete in describing the constitutional loss. Meanwhile, Constitutional Justice Saldi Isra advised the applicant to strengthen his legal standing. Meanwhile, Constitutional Justice Suhartoyo said the systematic application was good enough. However, he was concerned about the legal position of the Petitioner. " (Utami Argawati/Lulu Anjarsari P./M. Halim).

CONSTITUTIONALITY OF PRETRIAL PROVISIONS IS QUESTIONED

The provisions on pretrial, as contained in Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP), were materially challenged before the Constitutional Court (MK). M. Yasir Djamaludin, an advocate by profession, filed Petition No. 27/PUU-XXI/2023 to challenge Article 82 paragraph (1) letter d of the Criminal Procedure Code (KUHAP). The preliminary hearing of the case was held on Tuesday, March 28, 2023, in the Plenary Session Room of the Constitutional Court.

In the Petition, Imelda, as the legal counsel, argues that Article 82 paragraph (1) letter d of KUHAP had violated the Petitioner's constitutional rights. The Petitioner had performed his professional responsibilities by providing legal assistance in many cases. One of them is a pretrial motion registered as No. 1/Pid.Pra/2023/PN.Jap dated February 24, 2023, at the Jayapura District Court. However, the pretrial motion was deemed null and void as the case had been transferred to the Jayapura District Court and registered Criminal Case Number: 2/Pid.Sus-TPK/2023/PN.Jap and Criminal Case Number: 3/Pid.SusTPK/2023/PN.Jap, both dated March 01, 2023.

The Petitioner asserted that the enactment of Article 82 paragraph (1) letter d of the KUHAP had led to legal uncertainty for the advocate in performing his profession, considering that there is no clear emphasis on the interpretation of the phrase "the motion is null and void." Therefore, pretrial motions were not examined while the dossier was transferred and the case examined by the district court. Thus, the motion was declared null and void.

In response to the Petition, Constitutional Justice Enny Nurbaningsih advised the Petitioner to study the Constitutional Court Regulation (PMK) No. 2 of 2021 on judicial review. Meanwhile, Constitutional Justice Saldi Isra said that the Court could not examine and rule concrete cases, so the Petitioner was requested to elaborate on the background of the Petition so that the Constitutional Court could reconsider its stance in previous decisions. (Utami Argawati/Lulu Anjarsari P./Fitri Yuliana)

ADVOCATES RAISE CONCERNS OVER INVESTIGATIVE AUTHORITY BY THE PROSECUTION

Constitutional Court (MK) held a preliminary hearing of the material judicial review of three laws: Article 30 paragraph (1) letter d of Law No. 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia; Article 39 of Law No. 31 of 1999 on the Eradication of the Criminal Acts of Corruption; as well as Article 44 paragraphs (4) and (5) on the phrase "or the Prosecution Office," Article 50 paragraphs (1), (2), and (3) on the phrase "or the Prosecution Office," and Article 50 paragraph (4) on the phrase "and/or the Prosecution Office" of Law No. 30 of 2002 on the Corruption Eradication Commission (KPK Law). The preliminary hearing took place on Wednesday, March 29, 2023. Advocate M. Jasin Jamaluddin filed Petition No, 28/PUU-XXI/2023.

Through legal counsels Imelda, Reza Setiawan, and Putra Simatupang, the Petitioner argued that the articles violated Article 28D paragraph (1) of the 1945 Constitution. Simatupang explained before the Court that granting investigative authority on certain offenses to the Prosecution has led it to become a superpower. In addition to Prosecution, it can also investigate.

Meanwhile, the authority granted to the Prosecutor as an investigator in Article 30 paragraph (1) letter d of the Prosecution Law has enabled the Prosecutor to conduct an investigation arbitrarily. Imelda clarified that since Prosecutors are the ones conducting both pre-prosecution and investigation, there is no external supervision over their investigations by other institutions. Without proper control measures in place, Prosecutors often ignore requests for suspect rights, including requests to examine witnesses or experts to shed light on a case.

In one specific case, Putra reported that on February 21, 2023, a Prosecutor declared the Petitioner's client's dossier incomplete and that a follow-up investigation would be carried out. Despite the fact that the investigating Prosecutor skipped over the investigation, the pre-prosecution Prosecutor considered the dossier complete on February 23 and passed it to the public Prosecutor. Throughout the investigation, the Petitioner's client requested that his witnesses and experts be examined in order to shed light on the case. However, the investigator and pre-prosecution prosecutor ignored the request.

Therefore, in the petitum, the Petitioner requested that the Court declare all the petitioned articles, namely Article 30 paragraph (1) letter d of Law No. 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia; Article 39 of Law No. 31 of 1999 on the Eradication of the Criminal Acts of Corruption; as well as Article 44 paragraphs (4) and (5) on the phrase "or the Prosecution Office," Article 50 paragraphs (1), (2), and (3) on the phrase "or the Prosecution Office," and Article 50 paragraph (4) on the phrase "and/or the Prosecution Office" of Law No. 30 of 2002 on the Corruption Eradication Commission (KPK Law) in violation of Article 28D paragraph (1) of the 1945 Constitution.

Justice Daniel Yusmic P. Foekh recommended that the legal standing should be expanded upon if the Petitioner has a specific case regarding the phrases being petitioned. This will help convince the justices that the enactment of the norms had negatively impacted the Petitioner. Additionally, the Petitioner should clarify the connection between the touchstone and the articles being petitioned.

Meanwhile, Constitutional Justice M. Guntur Hamzah requested that the Petitioner clarify his legal standing. He was asked to explain the connection between his roles as an advocate and law enforcement officer and how it relates to the articles in question. During the session, Constitutional Justice Suhartoyo requested the Petitioner to improve their argument regarding the actual and potential constitutional harm. The Justice also informed the Petitioner that the revised Petition should be submitted by Tuesday, April 11, at 13:00 WIB before concluding the session. (Sri Pujianti/Nur R./Raisa Ayudhita)

PSI PROPOSES MINIMUM AGE OF 35 FOR PRESIDENTIAL AND VICE PRESIDENTIAL CANDIDATES IN INDONESIA

On Monday, April 3, 2023, the Constitutional Court (MK) held a judicial review hearing on Article 169 letter q of Law No. 7 of 2017 on General Elections (Election Law). The Indonesian Solidarity Party (PSI) (Petitioner I) and many individual Indonesian citizens, including Anthony Winza Probowo (Petitioner II), Danik Eka Rahmaningtyas (Petitioner III), Dedek Prayudi (Petitioner IV), and Mikhail Gorbachev (Petitioner V), filed Case No. 29/PUU-XXI/2023.

The Petitioners, represented by Francine Widjojo, argued that the current minimum age requirement for presidential and vice-presidential candidates is unambiguously set at 40 years. However, the Petitioners themselves are currently 35 years old and believe that the minimum age limit should be lowered to 35 years, given their extensive experience and qualifications for running for president and vice president. They claimed this norm is discriminatory and goes against moral and rational values, violating Article 28D paragraph (3) of the 1945 Constitution.

Therefore, the Petitioners requested that the Court accept and grant their Petition in its entirety and declare that Article 169 letter q of the Election Law contradicts the 1945 Constitution (unconstitutional) and is not legally binding, as long as it is not interpreted as "at least 35 (thirty-five) years old."

Judge Arief Hidayat advised on the Petitioners' Petition, stating that it did not comply with Constitutional Court Regulation (PMK) No. 2 of 2021 regarding legal standing and constitutional impairment. Specifically, Petitioner I, a political party, was found to lack legal standing as it did not have a legislative representative due to not meeting the parliamentary threshold.

Meanwhile, Constitutional Justice Manahan M. P. Sitompul stated that the political party must explain that its statute/bylaws state that the chairperson and secretary-general have the authority to file the Petition on its behalf. He also instructed individual Petitioners II-V to explain their legal standing. In addition, Justice Saldi Isra pointed out that the individual petitioners failed to provide their dates of birth, which is essential for the Justices to determine their age in connection with the case under consideration. (Sri Pujianti/Nur R./ Tiara Agustina)

PROSPECTIVE PROSECUTOR REQUESTS MK TO REVISE DEFINITION OF PUBLIC PROSECUTOR IN THE PROSECUTION LAW

A material judicial review hearing regarding Law No. 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia was held on Tuesday, April 4, 2023, by the Constitutional Court (MK). The hearing addressed Article 1 point 3, Article 19 paragraph (2), Article 20, and Article 21 of Law No. 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia. The case, numbered 30/PUU-XXI/2023, was filed by Jovi Andrea Bachtiar, a prosecution analyst and prospective Prosecutor from the Tojo Una-Una Prosecution Office in Central Sulawesi Province.

The Petitioner, through legal counsel Welly Anggara, has requested that the Court provide a constitutional interpretation to revise the definition of Public Prosecutor in Article 1 Point 3 of the Prosecution Law to include the Attorney General as part of the Public Prosecutor, not just civil servant prosecutors (PNS), as the Attorney General could be a retired prosecutor who is no longer a civil servant (PNS). This would ensure that the a quo norm does not violate Article 18 paragraph (1) of the Prosecution Law. He also requested that the Court provide an interpretation of the appointment of the Attorney General that is without a fit and proper test by the House of Representatives (DPR), which is a form of checks and balances. He asserted that this could potentially undermine the independence of the Indonesian Attorney General's Office as a law enforcement body in Indonesia.

Jovi further points out that Article 20 of the Prosecution Law creates an easy path for someone who has never worked as a prosecutor through various stages and processes to become Attorney General. He stated that he had worked very hard for 1-2 years as a prosecution analyst and had spent months participating in prosecutor education and training (PPPJ) in order to become a Prosecutor. He claimed that the norm violated Articles 27 paragraph (1), 28D paragraph (1), and 28H paragraph (2) of the 1945 Constitution.

In response, Constitutional Justice Wahiduddin pointed out that the Petition lacked details regarding the Petitioner's constitutional impairment and the causal relationship between the norm's implementation and the potential loss the Petitioner may face. Furthermore, the Petition contained uncommon elements that did not conform to the standard format submitted to the Constitutional Court.

Constitutional Justice Enny requested that the Court's authority be elaborated through the 1945 Constitution, Judicial Law, and Constitutional Court Law so that it was obvious that it had the authority to rule on the matter. She further stated that the Petitioner's constitutional rights were not explained. "Show whether there was a factual or constitutional impairment." "It is not necessary to explain that the Petitioner is a taxpayer because [the case] is unrelated to taxation laws," she explained.

While Constitutional Justice Suhartoyo, in his advice, mentioned the need for solid and substantive arguments from the Petition so that the sequence of the Petition becomes more concise and clear. He suggested that the Petitioner's legal standing could be improved if potential impairment was explained, as the Petitioner does not meet the necessary requirements to become a Prosecutor in the near future. "Explain the difference between leadership by a career and a non-career Attorney General," he said. (Sri Pujianti/Lulu Anjarsari P./Fitri Yuliana)

DEADLINE FOR RESOLVING PRESIDENTIAL ELECTION DISPUTES IN CONSTITUTIONAL COURT LAW IS BEING QUESTIONED

A teacher named Herifuddin Daulay has filed a judicial review petition to the Constitutional Court (MK) regarding Law No. 24 of 2003 on the Constitutional Court, as amended by Law No. 7 of 2020 on the Third Amendment to Law No. 24 of 2003 on the Constitutional Court, as well as Law No. 7 of 2017 on General Elections (Election Law). The preliminary hearing for case No. 31/PUU-XXI/2023 took place on Wednesday, April 5, 2023, in the panel courtroom.

Virtually, the Petitioner asserted that Articles 74 paragraph (3) and 78 letter a of the Constitutional Court Law, as well as Articles 475 paragraphs (1) and (3) of the Election Law, violated Articles 1 paragraph (2), 6A paragraph (1), 27 paragraph (3), and 22E paragraph (1) of the 1945 Constitution. He stated that the Court would be very unlikely to be able to settle disputes over the presidential election results fairly within fourteen workdays since the Court would conduct a thorough investigation of the Petition's reasoning. He claimed that a thirty-day deadline following the deadline for resolving disputes over legislative election results would be ideal.

Constitutional Justice Suhartoyo said the Petitioner could formulate the articles of the laws being petitioned so that the Court could see the connection between them and the impairment of the Petitioner's constitutional rights as an eligible voter. Additionally, he advised the Petitioner to provide a detailed explanation of the constitutional impairment.

Constitutional Justice Wahiduddin Adams advised the Petitioner to review his legal standing by observing Article 51 of the Constitutional Court Law, which details the petitioners and their constitutional impairment and the Court's authority in solving this case. He also recommended the Petitioner study the previous cases submitted to the Constitutional Court to better understand the Petition's systematics. Meanwhile, Constitutional Justice Saldi Isra requested clarification from the Petitioner regarding the nature of their Petition. Specifically, they must indicate whether it pertains to the 2019 election or a judicial review of norms. If the Petitioner intends to challenge the election, the Court lacks the authority to adjudicate. (Sri Pujianti/Lulu Anjarsari P./M. Halim)

OPEN TO MULTIPLE INTERPRETATIONS: PHRASE "OTHER DISTURBANCES" ON ELECTION DELAY CHALLENGED

A petition has been filed by Viktor Santoso Tandiasa challenging the interpretation of the phrase "other disturbances" in Law No. 7 of 2017 on General Elections, which pertains to the requirements for delaying an election. Viktor Santoso Tandiasa filed a petition of the Law due to the Central Jakarta District Court Decision No. 757/Pdt.G/2022/PN_Jkt. Pst petitioned by the Partai Rakyat Adil Makmur. The decision penalized the General Elections Commission (KPU) for not implementing the remainder stages of the 2024 Election and ordered it to start over within two years, four months, and seven days from the decision date.

Viktor made the statement while appearing in Court for a preliminary hearing on Thursday, April 6, 2023, in the plenary courtroom. In petition No. 32/PUU-XXI/2023, he claims that the concrete case correlated to the phrase "other disturbances" in Articles 431 and 432 of the Election Law, which he feels is open to multiple interpretations.

The hearing was presided over by Constitutional Justice Arief Hidayat, accompanied by Constitutional Justice M. Guntur Hamzah and Constitutional Justice Enny Nurbaningsih. During his argument before the Constitutional Justices, Viktor expressed his concern about the vagueness of the phrase "other disturbances." He pointed out that this phrase could have multiple and broad interpretations, as many conditions could meet the requirement for delaying an election. For example, he mentioned the Central Jakarta District Court Decision No. 757 of 2022, which is the reason for the concrete case in the Petitioner's Petition.

Viktor has pointed out that failure to implement the District Court Decision No. 757/2022 by the KPU could result in certain aspects of the election being legally flawed. Additionally, it is concerning that the KPU proceeded with the election stages despite the ongoing appeal process.

Viktor emphasized the principle of "Res Judicata Pro Veritate Habetuur," which states that decisions should be considered valid and can be implemented (uitvoerbaar bij voorraad) until they are corrected or annulled by a higher court in casu appeal and cassation up to judicial review.

Meanwhile, he continued, if the KPU insists on continuing the election, it would face criminal punishment. For example, another litigant could sue it to the State Administrative Court for having committed an unlawful act (onrechtmatige overheidsdaad) in casu of not implementing the district court decision. Viktor stated that this would weaken the KPU's position in conducting the election and could lead to delays or postponements categorized as "other disturbances."

Based on those explanations, Viktor argued that the phrase "other disturbances" in Article 431 paragraph (1) and Article 432 paragraph (1) of Law No. 7 of 2017 violated Articles 1 paragraph (3), Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution. Thus, in his petitum, he requests the Court to declare the phrase "other disturbances" in Articles 431 paragraph (1) and 432 paragraph (1) of the Election Law unconstitutional and not legally binding.

In response, Constitutional Justice M. Guntur Hamzah stated that the Petition was technically complete, including its legal standing. However, the Petitioner's legal standing as an individual citizen with voting rights must be explained regarding the phrase "other disturbances."

Meanwhile, Constitutional Justice Enny Nurbaningsih asked the Petitioner to clarify the context of the election, which she felt was irrelevant. She believes that laws cannot always dictate interpretation, especially in cases like the COVID-19 pandemic. Not to mention, Article 432 paragraph (3) of the Election Law has dictated the percentage for a late or postponed election. (Utami Argawati/ Lulu Anjarsari P./Andhini S.F.)

COMPLAINT IGNORED, PROVISIONS ON TERMINATION OF INVESTIGATION ARE CHALLENGED

On Monday afternoon, April 10, 2023, the Constitutional Court (MK) held a preliminary hearing of the judicial review of Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP) in the plenary courtroom. Asep Muhidin and Rahadian Pratama, both entrepreneurs from Garut Regency in West Java Province, filed Petition No. 33/PUU-XXI/2023.

The Petitioners, two residents of Garut, West Java, have expressed concern that the norm mentioned in Article 80 of the Criminal Procedure Code (KUHAP) violates the 1945 Indonesian Constitution (UUD 1945). During the virtual court session, the Petitioners explained that they had filed three pretrial motions, all of which were rejected because the Prosecution Office had not performed any investigation in response to public complaints. Therefore the judges regarded the motion premature.

Asep requested that the Garut District Public Prosecutor's Office take legal action in accordance with its primary duties of responding to public complaints so that they could follow up on the cases as soon as possible. However, the law enforcement authorities caused harm by failing to follow up on submitted reports and failing to notify the petitioners, causing the petitioners to repeatedly seek information from the High Prosecutor's Office.

Furthermore, Asep explained that criminal acts of corruption led to extensive losses, affecting all citizens. Therefore, there needs to be a mechanism for victims (citizens) who report alleged corruption offenses to oversee the law enforcement process at the Republic of Indonesia's Prosecutor's Office. He believes that public participation in the prevention and elimination of criminal acts of corruption can be realized through seeking, obtaining, and providing data or information on criminal acts of corruption as well as having the right to express suggestions and opinions responsibly on the prevention and elimination of criminal acts of corruption. A failure to take concrete and legal actions on reports from the public about alleged criminal acts of corruption for over a year is inappropriate. It is against the principle of legal certainty. Therefore, the Petitioners felt constitutionally harmed due to the lack of legal certainty from the Prosecution Office, which did not respond to public complaints on alleged criminal acts of corruption by those institutions.

In response, Constitutional Justice Daniel Yusmic P. Foekh stated that when there are multiple touchstones, the norms relating to the touchstones must be mentioned and elaborated one by one. Meanwhile, Constitutional Justice Manahan MP Sitompul advised the Petitioners to refer to the previous petitions filed to the Court. (Utami Argawati/Nur R./Raisa Ayuditha)

PETITIONER QUESTIONS MENTAL HEALTH CERTIFICATE REQUIREMENT FOR PANWASLU SELECTION PROCESS

On Tuesday, April 11, 2023, the Constitutional Court (MK) held a judicial review hearing in the plenary courtroom on Article 92 paragraph (2) letters c and d and Article 117 paragraph (1) letters g and h of Law No. 7 of 2017 on General Elections (Election Law). The case registered as Case Number 34/PUU-XXI/2023, was filed by Suryadin and was presided over by the Panel of Judges comprising Constitutional Justices Wahiduddin Adams, Saldi Isra, and Enny Nurbaningsih.

The Petitioner, who attended the hearing in person, revealed that between 2017 and 2022, he participated in many selection processes for prospective members of the Election Supervisory Body (Bawaslu) of Dompu Regency, West Nusa Tenggara (NTB). He was declared a possible interim member in September 2022 after passing the administrative selection, written test, and interview. The Petitioner raised concerns about the requirement for a mental health certificate from a psychiatrist, which the Dompu Regency Bawaslu mandated for all applicants, despite the selection process for the Dompu Regency's subdistrict Panwaslu (Elections Supervisory Committee) not having the exact requirement.

Constitutional Justice Saldi advised the Petitioner to carefully observe the Constitutional Court Regulation Number 2 of 2021, which outlines the proper format for submitting a petition to the Constitutional Court. Furthermore, the Petitioner was expected to explain the constitutional impairment he suffered due to the enactment of the norms. The Justice also advised him to review what he requested (petitum).

Meanwhile, Constitutional Justice Enny Nurbaningsih advised the Petitioner to carefully examine past Constitutional Court petitions related to the issues raised. This will help to strengthen the background of the arguments in the current Petition and highlight any contradictions in norms that are not evident in the present case. Before proceeding to the posita, it is crucial to show that the current Petition is not ne bis in idem with previous petitions. Justice Nurbaningsih also recommended thoroughly studying Bawaslu's regulations and legislation to clarify their correlation with the current case. (Sri Pujianti/Nur R./Tiara Agustina)

MINERAL MINING BAN PROVISIONS IN COASTAL ZONE AND SMALL ISLANDS ARE CHALLENGED

A preliminary judicial review hearing took place on Wednesday, April 12, 2023, at the Constitutional Court (MK). The review focused on the provisions that prohibit mineral mining activities in coastal zones and small islands as stated in Article 23 paragraph (2) and Article 35 letter k of Law No. 1 of 2014 on the Amendment to Law No. 27 of 2007 on the Management of Coastal Zones and Small Islands (Coastal Management Law). The hearing was held in the plenary courtroom of the Constitutional Court (MK), and petition No. 35/PUU-XXI/2023 was filed by PT. Gema Kreasi Perdana, represented by Executive Director Rasnius Pasaribu.

During the hearing led by Chief Justice Anwar Usman, Feri Wirsamulia presented that the Petitioner is a limited liability company (PT) with a mining business permit for small islands. However, the local community is against the business and has opposed its mining operations. They have filed a material judicial review of the Konawe Islands Regency Regulation No. 2 of 2021 on the Regional Spatial Plan of Konawe Islands Regency of 2021-2041 (Exhibit P-74, particularly Article 24 letter d, Article 28, and Article 36 letter c, which specifically regulate mining areas on Wawonii Island), to the Supreme Court.

Feri stated that on December 22, 2022, the Supreme Court issued Decision No. 57/P/HUM/2022, ruling that those articles were not legally binding since they violated the a quo Law, particularly Article 23 paragraph (2) and Article 35 letter k.

Following this ruling, the Petitioner feels its constitutional rights had been violated by the enactment of Article 23 paragraph (2) and Article 35 letter k of the Coastal Management Law, which the Supreme Court interpreted as an unconditional ban on mining activities in the area through Decision No. 57/P/HUM/2022. In its decision, the Supreme Court of the Republic of Indonesia stated that Article 24 (d), Article 28, and Article 36 letter (c) of the Regional Regulation of Konawe Regency Islands Regency Regulation Number 2 of 2021 concerning the Regional Spatial Plan of the Regency Konawe Islands Year 2021–2024 were not legally binding because they violated Article 23 paragraph (2) and Article 35 letter (k) of the a quo Law.

In response, during the hearing, Constitutional Justices Manahan M.P. Sitompul and Daniel Yusmic P. Foekh gave recommendations for improving the Petition. Justice Sitompul suggested that the Petitioner should review Constitutional Court Regulation (PMK) No. 2 of 2021 and revise the legal standing of the Petition. On the other hand, Justice Foekh advised the Petitioner to update their profile to accurately describe the authorized parties representing PT Gema Kreasi Perdana as a private legal entity. The Chief Justice, Anwar Usman, also recommended the Petitioner refer to previous Constitutional Court decisions on similar articles to avoid repetition (nebis in idem) with the previous Petition (Utami Argawati/Lulu Anjarsari P./Fitri Yuliana).

PREVIOUSLY ANNULLED PUNISHMENTS FOR INSULTING STATE EMBLEMS ARE CHALLENGED

Article 237 letter c of Law No. 1 of 2023 on the Criminal Code (KUHP) contains provisions for criminal punishment for insulting the state emblem. These provisions were materially challenged in the Constitutional Court (MK) by Leonardo Siahaan and Ricky Donny Lamhot Marpaung through petition No. 36/PUUXXI/2023. They also challenged Article 100 paragraph (1) and Article 256 of the Criminal Code. On Thursday, April 13, 2023, Siahaan attended a preliminary hearing in the plenary courtroom and claimed that Article 237 letter c of the Criminal Code resembled Article 57 letter d, which the Court had previously annulled. Siahaan believes that this article demonstrates the Government's disregard for Constitutional Court Decision No. 4/PUU-X/2012.

In their Petition, the Petitioners express their concerns regarding the criminal penalties imposed on individuals who protest without a permit, as outlined in Article 256 of the Criminal Code. They believe that this provision has the potential to cause harm and violate the right to freedom of speech as guaranteed by Article 28 of the 1945 Constitution. The Petitioners oppose Article 100 of the Criminal Code, which they believe could cause constitutional harm if the death penalty is only implemented after a probationary period. They argue that the death penalty is the most effective punishment for achieving justice and deterring similar crimes. They believe the death penalty can prevent potential criminals, leading to a more stable and controlled community. Based on these matters, the Petitioners have requested that the Court declare Articles 100, 237 letter c, and 256 of the Criminal Code unconstitutional and not legally binding.

Constitutional Justice Manahan M. P. Sitompul responded to the Petition by reminding the Petitioners that when a law is enacted, there may be material losses in judicial review. On the other hand, Constitutional Justice Wahiduddin Adams emphasized that the three articles should be deemed unconstitutional and not legally binding. He also pointed out that although the Criminal Code had been passed, it would not be enforced for another three years. Justice Adams requested that the matter be reconsidered. (Utami Argawati/Lulu Anjarsari P./Andhini S.F.)

THE CONSTITUTIONAL COURT'S INTERNATIONAL SYMPOSIUM

Constitutional Justice Suhartoyo attended an International Symposium in Thailand in early April. The Indonesian delegation introduced MKRI to the world's Constitutional Courts during the event. Here's a sneak peek at the event.

International Symposium on the Protection of Rights and Liberties

On April 10, 2023, Constitutional Justice Suhartoyo led a delegation from the Constitutional Court of the Republic of Indonesia (MKRI) to attend an international symposium in Bangkok, Thailand. The symposium, titled "The Constitutional Court on the Protection of the People's Rights and Liberties," coincided with the twenty-fifth anniversary of Thailand's Constitutional Court. Other Constitutional Courts in attendance included those from Indonesia, Austria, Mongolia, and Korea.

MKRI's Role in Guaranteeing Constitutional Rights

In the second session of the International Symposium hosted by the Constitutional Court of Thailand, Constitutional Justice Suhartoyo presented a lecture titled "The Constitutional Court of the Republic of Indonesia's Role in Guaranteeing Citizens' Constitutional Rights and Freedoms." The event took place on Monday, April 10, 2023, in Bangkok, Thailand. Suhartoyo emphasized that freedom of opinion and expression is crucial to any democratic nation.

Bimtek PHPU for Indigenous Communities

The Constitutional Court invited not only political parties but also *Lembaga Tinggi Masyarakat Adat Republik Indonesia (Lemtari)*, an institution representing Indonesian indigenous people, to participate in the workshop on procedural Law for resolving disputes arising from the 2024 General Election Results (PHPU). Let's take a look at the documentation of the event.

On Monday, April 10, 2023, Chief Justice Anwar Usman gave his speech and opened a workshop at the Pancasila and Constitution Education Center in Cisarua, Bogor, West Java Province. The workshop focused on procedural Law for the 2024 General Election Results Dispute Resolution (PHPU). It was held for the *Lembaga Tinggi Masyarakat Adat Republik Indonesia (Lemtari)*, an institution dedicated to Indonesian indigenous people.

Justice Arief Gives Lecture on Nationalism for Indigenous Communities (Lemtari)

Constitutional Justice Arief Hidayat became a speaker by giving a lecture on nationalism before the indigenous people (Lemtari) in the workshop on the procedural Law for the 2024 General Election Results Dispute (PHPU) on Wednesday, April 12, 2023, at the Pancasila and Constitution Education Center in Cisarua, Bogor, West Java Province.

Donating to Orphaned Children to Complete Worship

MK makes donations to the sons and daughters of late court employees in the Holy month of Ramadhan in order to share happiness. The portrait below captures the joyful grins of the recipients.

Officials and staff of the Constitutional Court (MK) organized a donation event for orphaned children of late Court employees on April 12, 2023, which was the 21st day of Ramadan 1444 AH. The event took place at the Court's main building. It was attended by Chief Justice Anwar Usman, Deputy Chief Justice Saldi Isra, Acting Secretary-General Heru Setiawan, Secretary-General of the Witness and Victim Protection Agency (LPSK) Noor Sidharta, Director of BAZNAZ (National Zakat Board) Center of Strategic Studies (Puskas) Muhammad Hasbi Zaenal, as well as other officials. The donation was given to a total of 19 orphaned children from 10 families.

SCIENTIFIC CHAIN OF CONSTITUTIONAL LAW IN INDONESIA (Introduction)

BISARIYADI
Expert Assistant of Constitutional Justice

Understanding *"sanad"* is crucial in Islamic Law, specifically in the study of the transmission of Prophet Muhammad's sayings, known as *hadith*. Hadith transmission involves examining two important aspects: the "*Sanad"* and the *"Matan."* *"Sanad"* refers to the careful examination of the chain of transmission of knowledge from Prophet Muhammad (pbuh) to the current physically living teacher of that field. Meanwhile, *"Matan"* pertains to the arrangement of words that represent the content of the Prophet's sayings or the actual text of the hadith.

To ensure the accuracy and credibility of a hadith, it is crucial to thoroughly investigate the chain of "sanad" and the individuals who conveyed the information. This process involves examining their backgrounds and determining their reliability and authenticity. It should be noted that the compilation of hadith took place long after the Prophet's passing. Therefore, the scholars who collected the hadith needed to verify the authenticity of each statement and confirm that it truly originated from the Prophet.

If a saying is attributed to the Prophet, but the chain of narrators includes unreliable individuals, the validity of that statement may be disputed.

The concept of *"sanad"* is not restricted to just the transmission of hadith. In the tradition of Islamic boarding schools (*pesantren*), there are two types of *"sanad"* – "scientific links (*sanad keilmuan*)" and "lineage links (*sanad keturunan*)." "*Sanad keilmuan*" concerns knowledge transfer between teachers and students based on an educational relationship. Conversely, "*sanad keturunan*" refers to a genealogical lineage based on blood relations. For example, individuals who can trace their ancestry back to the Prophet are referred to as "*Habaib*" or "*Habib*." The *pesantren* culture also follows a social system based on "sanad keturunan," where the term "*Gus*" indicates that the person is the offspring of an Islamic scholar or *Kyai*.

Having a "genealogical lineage (sanad keturunan)" does not automatically give anyone privileges that could lead to discrimination. One's faith and level of scholarly understanding cannot be inherited. Even if one's parents are knowledgeable, there is no guarantee that their children will possess the same level of understanding. Furthermore, privileges that come from one's genealogical lineage go against the essence of education, which promotes the idea that everyone is equal.

This writing aims to apply the concept of "sanad keilmuan" from the pesantren tradition and adopt it in the quest for the

historical roots of constitutional law knowledge in our country.

It is important to pay sincere attention to *"sanad keilmuan"* because, as a wise person once said, "Knowledge is an immensely powerful matter, so be mindful of from whom you acquire knowledge!"

There are notable distinctions in the way teacher-student relationships are approached in the pesantren tradition and university campus culture. Due to these differing factors, it is impossible to implement the concept of "sanad keilmuan" in the same way in both contexts. In pesantren tradition, teachers and students have a connection built on emotional bonds. In contrast, in campus culture, the relationship between professors and students is mainly based on the teaching and learning process that occurs in the classroom.

However, this article aims to explore and revisit the historical roots of the development of constitutional Law in modern Indonesia. It's important to note that this article won't cover the historical evolution of Law in older civilizations but will instead focus on Indonesia's historical development since the early 1900s, during the movement towards independence. At that time, the Kingdom of the Netherlands, ruled by Queen Wilhelmina, announced and implemented the "ethical policy" as a moral obligation of the colonial administration, which aimed to provide opportunities for the native population to participate in the Government by granting access to education. This policy resulted in the emergence of educated groups from the native population, although it was limited to the aristocrats and the *priyayi* (nobility class).

As a result, many native people traveled across continents to study at renowned universities in the Netherlands, with Leiden University becoming the center of attention, particularly in the field of Law. However, it was not the only institution affected. The ethical policy also led to the establishment of *"Sekolah Tinggi"* (High Schools) that focused on specific fields of study like the Bandung Institute of Technology *(Technische Hoogeschool te Bandoeng)* founded in 1920 and the Batavia School of Law *(Rechtshoogeschool te Batavia)* established in 1924. At that time, Dutch colonial regulations did not allow the formation of a "University," as at least five faculties were required.

Leiden University and the Batavia School of Law *(Rechtshoogeschool te Batavia)* became educational institutions that laid the initial foundation for the development of constitutional Law in modern Indonesia.

The Leiden School of Thought

Although the Kingdom of the Netherlands implemented an ethical policy, not all educational institutions in the country welcomed it with enthusiasm, except for Leiden University. Peter Burns extensively documented the influence of Leiden University on the development of Law in the Dutch East Indies (now Indonesia) in his 1995 doctoral thesis at James Cook University of North Queensland. The thesis was later adapted into a book titled "The Leiden Legacy: Concepts of Law In Indonesia." In Leiden, there was a bright young scholar named Cornelis van Vollenhoven who fully welcomed and supported the Dutch Government's ethical policy. It so happened that he was appointed as the head of the colonial and administrative law department.

Van Vollenhoven is widely known for his work in Customary Law. He pioneered organizing Customary Law and advocated for Indonesia to adopt its own indigenous Law based on its Customary Law. He believed that Western legal systems were not appropriate and suitable for a country that had its own well-established legal traditions within specific communities, which he referred to as "Customary Law" (*hukum adat*) in the context of the Dutch East Indies.

When people are asked about the relationship between customary Law (hukum adat) and Constitutional Law, they often

believe that Customary Law only pertains to civil and criminal law issues.

They may be curious about how customary Law handles disagreements between parties regarding civil matters like marriage, divorce, inheritance, and commercial disputes. Additionally, they may question how Customary Law punishes criminal actions committed by its members, such as murder or unlawful appropriation of property.

However, Cornelis van Vollenhoven also explored the governance structure, judiciary system, and law formation by referencing the prevailing customs in local communities. In his book, Volume II, which focused on Customary Law and was published in 1931, he presented around 350 pages of arguments discussing the role of Customary Law in the Dutch East Indies legal system. The book was titled "The Constitutional Position of Adat Law in the Legal System of the Netherlands East Indies." In addition, he wrote a book about Colonial Constitutional Law (*Staatsrechts Overzee*), which was published in 1934.

Van Vollenhoven was a brilliant intellectual who had many great ideas. At the young age of 24, on May 13, 1898, he successfully defended his dissertation in political science at 3:00 PM. Just an hour later, at 4:00 PM, he was declared a doctor of Law in front of the examining committee of professors who assessed his research. B.J.A. de Kanter-Van Hettinga Tromp and A. Eyffinger have written a well-documented monograph on Van Vollenhoven's life. This article is part of the book "The Moulding of International Law: Ten Dutch Proponents" (1995), published by the TMC Asser Institute. This book can be freely accessed online.

Despite focusing significantly on the situation in the Dutch East Indies and formulating Customary Law, it is important to note that Van Vollenhoven only visited the region twice, in 1907 and 1932. During his second visit, he delivered a public lecture at the Batavia School of Law (*Rechtshoogeschool te Batavia*) titled "Poetry in Indonesian Law" (*De poezie in het Indisch recht).*

As a professor at Leiden University, Van Vollenhoven promoted 67 students to doctoral candidates, including some from Indonesia. This information is documented in Jan Michel Otto and Sebastian Pompee's "Leiden Oriental Connection 1850-1940," which has been translated into Indonesian with the title *"Aras Hukum Oriental."* Some of the students under Van Vollenhoven's guidance were: (1) Enda Boemi with a research *title "Het Grandenrecht in de Batak-Landen"*m(1925); (2) Moestapa, *"Over gewoonten en gebruiken der Soendanezen"* (1913); (3) Soebroto, *"Indonesische Sawah-verpanding"* (1925); (4) Soeripto, *"Ontwikkelingsgang der Vorstenlandsche Wetboeken"* (1929); (5) Soepomo, *"De Reorganisatie van het Agrarisch Stelsel in het Gewest Soerakarta"* (1927); (6) Gondokusumo, *"Vernietiging van dorpsbesluiten in Indië"* (1922).

It's common to hear the name Soepomo in discussions about politics and Law as he was a politician and practitioner who held parliamentary seats and participated in drafting the Constitution (UUD). At the time, many native doctors who graduated from Leiden University were actively engaged in practical politics or pursued careers as judges. Only a handful chose the academic path. However, as time passed, many of them became professors at universities established after independence. In the same case, Soepomo's dance and karawitan partner, Wirjono Prodjodikoro, was appointed Chief Justice of the Supreme Court (1952–1966) and became a professor at several higher education institutions.

Soepomo played a significant role in the development of Constitutional Law through his practical experience as a member of parliament and as a minister in the government cabinet. However, it is challenging to trace his students or followers under the "sanad keilmuan" (scientific chain). Before independence, Soepomo

served as a professor of Customary Law at Rechtshoogeschool, where he was appointed in 1938. After independence, he became a Professor of Constitutional Law at the University of Indonesia, where he was appointed in 1956.

Rechtshoogeschool te Batavia

Leiden University had a "branch" in the Dutch East Indies called the *Rechtshoogeschool*, which was a Law School. Although Paul Scholten was its first director from the University of Amsterdam, many of its instructors were from Leiden University. They were familiar with van Vollenhoven's ideas on Customary Law. As a result, the *Rechtshoogeschool* became a branch that followed the same line of thought as van Vollenhoven's teachings in Leiden.

Furthermore, graduates of the *Rechtshoogeschool* had the opportunity to pursue doctoral studies at universities in the Netherlands. Soetandyo Wignjosoebroto's book, *"Dari Hukum Kolonial ke Hukum Nasional: Suatu Kajian tentang Dinamika Sosial Politik dalam Perkembangan Hukum Selama Satu Setengah Abad di Indonesia (1840-1990)"* (From Colonial Law to National Law: A Study of Socio-Political Dynamics in Legal Development for One and a Half Centuries in Indonesia, 1840-1990), provides intriguing statistical information on the number of students and graduates from the *Rechtshoogeschool*. Over 16 years of its operation, the school accommodated approximately 1,200-1,300 individuals, with half being native. This means that by the 1940s, there were approximately 600 indigenous law graduates from *Rechtshoogeschool*.

Paul Scholten, who served as the school's director, played a crucial role in its success. He advocated for teaching in native languages, such as Malay and Javanese, rather than requiring students to learn Latin. For those interested in learning more, Upik Djalins' article "Paul Scholten and the Founding of the Batavia Rechtshoogeschool" sheds light on his story and is worth exploring. The impact of Scholten's policies was significant, as evidenced by the fact that Soegondo Djoyopoespito and Muhammad Yamin, who were part of the 1928 youth conference, were both students of *Rechtshoogeschool*.

During the youth conference, Yamin formulated the "Youth Pledge" declaration, which included the phrase "one language, Indonesian language." The conference chairman, Djoyopoespito, approved this statement. Yamin was renowned as a poet from the beginning. He wrote a poem titled "*Bahasa, Bangsa*" (Language, Nation), which was published in the February 1921 issue of Jong Sumatra magazine. The final stanza of his poem was quite stirring and appeared to foreshadow the creation of the "Youth Pledge" that he would eventually draft.

Andalasku sajang, djana bedjana
Sedjakkan ketjil muda teruna
Sampai mati berkalang tanah
Lupa kebahasa, tiadakan pernah
Ingat pemuda, Sumatera malang
Tiada bahasa, bangsapun hilang

Two instructors who had a close relationship with van Vollenhoven were ter Haar and Johann Heinrich Adolf (JHA) Logemann. Ter Haar began exploring and initiated research in the field of Customary Law, while JHA Logemann encouraged and supervised research in Constitutional Law and state administration. JHA Logemann's name is especially relevant to the development of Constitutional Law.

In 1924, Rechtshoogeschool (Law School) faculty members were captured in a photograph.

The Rechtshoogeschool Teaching Professors in 1924

(Source: Documentation of Mrs. Drs. E.B. Locher-Scholten)

From left to right (standing): E. Bessem, B.J.O. Schrieke, B. ter Haar, F.M. Baron van Asbeck, R.D. Kollewijn, J. Kats, and J.H. Boeke.

PARA GURU BESAR PENGAJAR RECHTSHOOGESCHOOL DI TAHUN 1924
(SUMBER FOTO DARI DOKUMENTASI NY. DRS. E.B. LOCHER-SCHOLTEN)
KIRI – KANAN (BERDIRI): E. BESSEM; B.J.O. SCHRIEKE; B. TER HAAR; F.M. BARON VAN ASBECK; R.D. KOLLEWIJN; J. KATS; J.H. BOEKE
KIRI – KANAN (DUDUK): R.A. HOESEIN DJAJADININGRAT; P. SCHOLTEN; J.H.A. LOGEMANN

From left to right (sitting): R.A. Hoesein Djajadiningrat, P. Scholten, and J.H.A. Logemann

It is important to note that while Logemann was close to van Vollenhoven, he wasn't van Vollenhoven's doctoral student while writing his dissertation.

In 1923, Logemann completed his dissertation on the principles of corporate taxation in the Netherlands and Dutch East Indies *(De grondslagen der vennootschapsbelasting in Nederland en Indië)*, under the supervision of H. Krabbe. Interestingly, it was van Vollenhoven who persuaded Logemann to become a professor of constitutional law and state administration at *Rechtshoogeschool*. Additionally, Logemann worked as the Government's representative commissioner for *de Javasche Bank* (now Bank Indonesia).

At *Rechtshoogeschool*, Logemann was known as "*si Matjan*" (the tiger) among his students due to his strict teaching style and grading. However, this didn't define his entire approach as a teacher. One of his students, Hamid Algadri (who happens to be Nadiem Makarim's grandfather), was allowed to skip the oral exam for the constitutional law course because he had to attend a political party conference where

he was scheduled to speak.

The instructors and students had a respectful relationship, with the professors addressing their students as "misters." This idea was introduced by Scholten during the opening of *Rechtshoogeschool* as a way to honor the students by saying

Legal science does not only require comprehension of rules and knowledge or even comprehension of facts, it also requires an understanding of those for whom those rules are intended. That understanding is something other than just comprehending. It includes an element of emotion (gevoelselement). Whoever wants to illuminate a people in seeking Law must be a good observer of that people.

However, Logemann didn't use the title "mister" for one of his students. He referred to Djokosutono as *"mas Djoko"* instead, which was a term of endearment due to their close relationship. G.J. Resink's article "*Rechthoogeschool, Jongereneed, 'STUW' en Gestuwden"* (1974) discusses the development of *Rechtshoogeschool*. However, the article is written in Dutch, which can make it difficult for non-Dutch speakers to comprehend.

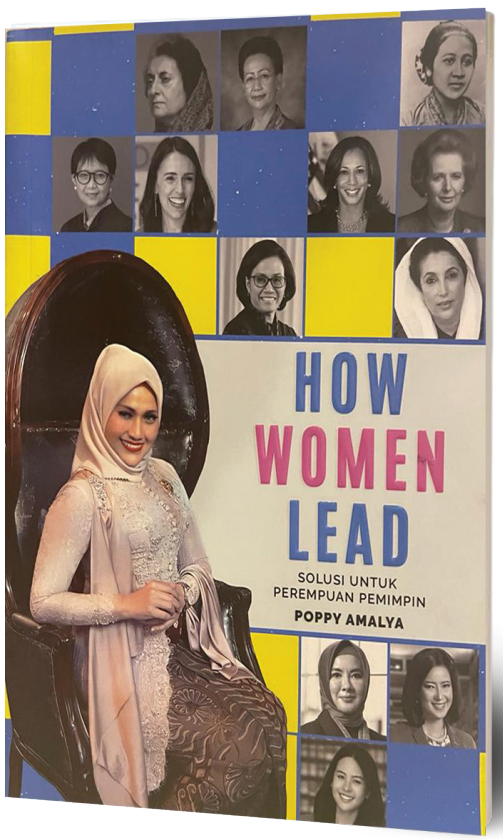
Based on the given information, it appears that Logemann had a group of students in his circle. In addition to Djokosutono, who had a close relationship with Logemann, as previously mentioned, Resink identified Syafruddin Prawiranegara, Ali Budiardjo, and Soediman Kartohadiprodjo as individuals who were part of this network. These students were known to visit Logemann's home for discussions, music listening sessions, and meals, and sometimes even stayed overnight. Djokosutono was a student of Logemann for a longer time until 1939 and was the only one among the mentioned names who chose an academic path, ultimately becoming Logemann's first and only teaching assistant. Soediman Kartohadiprodjo returned to the academic path after a career in bureaucracy and the judiciary. "Mas Djoko used to come to my house often wearing a *sarong*," Logemann recalled, "but after the war, he changed to wearing suits and a *kopiah* (a traditional Indonesian cap)."

After the dissolution of *Rechtshoogeschool* in 1942, Logemann returned to the Netherlands. Despite being away, he kept a close eye on Indonesian developments and prolifically wrote about Indonesian constitutional Law. Logemann tried to create a theory about the general discourse on constitutional Law in a country and published a book titled *"Over de Theorie van Een Stellig Staatsrecht"* (On the Theory of a Certain Constitutional Law). This book was later translated into Indonesian as *"Tentang Teori Suatu Hukum Tata Negara Positif"* (On the Theory of a Positive Constitutional Law). Additionally, Logemann wrote, *"Keterangan-keterangan Baru Tentang Terjadinya Undang-Undang Dasar Indonesia 1945"* (New Information about the Establishment of the 1945 Constitution of Indonesia) and *"Het Staatsrecht van Indonesie"* (The Constitutional Law of Indonesia). However, the latter title has not yet been translated into Indonesian. In his published journal articles, including "The Indonesian Problems" (published in Pacific Affairs in 1947) and "The Indonesian Parliament" (published in Parliamentary Affairs in 1952), he focused on Indonesia's development.

The next edition will continue the narrative of constitutional Law thinking development, highlighting the chain of transmission through academic relationships. The upcoming edition will delve into Djokosutono and the emergence of various universities with law faculties during the establishment of the Republic of Indonesia.

HOW WOMEN LEAD, SOLUTIONS FOR WOMEN LEADERS

OLEH: DR. WILMA SILALAHI, S.H., M.H.



BOOK TITLE: HOW WOMEN LEAD, SOLUSI UNTUK PEREMPUAN PEMIMPIN

AUTHOR: POPPY AMALYA

PAGES: 144

PUBLISHER: PT. GENTA MITRA ANDALAN

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The book with the title, *"How Women Lead, Solusi untuk Perempuan Pemimpin"* (How Women Lead: Solutions for Women Leaders), is a book that shares inspiring stories of successful women throughout history. One notable woman featured is Raden Adjeng Kartini, a national hero who fought tirelessly for gender equality during a time when women were often undervalued. Sri Mulyani Indrawati, the Finance Minister of Indonesia and former Managing Director of the World Bank, is another remarkable figure highlighted in the book. Maudy Ayunda, a young actress and singer, is also featured for her academic achievements, including completing her undergraduate studies at Oxford University and pursuing a master's degree in Politics, Philosophy, and Economics at Stanford University. In recognition of her accomplishments, she was included in the Forbes magazine "30 under 30 Asia" list for 2021.

The author stresses the importance of women with the dual roles of wife and mother to remember their inherent nature. They are expected to balance fulfilling their roles as leaders, wives, and mothers. Despite the challenges that come with it, the author provides tips and solutions for effectively managing these multiple responsibilities, allowing for a harmonious coexistence of career and family life.

The book also shares the story of Margareth Thatcher,

the "Iron Lady," who prepared breakfast for her husband and served as the Prime Minister of the United Kingdom from 1979 to 1990.

She was nicknamed the "Iron Lady" by a Soviet military journalist named Captain Yuri Gavrilov, who wrote about her in the Red Star newspaper on January 24, 1976. This was after Thatcher's "Britain Awake" speech at Kensington Town Hall in London five days earlier. Despite her demanding role as Prime Minister, Thatcher remained a dedicated wife and mother. She even took care of domestic chores with her husband's help, such as shopping, sewing, cooking, and even ironing. Thatcher had close relations with various prominent individuals worldwide. She was recognized in the global political arena as a "political soulmate" of the U.S. President, Ronald Reagan, as they shared similar perspectives on topics such as small Government, free markets, robust defense, and currency issues. Moreover, Thatcher had a friendly relationship with Mikhail Gorbachev, whom she regarded as a "reliable man." Thatcher played a crucial role in ending the Cold War, partly due to her collaboration with Gorbachev. Additionally, she was close friends with India's resilient female leader, Indira Gandhi. According to the author, one must be adaptable to bring about change. A good leader should be open to making changes within themselves so that they can inspire and guide others to follow their lead.

The book also explores the life of Benazir Bhutto, who treasured her time with her family while in exile. She was the first female Prime Minister to lead a government in a Muslim-majority country, the Islamic Republic of Pakistan, serving as the youngest Prime Minister in history. Benazir's leadership represented hope and opposition to General Zia ul Haq's repressive and regressive regime. At the age of 16, Benazir pursued her education at Radcliffe College, Harvard University in the USA, from 1969 to 1973. She later studied philosophy, politics, and economics at the University of Oxford in England. Benazir endured a lengthy struggle, which included time spent in prison and exile in London, England. However, she remained determined to return to Pakistan and actively pursue her political career, continuing her fight to realize her father's vision. "My father had a vision of making Pakistan a democratic and progressive country. My family is committed to my father's vision for Pakistan, and we are not afraid of anything." In April 1986, Benazir returned to Pakistan and was greeted by approximately two million people at Iqbal Park. This is where she led a demonstration against the Zia regime. On December 27, 2007, she delivered a speech to her supporters after a meeting with Afghan President Hamid Karzai. However, three shots fired by a man interrupted her speech, leaving Benazir severely wounded and rushed to the public hospital in Rawalpindi. Despite all efforts to save her, she passed away.

The book also discusses the figure of Indira Gandhi as a resilient and influential figure who persevered through political conflict and personal struggles. Despite being a controversial leader, her strong, authoritative style of leadership was undeniable, which often sparked debates and turmoil in the land of India. Indira Gandhi was the daughter of Pandit Jawaharlal Nehru, India's inaugural Prime Minister. She received her education at the International School of Geneva in Switzerland and Somerville College in Oxford, England. Following in her father's footsteps, she joined the Congress Party in 1938. Nehru became India's first Prime Minister on August 15, 1947, which was India's Independence Day. Indira Gandhi served on the Congress Working Committee from 1955 until she was elected President of the Congress Party in 1959. In 1964, she joined the Indian Parliament's Upper House, also known as the *Rajya Sabha*. Afterward, she became India's third Prime Minister and the first woman to hold this position in the country's history. Unfortunately, Indira lost her tenure as Prime Minister when she was defeated in the 1977 elections. She was subsequently imprisoned on corruption charges until her release in December 1978. During the 1980 elections, Indira's new party, the Congress (I) Party, achieved a resounding victory over the Janata Party, allowing her to reclaim the position of Prime Minister. Despite her strong façade and authoritative leadership, Indira harbored insecurities as a daughter, a betrayed wife, a national heroine, and a tough dictator. Throughout her life, Indira had been disappointed by the men in her life, including her father, husband, and son, Sanjay. Unfortunately, Indira met her untimely end with fatal gunfire at the hands of two of her personal guards who sought revenge for

the Sikh temple raid in Amritsar, which Indira had ordered.

The raid resulted in the deaths of hundreds of Sikhs. The two guards responsible for Indira's death were Sikhs seeking vengeance against the Prime Minister's actions.

The book also delves into the inspiring story of Jacinda Ardern, a leader and professional mother who graduated from the University of Waikato. In 2017, Ardern became the youngest-ever leader of the New Zealand Labour Party and became the third female Prime Minister of New Zealand after winning the September 2017 election. She continued to serve as Prime Minister until 2020 and then returned to the position from 2020 to 2024. Ardern identifies as a social democrat, progressive, and feminist, and her leadership style has gained international recognition. She is a strong and decisive leader who also shows compassion, empathy, and authenticity toward her people. Ardern joined politics with a strong commitment to enhancing the well-being of children. In 2018, she revealed her Government's aim to decrease child poverty in New Zealand by 50% in the following decade. Amidst the COVID-19 pandemic lockdown, she decided to reduce her salary by 20% as a gesture of solidarity for the New Zealand citizens who were forced to stop working or had their wages reduced.

The next figure discussed in the book is Kamala Harris. She works in the White House alongside her husband and made history as the first woman and first person of African-Asian ethnicity to serve as Vice President of the United States. Harris attended Howard University in Washington, D.C., starting in 1981 and earned a Bachelor of Arts (B.A.) degree in political science and economics in 1986. While studying, she joined the esteemed Black student organization called Alpha Kappa Alpha. Harris then pursued Law at the University of California and obtained her law degree in 1989. In 2010, she became the 32nd Attorney General of California, again making history as the first Black and Asian-American woman to hold the position. One of her notable achievements was the creation of "open justice," an online platform that provides public access to criminal justice data. This database contributes to police accountability by collecting data on the number of deaths and injuries of individuals in custody. She made history in the 2016 elections by securing the role of U.S. Senator, becoming the first South Asian-American woman and the second Black woman to hold a position in the U.S. Senate. Harris was a highly active member of the US Senate, working tirelessly to introduce and support bills that would raise workers' wages and reform the criminal justice system. She strongly advocated for healthcare to be recognized as a right for all Americans. She was dedicated to addressing the substance abuse epidemic, supporting veterans and military families, and increasing access to childcare for working parents. Initially, Harris had run for the Democratic presidential nomination, but Joe Biden ultimately secured the nomination and chose Harris as his running mate. Biden praised Harris as a fearless fighter for the interests of the common people and recognized her as one of the best public servants in the country. Ultimately, Harris was officially appointed Vice President of the United States alongside President Joe Biden.

This book delves into various aspects of women in leadership roles, such as their dynamics and strengths and weaknesses. It also highlights the benefits of married women pursuing careers and the challenges faced by career-oriented women. The book covers leadership styles and conflicts that working mothers encounter, including those with partners, children, parents/in-laws, and the surrounding environment. Additionally, it addresses conflicts in the workplace, personal feelings, and the balance between personal dreams and family responsibilities. Lastly, the book provides tips on how to become a successful female leader.

In the conclusion, the author stresses the importance of leaders having someone they can confide in. Seeking a confidant is not wrong, but it is crucial to choose someone trustworthy. Your confidante should be capable of keeping your secrets and concerns private, and even in the event of conflicts, they should be able to maintain your trust.

The book is highly recommended for the general public, especially those interested in women's issues, as it is a valuable resource worth reading. Don't miss out on the opportunity to learn from it.

Happy Reading!
"Reading is one of the ways to enrich our knowledge."

SEPARATE CHAPTER ON FINANCIAL MATTERS AND THE AUDIT BOARD OF THE REPUBLIC OF INDONESIA (BPK)

LUTHFI WIDAGDO EDDYONO
Researcher at Constitutional Court

In the process of amending the 1945 Constitution, one of the most important meetings was the lobby meeting. This meeting involved a small group of elites from various factions in the People's Consultative Assembly (MPR), who discussed critical matters in a more intensive and productive manner.

For example, financial issues were discussed at the PAH I Lobby Meeting on June 7, 2000. According to the Comprehensive Manuscripts of the Process and Results of the Amendment to the 1945 Constitution, the debate was informative and interesting. It focused on the state's finances and the role of the State Audit Board and is documented in the *Comprehensive Manuscripts of the Amendment to the 1945 Constitution of the Republic of Indonesia, Background, Process, and Results of the Discussions, 1999-2002, Book VII Finance, National Economy, and Social Welfare (Jakarta: Secretariat General and the Registrar of the Constitutional Court; Revised Edition, July 2010).*

During the meeting, which was documented in the *Comprehensive Manuscript*, Gregorius Seto Harianto of the F-PDKB faction suggested discussing financial issues under the title "State Finance." Initially, he proposed "Financial Matters." Hamdan Zoelva of the F-PBB faction agreed with "State Finance" since it would cover the central bank and the State Audit Board (BPK). Meanwhile, Hendi Tjaswadi from the F-TNI/Polri faction also preferred "State Finance" but suggested separating BPK into its own chapter. However, Fuad Bawazier from the F-Reformasi faction argued that they should use the title "Financial Matters" instead, as "State Finance" might not be appropriate if it includes the central bank.

Lukman Hakim Saifuddin, a member of the F-PPP faction, shares a similar view to the TNI/Polri faction regarding the state finance chapter. *"PPP agrees that the BPK should have its own separate chapter since it requires many regulations in its articles, so it should not be merged into this 'State Finance' chapter. The central bank was only previously mentioned in the Elucidations. Therefore, because the Elucidations are not included, the central bank can be included in the state finance chapter. This chapter will cover one or two articles that discuss the position and status of the central bank. As for the BPK, it will be treated similarly to the Supreme Court and other institutions and will have a separate chapter created for it."* Fuad Bawazier says, *"It's crucial to recognize that the BPK will conduct financial audits covering various areas such as asset flow, state assets, and state-owned enterprises (BUMN). BUMN is classified as the state's separated wealth under our legislation. This*

means it's no longer part of the state's wealth, even though it's still considered state finance. Essentially, BUMN represents the state's finances that have been separated from its other assets."

According to the Comprehensive Manuscript, Lukman Hakim Saifuddin argued that BPK should have its own chapter separate from other topics. Fuad Bawazier responded by giving the example that BPK would also audit state-owned enterprises (BUMN). Since BUMN is considered a separate asset of the state. This would simplify matters and allow for the original title to be used.

TM. Nurlif of the F-PG faction responded by stating, *"In my opinion, Chapter VIII was originally titled "Financial Matters." I completely agree with Mr. Fuad on this matter. There is no need to change it to "State Finance" or "State Finance and State Audit Board." The script prepared by the Independence Preparation Committee and the Elucidations of the 1945 Constitution clearly explains that Clauses (1) to (5) in Article 23 form a unity that cannot be separated. Clauses (1) to (4) discuss matters related to financial instruments, while Clause (5) specifically pertains to the institution responsible for financial audits. Based on our colleagues' opinions regarding the existence of the central bank, we may want to include institutions related to finance, such as Bank Indonesia and the State Audit Board, instead of just financial instruments. To be more specific, we can regulate these institutions in separate articles rather than just mentioning them in Article 23."*

During a lobby meeting, Hendi Tjaswadi from the F-TNI/Polri faction changed his opinion on "Financial Matters" from his initial proposal. It is possible that the intense and focused debates during the meeting influenced his decision. Hendi stated that the title change was not a problem.

"Okay, there is no problem with the title. "Financial Matters" is perfectly acceptable. However, the format of the article needs to be adjusted. It is important to separate BPK, as we have previously insisted. The first four clauses of "Financial Matters" pertain to the DPR and cover all matters related to finance due to relevant laws. Therefore, we suggest that these clauses (1-4) can be turned into articles or elevated to become articles since this is the title of a chapter. As for Clause (5), it should be a separate chapter with additional provisions later. We prefer the format of having two chapters, one for financial matters and one for BPK, BPK institution, rather than three chapters."

Ultimately, the financial matters were divided into two chapters: CHAPTER VIII - FINANCIAL MATTERS, consisting of Clauses (1) to (3) of Article 23, Article 23A, Article 23B, Article 23C, and Article 23D. While CHAPTER VIIIA - FINANCIAL AUDIT BOARD focused on the BPK institution, consisting of Clauses (1) to (3) of Article 23E, Clauses (1) and (2) of Article 23F, and Clause (1) and (2) of Article 23G, which states, "The Financial Audit Board shall be domiciled in the capital city of the state, and shall have a representation in every province, and further provisions regarding the Financial Audit Board shall be regulated by law."

MECHANISM OF INDONESIAN CONSTITUTIONAL AMENDMENT OVER TIME

LUTHFI WIDAGDO EDDYONO
Researcher at Constitutional Court

In his writing, *"Konstitusi dan Konstitusionalisme Indonesia"* (Constitution and Constitutionalism in Indonesia), Prof. Jimly Asshiddiqie explains the difference between the definition of a constitution and the text of Indonesia's Constitution (Undang-Undang Dasar or UUD). While the UUD is the written Constitution in a narrow sense, there is a broader understanding of the Constitution that includes the fundamental values and philosophies reflected in the substantive content of the written Constitution.

Typically, the final paragraph of a written constitution outlines the procedure for amending the Constitution or UUD. According to global constitutional theory and practice, constitutional amendments can be made in several ways. These include legislative body sessions with specific requirements, such as a quorum and a minimum number of approving members, referendums or plebiscites by the people, a special convention known as *musyawarah khusus*, or the approval of state entities in federal states through a majority vote of all state units.

Before the amendment, Article 37 in the Constitution of 1945 mandated that any changes made to the Constitution must be approved by at least two-thirds of the members present in the MPR, along with the presence of two-thirds of MPR members. Later, a referendum requirement was added, as per MPR Decree Number IV/MPR/1983, stating, "Before amending the 1945 Constitution, the MPR must first seek the people's opinion via a Referendum."

The adoption of federal principles in the RIS Constitution (1949 Constitution) meant that any amendments required the presence of two-thirds of DPR/senate members and the approval of two-thirds of the members present (as stated in Article 190). However, political movements aimed at abandoning the federal state in favor of a unitary state led to the introduction of the 1950 Constitution (UUDS). As a result, the RIS Constitution was only effective in Indonesia from December 27, 1949, to August 17, 1950.

In the 1950 Constitution, Article 140 granted the authority to make amendments to the Constitution to a body known as the "*Majelis Perubahan UUD*," or Constitution Amendment Assembly. This Assembly included members of the DPRS and KNIP who were not a part of the DPRS. To make an amendment, it was necessary to have more than half of the members present in the session and approval from the majority of the votes. However, there were never enough members present to make any decisions, and the Constituent Assembly failed to reach a quorum. Therefore, President Soekarno issued a Presidential Decree on July 5, 1959, which dissolved the Constituent Assembly and reinstated the 1945 Constitution.

In the 1945 Constitution of Indonesia, after the amendments, Chapter XVI, Article 37, contains five clauses that regulate the mechanism of amendments, as follows: (1) Proposals for amending the articles of the Constitution can be put on the agenda in the session of the People's Consultative Assembly if they are submitted by at least one-third of the total members of the Assembly. (2) Each proposal for amending the articles of the Constitution must be submitted in writing, clearly indicating the specific part to be amended along with the reasons for the proposed amendments. (3) To amend the articles of the Constitution, the People's Consultative Assembly session must be attended by at least two-thirds of the total members of the Assembly. (4) Decisions to amend the articles of the Constitution require the approval of at least fifty percent plus one of all members of the People's Consultative Assembly. (5) Particularly regarding the form of the Unitary State of the Republic of Indonesia, no amendment can be made.

Jimly Asshiddiqie believes that the mechanism of amending the Constitution through an addendum document attached to the original text is "incremental" and preferable to a complete replacement of the Constitution, which is considered a "big-bang" approach. This amendment approach through an addendum or 'amendment' is considered more favorable as it ensures both continuity and change. It was a requirement agreed upon for the acceptance of the agenda to amend the 1945 Constitution, which took place for the first time in 1999.

According to Jimly Asshiddiqie, accepting this mechanism means that the 1945 Constitution, which Presidential Decree reinstated on July 5, 1959, remains in effect. The first, second, and subsequent amendments are inseparable attachments from that date's original text. It's important to mention that Article 37, Clause (5) states that "Particularly regarding the form of the Unitary State of the Republic of Indonesia, no amendment can be made." This means that as long as Clause (5) is in effect and binding, the Government under the name of Indonesia and the form of the unitary state cannot be changed through constitutional procedures based on Article 37 of the 1945 Constitution.

This article is referred to as the "unamendable article." The Preamble of the 1945 Constitution can also be considered an "unamendable article" since Article 37, Clause (1) states, "Proposals for amending the articles of the Constitution can be put on the agenda in the session of the People's Consultative Assembly if they are submitted by at least one-third of the total members of the Assembly." This means that only the articles of the 1945 Constitution can be amended, and the Preamble is not included in those articles that can be amended.

REVIEW

THE AUTHORITY OF PROSECUTOR GENERAL TO REQUEST PK

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As a nation governed by the rule of Law *(rechsstaat)* rather than arbitrary power *(maachsstaat),* Indonesia guarantees an independent judiciary to uphold Law and Justice based on Pancasila and the 1945 Constitution. The Prosecutor's Office is a government institution with functions related to judicial power, responsible for carrying out state authority in the field of Prosecution, as well as other authorities based on the Law as stated in Article 1 of Law No. 11 of 2021 on Amendments to Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (Law 11/2021)].

Individuals who work as Prosecutors are functional officials authorized by Law, giving them the power to act as public prosecutors and enforce court rulings that are legally binding. They also have additional powers granted by the Law. Additionally, they serve as a law enforcement agency in the field of Prosecution and other authorities established by Law, ensuring that Justice is properly administered and upheld. As representatives of the state, Prosecutors are accountable to the state and the hierarchical chain of command when carrying out their duties and authorities. They function as both public prosecutors in criminal cases and state attorneys in civil and administrative matters, including prosecuting corruption charges within the criminal domain. Their role in combating corruption is crucial within the criminal justice system.

According to Law 11/2021, Prosecutors have the following duties and authorities: (1) to conduct prosecution activities; (2) to execute court orders after obtaining legally binding court sentences; (3) to oversee the implementation of conditional criminal decisions, criminal supervision decisions, and conditional release decisions; (4) to investigate certain crimes based on the Law; (5) to complete specific case files, which may involve further examination before being transferred to the Court, in coordination with investigators. It is the duty of Prosecutors to ensure legal certainty, justice, and truth in accordance with the Law. They must also uphold religious, ethical, and moral norms while carrying out their duties and authority. It is their obligation to promote human values, the law, and justice in society. Additionally, prosecutors should actively participate in the development process, contributing to the creation of conditions and infrastructure that support and secure the implementation of development. This will help achieve a just and prosperous society based on Pancasila. Prosecutors are also responsible for safeguarding the credibility of

the Government and the state, as well as protecting the people's interests through the enforcement of the Law.

According to Article 30C letter h of Law 11/2021, it is the responsibility and authority of the Prosecutor's Office to file a "request for review" (PK) while carrying out their duties. The submission of the PK by the Prosecutor's Office has resulted in a separate issue, leading to judicial review by the Constitutional Court and being ruled upon in Constitutional Court Decision Number 20/PUU-XXI/2023, which was announced in a public plenary session on April 14, 2023.

Constitutional Court Decision Number 20/PUU-XXI/2023

On April 14, 2023, the Constitutional Court made a ruling (Number 20/PUU-XXI/2023) that Article 30C letter h of Law 11/2021 (with its Explanations) violates Articles 28D paragraph (1) and 28I paragraph (1) of the 1945 Constitution. The Petitioner, Hartono, is an Indonesian citizen and Notary by profession and was previously a defendant in a criminal case. The Gianyar District Court in Bali found Hartono guilty and sentenced him to two years in prison in Decision Number 149/Pid.B/2019/PN.Gin dated November 13, 2019. The Petitioner filed an appeal on November 15, 2019, and on January 21, 2020, the Denpasar High Court declared him not guilty with Decision Number 78/PID/2019/PT.DPS. The Petitioner was acquitted of all charges and released from imprisonment. However, the Prosecutor's Office filed a Cassation with the Supreme Court on June 30, 2020, with case number 534 K/PID/2020. The Supreme Court found the Petitioner guilty of document falsification and sentenced him to four years in prison. The Petitioner responded to the cassation decision by filing a PK with the Supreme Court on April 26, 2021, under case number 41 PK/PID/2021. On September 15, 2022, the Court declared the Petitioner not guilty, acquitted him of all charges, and released him from imprisonment. However, the Prosecutor's Office filed a new PK application to the Supreme Court on December 26, 2022, with the covering letter number TAR-3385/N.1.15/Eku.2/12/2022 and citing Article 30C letter h and its Explanation of Law 11/2021. The Prosecutor's Office took action because they believed that the Petitioner, an Indonesian citizen, had his constitutional rights violated due to a challenged norm. This norm concerns the right to access justice and legal certainty regarding the Prosecutor's submission of a PK against an acquittal. It has been determined that there is a causal relationship between the Petitioner's belief that his constitutional rights have been violated and the use of Article 30C letter h and its Explanation of Law 11/2021. Therefore, even if the Petitioner's claims about the Law's unconstitutionality have not been substantiated, the Court has concluded that the Petitioner has legal standing and is entitled to act as such in the a quo case.

In its legal considerations, the Court is reviewing whether Article 30C letter h and its Explanation of Law 11/2021 conflict with the 1945 Constitution. The provisions have resulted in potential differential treatment before the law, potential abuse of authority by the Prosecutor, legal uncertainty, and injustice. They also conflict with Constitutional Court Decision Number 16/PUU-VI/2008 and Constitutional Court Decision Number 33/PUU-XIV/2016. In Constitutional Court Case Number 16/PUU-VI/2008, dated August 15, 2008, the Court has determined that seeking justice is still possible even after ordinary legal remedies have been taken.

The Public Prosecutor cannot file a PK request in Decision Number 16/PUU-VI/2008. This is because the philosophy underlying

PK protects the defendant's human rights and ensures that they receive fair legal certainty in the judicial process they encounter. It is fair to restrict PK examinations to convicted individuals or their heirs since the Prosecutor/ Public Prosecutor has had ample opportunities to exercise their authority in the first instance, appeal, and cassation processes.

According to Constitutional Court Decision Number 33/PUU-XIV/2016, dated May 12, 2016, four fundamental principles should not be violated or interpreted beyond the explicitly stated Article 263 paragraph (1) of Law 8/1981. These principles are: (1) a request for review can only be filed against a legally binding verdict *(inkracht van gewijsde zaak);* (2) a request for review cannot be filed against an acquittal or a verdict that releases from all legal claims; (3) a request for review can only be filed by the convict or their heirs; and (4) a request for review can only be filed against a criminal verdict. Additionally, the Court explained the philosophy of PK in the same decision. The institution of PK is intended for the benefit of the convict to pursue extraordinary legal remedies and not for the interests of the state or the victim. As an extraordinary legal remedy pursued by the convict, the convicted individual or their heirs are the only ones or the subject that are allowed and entitled to file a request for review (PK) application. The object of the PK application is a verdict that declares the alleged acts proven and results in a criminal sentence. This type of legal remedy is only available to the convict or their heirs, and its purpose is to protect the human rights of citizens. Pursuing a PK application is especially important for convicts, who may face the state's overwhelming power.

In its legal consideration, the Constitutional Court Decision Number 20/PUU-XXI/2023 addresses a legal issue regarding Law 11/2021. It introduces a new provision, Article 30C letter h inserted between Article 30 and Article 31 of Law 16/2004, which outlines the duties and authorities of the Prosecutor's Office. This new provision, Article 30C letter h, grants the Prosecutor's Office additional authority, allowing them to file a PK without a clear explanation of its substance. However, the Court has pointed out that this added authority creates legal uncertainty and has the potential to be abused by the Prosecutor. Specifically, it may lead to PKs being filed against matters that have already been acquitted or released from all legal claims. Moreover, it is important to note that the Constitutional Court has already addressed the issue of PK's constitutionality in Decision Number 16/PUU-VI/2008 and reaffirmed it in Decision Number 33/PUU-XIV/2016. Therefore, if the Prosecutor's Office is given more authority to file PKs, it could potentially undermine justice and legal certainty, which are fundamental rights guaranteed by the 1945 Constitution. It could also create legal conflicts and confusion in PK applications and violate the right to recognition, assurance, and protection of fair legal certainty as outlined in Article 28D paragraph (1) of the 1945 Constitution.

After careful consideration, the Court has ruled that the Petitioner's arguments regarding Article 30C letter h and Explanation of Article 30C letter h of Law 11/2021 are legally valid. These provisions have caused unfair treatment and legal uncertainty, which contradicts Article 28D paragraph (1) of the 1945 Constitution. As a result, Article 30C letter h and its Explanation of Article 30C letter h of Law 11/2021 are in conflict with the 1945 Constitution and will not be legally binding.

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