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E-MAGAZINE

KONSTITUSI

MEDICAL CANNABIS NEEDS SCIENTIFIC RESEARCH





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Editor's Foreword

Marijuana, also well-known as cannabis, is a general term for the cannabis sativa plant. The World Health Organization (WHO) mentions cannabis has a psychoactive substance called delta-9-tetrahydrocannabinol (THC). In addition, the content in marijuana harms health, such as decreased brain function, causing schizophrenia, causing defects in the fetus, causing lung infections, and others.

Based on that fact, the July 2022 edition of Konstitusi Magazine raised the decision of Constitutional Court Number 106/PUU-XVIII/2020 on 20 July 2022. In that decision, the Constitutional Court of Justice rejected the Petitioner's request. In the legal considerations read out by Constitutional Justice Suhartoyo said that the Court can understand and have a high sense of empathy for sufferers of certain diseases which "phenomenon" according to the Petitioners can be cured by therapy using Schedule I Narcotics, as experienced by the Petitioner's child. I, Petitioner II, and Petitioner III.

However, considering that this has not been the valid result of scientific study and research taking into account the effects or impacts that can be caused if the Court accepts the arguments of the Petitioners a quo. Furthermore, there is no other choice for the Court to encourage the use of Schedule I Narcotics that previously carried out scientific studies and research related to the possibility of using Schedule I Narcotics for health services and/or therapy.

That's a glimpse of the Constitutional Court's decision related to narcotics. In addition to information from the Main Report, as usual, we present regular rubrics typical of Constitutional Magazine such as Editorial, Session Room, Action, and others. In short, we wish you a pleasant reading to the loyal readers of Constitution Magazine.

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SCIENTIFIC RESEARCH AS THE BEGINNING OF MEDICAL CANNABIS POLICY

Again and again, the decisions of the Constitutional Court (MK) have received huge attention. The tone of the narrative varies. Some people carefully read the verdict/decision, then understand. Yet, others do not know the substance, have never even seen the verdict, and have railed wildly. On social media, slurs against the Constitutional Court's decision boomed. Bad dictions are easily written and spoken. Discussions and debates between netizens took place. Those who agree tend to be argumentative. The argumentation of the results of their reading against the verdict is clear from his language. However, the argument was overwritten by an emotional diction. In some comments, the choice of words tends to be obscene. It also got likes from dozens of other netizens.

The Constitutional Court's decision as a public document may be criticized. But isn't criticism different from insulting? Anyone, anything, especially concerning the public interest, is allowed, even obliged, and must be ready to be criticized. However, there is often a slight difference between criticism and insults.



In the decision on medical cannabis, the Constitutional Court stated in its injunction: rejecting the Petitioner's application in its entirety. Refusing is this commanding word that sometimes suddenly ignites a spontaneous response. In fact, why did the Court refuse? there must be a reason. What is the reason? Included in the legal considerations and opinions of the Constitutional Court in the decision. What is the reason? This must be understood. What is a method? Read carefully the considerations and opinions of the Court. No other way.

Several points need to be emphasized to understand the Constitutional Court's decision. First, certain types of narcotics are drugs or materials that are useful for treatment or health services and the development of science. On the other hand, narcotics cause a very high dependence on users. It can even be detrimental if it is misused or used without strict and careful control and supervision.

Second, although the use of narcotics has been used legally and legally recognized as part of health services in several countries, this does not necessarily become a parameter to be applied by all countries, including Indonesia. There are different characters, both the type of narcotic material, the structure, and the legal culture of the people of the country concerned, including the facilities and infrastructure needed.

Third, related to the desire to shift/change the use of narcotics from one group to another, a very comprehensive and in-depth policy is needed through important stages that must begin with scientific research and assessment. There is no evidence that a comprehensive and in-depth scientific and comprehensive study and research has been carried out in Indonesia for the desire to allow the type of Schedule I Narcotics for health services and/or therapy. Thus, the desire is difficult to justify, both medically, philosophically, sociologically, and juridically.

Fourth, the provisions regarding the division of narcotics groups in the Narcotics Law are very relevant to be maintained to be used as references in making regulations related to use, study, and research, as well as law enforcement when abuse occurs. Imperatively, Narcotics Type I users are threatened with very heavy imprisonment. The heavy sanction is because the state wants to protect the safety of the nation and the state from the dangers of narcotics abuse, especially Schedule I Narcotics.

Fifth, concerning the results of the assessment and research, if it turns out that Schedule I Narcotics, can be used for health services and/or therapy and implementing regulations are needed, the Government together with the stakeholders must regulate in detail the anticipation of the possibility of misuse of the Schedule I Narcotics. Through this decision, the Constitutional Court reminded us that legislators, including implementing regulations, must be very careful and careful in anticipating these things, considering the culture and legal structure in Indonesia still require continuous education.

The Constitutional Court realized that the urge for Type I Narcotics to be used for medical therapy had existed since before the Narcotics Law was enacted. Therefore, the biggest point of this decision, the Constitutional Court encourages the conduct of studies and research on the types of Schedule I Narcotics for health services and/or therapy to become material for determining policies, including the need for changes to the law by legislators. Why did the Constitutional Court seem impressed with throwing the ball at the legislators? Because the Narcotics Law does not only regulate the classification of narcotics but also regulates criminal sanctions. Concerning laws that contain the substance of matters relating to criminalization (criminalization/decriminalization), the Constitutional Court in several of its decisions believes that these matters are the authority of the legislators.

Those are some of the important points of the Constitutional Court's decision regarding medical marijuana. *Ngerti sekarang? Ngerti dong, masak gak ngerti* (Got it now? I know you know, don't say you don't). This is a dialogue excerpt from a television series that is often used as a parody of videos on Reels and Tik Tok. Let the comments be cooler and more constructive. Do not slur with inappropriate diction. Long live Constitution!

Window

CICERO

I D.G.Palguna

"*The good life is impossible without a good state; and there is no greater blessing than a well-ordered state*"

Cicero.



In the old book The Roman Way, Edith Hamilton in one section praises Cicero sky-high. Says Hamilton, "Of most famous people we know only their impressive exterior. We don't have the key to open the door and let us in. Cicero was one of the very few famous people who left the key behind. Broadly speaking what he has done is familiar to us: he was one of the two greatest orators of the primeval era and everything else about him is of no comparison." Hamilton bases his praise on the fact that after more than three thousand years, countless numbers of Cicero's orations have survived. The oration scrolls from his golden period still stir emotions to this day. Even though a pile of treatises, political views, Cicero's philosophy, and rhetoric had largely followed in the footsteps of the books that adorned libraries and were never read, "some of his writings had a large number of fanatical readers," Hamilton continued.

Please don't be mistaken, the Cicero referred to here is Marcus Tullius Cicero—a philosopher, lawyer, politician, plus an accomplished orator. Because there was "another Cicero" who also had a great story in his time, his name was Quintus Tullius Cicero—a *legatus*, a general who occupied a high military position in the Roman armed forces when Julius Caesar was commander in chief. He "coincidentally" is the younger brother of Marcus Tullius Cicero. Like his brother, Quintus Cicero is also quite fond of writing, although some people had doubts about it.

Hamilton's flattery was by no means exaggerating, much less far-fetched. In fact, even further than that, from a very young age, Cicero has been a brilliant orator as well as a lawyer as well as an astute politician. He was elected to almost all the important political positions that existed during the era of the Roman Republic. Amazingly, he was elected to these positions the first time he tried and was at the minimum age required to fill those positions. He has been a quaestor (lower magistrate responsible for managing state assets), aedile (lower magistrate responsible for managing buildings and public celebrations), praetor (a legal institution that has broad authority to deal with equity issues), and consul (a position that resembles the head of state as well as the head of government because of its broad authority covering administrative, legislative, and judicial fields). All of that then led Cicero as a member of the Roman Senate. Therefore, he is seen as the "most versatile thinker" of the Ancient Roman era.

An aspirant in the development of rule of law thought, Brian Tamanaha, calls Cicero a figure who represents the positive side of Ancient Roman thinkers in the idea of a rule of law—especially through his book De Legibus. In Cicero's mind, talking about law is not just talking about a series of rules. Rather, the regulation itself must come from something that is embedded in the human soul, which is formed and is an inseparable part of the journey and experience of his life—thoughts that thousands of years later were reborn and received justification from thinkers of historical schools and sociological jurisprudence. Only in such circumstances can it be said that when a magistrate rules, it is not the people who rule but the law. From this, Cicero derived his famous proposition, "The function of a magistrate is to govern and give orders that are fair and useful and do not conflict with the law. Because the law controls the magistrate, so from there a magistrate has the right to govern the people, it is not wrong to say that the magistrate is the law that speaks and the law is silent magistrate".

Cicero was a scholar who strongly believed in the laws of nature. The reason is that the laws of nature are the rules of reason. According to reason, the law must work for the good of mankind. Thus, the law must be fair and bring happiness and safety to the people who support the law. Such a situation will only be achieved when the law is consistent with the laws of nature. Only in such circumstances does the law deserve to be called law. "True law is correct reasoning

in accord with nature; it is universal, unchanging and eternal; he demands duty through his commandments, and avoids wrongdoing through his prohibitions. . . . Of all the material debated by philosophers, none is more valuable than the full awareness that we were born for justice and the foundation of truth is not placed on human opinion but nature. This statement is a continuation of Cicero's proposition that reason, when fully developed and perfected, becomes wisdom. Therefore, because there is nothing better than reason, and because reason exists both in man and God, the first common possession of man and God is the reason. However, those who have a common reason (reason in common) must also have the right reason in common. In addition, because true reason is law, then we must believe that humans have the same law as God's law.

Cicero did not distinguish between law and justice. "Those who share Law must also share Justice," he said. This is the reason he opposed the idea that the law depends solely on human will. If it is true that the principles of justice can be found in the will of the people, in the edicts of the king, or the decisions of judges alone, then justice will one day protect robbers, fraudsters, and all other perpetrators of bad deeds if those actions take place. approved based on the results of the statement of the people's opinion, based on the king's order, or solely based on the judge's decision. All that must be in harmony with the laws of nature. For this reason, Cicero insisted that the laws of nature could not be changed solely by human thought. "If such a great power rests in the decisions and decrees of fools that the laws of nature can be changed by the vote, they cast then why don't they command all that what is bad and destructive is considered good and wholesome? Or if the law can create justice out of injustice, doesn't that mean that good can be created out of evil?"

Thus, we get the message from quotes from his words in De Legibus. Therefore, despite all the criticisms directed at the teachings of natural law, including by John Austin and Hans Kelsen, no objections were heard directed at Cicero who emphasized the importance of reason, decency, peace, and freedom (liberty) as the moral standard of every government based on law. Lately, the idea of a rule of law that departs from reason has become an important basis for the birth of the idea of *Rechtsstaat* in Germany which was sparked by the thought of Immanuel Kant.

Meanwhile, as an orator, Cicero is known for his beautiful and electrifying oration skills. It was so great that it was rumored that he had made the paper in Julius Caesar's hand until it slipped out of his grip when he heard Cicero argue before the Senate against the behavior of rotten politicians and defending the citizens of Rome from greedy officials. Although noted as a staunch opponent of the dictatorship of Julius Caesar, Cicero did not participate in the conspiracy to assassinate the dictator carried out by a group of senators in mid-March of 44 BC. Instead, he strongly condemned the conspiracy in the conspirators' requests for him to "restore the Republic" (which had been "stolen" by Julius Caesar). At the same time, he also opposes the intentions of Marcus Antonius who plots revenge against Caesar's assassins. Instead, he proposed amnesty for the perpetrators of the assassination, and in return, he encouraged the Senate not to declare Caesar a tyrant—which in this way meant Caesar's supporters were still legitimately championing Caesar's ideas. However, instead of easing tensions between Cicero and Marcus Antonius, this became part of the beginning of their feud.

Cicero and Marcus Antonius became the most prominent figures in Rome after the assassination of Julius Caesar. Cicero was the spokesman (chairman) of the Senate, while Marcus Antonius was the leader of Caesar's support faction. The hostility between the two worsened when Cicero judged that Marcus Antonius had arbitrarily interpreted the wishes of (the late) Caesar. He also attacked Marcus Antonius through his speeches in the Senate and won the support of most of the Senators. The thing that made Marcus Antonius even more annoyed was that at the same time as the attack on him, Cicero praised Octavinus August - the adopted son of Julius Caesar - to the sky and called him a "God sent child" who only wanted honor and would not repeat the same mistakes made by him. adoptive father. Then, when Cicero pushed the Senate to declare Marcus Antonius an enemy of the state, Marcus Antonius' anger reached a boiling point. Even though it was reported that the proposal was later canceled by Cicero himself, it seems that Marcus Antonius' frustration was unstoppable. When Cicero's attempts to get rid of Marcus Antonius failed and, on the other hand, Marcus Antonius succeeded in forming the Triumvirate (along with Octavianus Augustus and Marcus Aemilius Lepidus), Cicero and his supporters and those who had contact with him was immediately listed as "enemies of the state" - although, it is said, the inclusion of Cicero's name was strongly opposed by Octavian August but failed. In fact, Cicero's name was recorded as the most wanted name.

Although most of the community sympathized with Cicero and therefore refused to reveal his whereabouts, Marcus Antonius's assassins managed to find him. It is said that to his (potential) killers, Cicero had said, "Although there is nothing that can be said to be worthy of what you are doing, soldier, try to kill me properly". The killer then beheaded Cicero.

Years later it was told, Octavian Augustus (at that time already emperor) caught one of his grandchildren reading Cicero's book. The little boy, full of fear, tried to hide the book under his clothes. Emperor Augustus took it, then read the best part of the book, and then returned it to his grandson saying, "He is a learned man, my grandson, a scholar and a lover of his country".

THE DETAILS OF THE 2024 ELECTION CAMPAIGN AND THE EXISTENCE OF ELECTION MONITORS

Luthfi Widagdo Eddyono
Observer of Law and Democracy, Author of the Book "The Dynamics of Constitutionalism in Indonesia" (2020)

On June 9, 2022, the General Elections Commission (KPU) issued General Election Commission Regulation Number 3 of 2022 concerning the Stages and Schedule of General Elections. The first stage will start on June 14, 2022. The most important stage is that the voting will be held on February 14, 2024, and June 26, 2024, for the second round of Presidential/ Vice Presidential elections if any. All stages will end on October 20, 2024, with the oath/pledge of the winner of the election.

In total, there are 11 stages of organizing the 2024 General Election, such as: program planning and budgeting as well as the preparation of implementing regulations for the implementation of the General Election; updating voter data and compiling a voter list; registration and verification of Election Contestants; determination of Election Contestants; determination of the number of seats and determination of electoral districts; nomination of President and Vice President as well as members of House of Representatives, Regional Representative Council, Provincial Regional People's Representative Assembly, and Regency/Municipal Regional People's Representative Assembly; election campaign period; Quiet period; voting and counting of votes; determination of election results; and taking the oath/promise of the President and Vice President as well as members of the House of Representatives, Regional Representative Council, Provincial Regional People's Representative Assembly, and Regency/Municipal Regional People's Representative Assembly.

This scheduling needs to be carefully observed, especially during the campaign period scheduled for November 28, 2023, to February 10, 2024. Compared to the 2014 and 2019 elections, the 2024 election campaign period is relatively short. The 2014 election campaign period is 15 months and the 2019 election campaign period is 6 months and 3 weeks.

Pros and Cons of Campaign Period

Related to this campaign period, there are pros and cons to the campaign period which only reaches 75 days. The contra people think that a short campaign period will only benefit the well-known big parties, while the smaller parties will find it difficult to socialize the existence of their party.

Law Number 7 of 2017 concerning General Elections (Election Law) has been regulated in such a way regarding campaigns. Article 267 paragraph (1) stipulates that election campaigns are part of public political education and are carried out responsibly. The election campaign must also be carried out simultaneously between the presidential and vice-presidential election campaigns and the election campaigns for members of the House of Representatives, Regional Representative Council, and Regional People's Representative Assembly (paragraph (2)).

The election campaign can be conducted through: a. limited meetings; b. face-to-face meetings; c. distribution of Election Campaign materials to the public; d. installation of props in public places; e. social media; f. print mass media advertisements, electronic mass media, and the internet; g. general meetings; h. Candidate Pair debate on Candidate Pair Campaign materials; and i. other activities that do not violate the prohibition on election campaigns and the provisions of laws and regulations (Article 275 paragraph (1)).

The Election Law does not regulate the campaign period. No norm in the Election Law definitively states how many days the campaign period is. From the norm review, regarding the campaign period, it is only regulated in general in Article 276 paragraph (1) which states, limited meetings; face-to-face meetings; distribution of Election Campaign materials to the public; and the installation of visual aids in public places can be conducted three days from the determination of the list of candidates until the Calm Period. Furthermore, paragraph (2) implies that the election campaign is in the form of advertisements for print mass media, electronic mass media, and the internet; and the general meeting is held for 21 (twenty-one) days and ends until the start of the Quiet Period.

The General Election Commission explained that the 75-day campaign period was proportional enough and reduced conflicts in the community in the mirror of the previous election (Republika, 14 June 2022). This opinion was also confirmed by the Minister of Home Affairs (Mendagri) Tito Karnavian who said that the longer the campaign period, the more prone to polarization in society. In addition, the Minister of Home Affairs sees it from the point of view of budget politics because a short campaign period can have an impact on the efficiency of the election budget. (Republican, 7 June 2022).

In addition, there are concerns that there will be a stolen campaign start during this short campaign period. However, from the experience of the 2019 election with a longer campaign period, stealing starts also often occurs. Thus, it is necessary to enforce the election law based on the principles of honesty, fairness, legal certainty, and order. This requires the performance of the Election Supervisory Agency (Bawaslu) as the Election Organizing Agency that oversees the implementation of elections. The General Election Commission certainly needs to immediately draw up rules regarding campaigning. Thus, the legal certainty is clear.

Creative Campaign

During a short campaign period, election participants are expected to be able to streamline the masses by prioritizing positive political narratives. Although in the research of Kevin Arceneaux and David W. Nickerson written in "Comparing Negative and Positive Campaign Messages: Evidence From Two Field Experiments" (2009), it was found that "personally delivered preferences messages can be effective at influencing voting, but neither experiment uncovered a systematic difference between the effects of negative and positive messages on voter turnout or political attitudes", however, negative narratives will tend to divide and create conflicts that are difficult to resolve and should therefore be avoided.

Many creative campaign methods can be used, especially during the Covid-19 pandemic, which has not yet ended. Digital campaigns do need to be optimized. The use of communication and information technology is the most appropriate way to reach young and novice voters.

The sustainable use of social media, for example, will be able to provide the right information and be able to fight hoaxes and negative campaigns. Interaction in the form of live videos on social media is also effective for directly conveying the vision and mission, as well as media for questions and answers that prioritize personal and responsible messages.

Election Monitoring from Time to Time

It is expected that under these conditions, the Election Supervisory Agency's initiative to prepare a service desk for monitoring the 2024 General Election can be understood early. "The accreditation of observers is with Bawaslu for the 2024 election, the sooner the better so that the observers oversee the stages of supervision of planning, supervision of political parties participating in the election," said Chairman of the Indonesian Bawaslu, Rahmat Bagja (Media Indonesia, 10/6/2022).

In the writings of Amalia Salabi (rumahpemilu.org), the existence of election observers is remembered, which has

only existed since the 1997 elections during the reign of President Soeharto. It is said that the Independent Election Monitoring Committee (KIPP) is the first election monitoring agency in Indonesia which was established in 1995.

In the 1999 General Election, which was the first general election during the Reformation era, KIPP had 13,260 people voluntarily registering as observers. There was also the University Network for Free Elections (UNFREL) and the Chancellor's Forum. UNFREL was recorded to have 100 thousand volunteers in 22 of 27 provinces to monitor the stages of the 1999 General Election. Amalia Salabi also noted that apart from domestic election observers, election observers also came from other countries. No less than 15 representatives of European countries, such as Germany, Britain, France, Italy, and the Netherlands participated in monitoring the 1999 elections. They are members of the European Union Observation Unit. There are also international election monitoring institutions that participate in monitoring, including NDI, The Carter Certer, Asia Network For Free Elections (ANFREL), National Citizen Movement For Free Elections (NAMFREL), and International Republican Institute (IRI).

In the 2004 election, the General Elections Commission gave accreditation to 25 monitoring institutions. Amalia Salabi also explained that fewer than in the 2004 election, there were only 18 monitoring institutions accredited by the General Elections Commission in the 2009 election. In the 2014 election, there were 19 election monitoring institutions accredited by the General Elections Commission. In the 2019 election, the rules then transferred registration and accreditation was given to the Election Supervisory Agency. There are 158 election monitoring institutions registered and accredited by the Election Supervisory Agency in 2019.

The increase in election observers, especially for the 2019 election, certainly showed an urge to be involved in realizing a quality election, apart from the very high political temperature. In the 2024 election, political tension is certainly no less high. Election observers who are often referred to as election actors need to be allowed to participate in observing the implementation of the election. Election observers will assist in protecting the civil and political rights of voters and election participants.

In their research Sarah Sunn Bush and Lauren Prather said, "Who's There? Election Observer Identity and the Local Credibility of Elections" found that "the activities of election observers can enhance elections' local credibility, but only when locals perceive observers as being both capable of detecting fraud and unbiased in that pursuit. Not all observer groups are seen as equally capable and unbiased."

Therefore, Election Supervisory Agency has issued Procedures for Registration and Accreditation of Election Observers for 2024. The criteria for election observers can be from non-governmental organizations/legal entities, legal entities monitoring institutions from abroad, overseas election institutions, and representatives of friendly countries in Indonesia, as well as individuals. who register with Election Supervisory Agency.

2024 Election Observer Challenge

It must be remembered that the Covid-19 pandemic has not ended. Thus, information technology-based monitoring must be strengthened. Of course, this is also related to the provision of digital information by election organizers. The General Elections Commission must give the main focus on providing digital-based information, both electronic information, and electronic documents.

In the field, limited resources, both in the number of observers and limited funds, are of course always the reason, including protection for monitors for sensitive issues such as money politics and structured violations. The existence of election observers is very important to provide reports based on the truth of the data to avoid election hoaxes. Therefore, election observers also need to have sufficient expertise. Election observers need to receive adequate and appropriate training.

CONSTITUTIONAL COURT

HEARING PROTOCOLS



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



THE PARTIES CAN ATTEND THE HEARING THROUGH A VIRTUAL HEARING



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



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

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MEDICAL CANNABIS NEEDS SCIENTIFIC RESEARCH

"... in fact, the need for certainty whether or not the type of Schedule I Narcotics is used for the benefit of health services and/or therapy has long been a very urgent need."
(Legal Considerations of the Constitutional Court Decision Number 106/PUU-XVIII/2020)

Efforts to legalize medical cannabis still have a long way to go. The Constitutional Court (MK) rejected the application submitted by some NGOs as well as mothers with children with cerebral palsy. However, in its legal considerations, the Court asks the Government to immediately conduct a study and research on the type of Schedule I Narcotics for health services and/or therapy. Furthermore, the results of these studies and research are used in determining policies, including the possibility of changes to laws by legislators to accommodate the need for medical cannabis.



Cannabis marijuana illustration/Source: integristock

Marijuana or well-known as Cannabis is a general term for the Cannabis sativa plant. The World Health Organization (WHO) mentions marijuana has a psychoactive substance, named delta-9-tetrahydrocannabinol (THC). In addition, the content in cannabis harms health, such as decreased brain function, causing schizophrenia, causing defects in the fetus, causing lung infections, and others. Meanwhile, according to the United Nations Office of Drugs and Crime (UNODC), which is part of the United Nations for the field of crime and drug abuse, marijuana is one of the most commonly used psychoactive substances after alcohol. This was revealed by the UNODC in the 2017 World Drug Report which found that 75% of registered narcotics abusers used marijuana.

However, WHO at the 42nd meeting of the WHO Expert Committee on Drug Dependence (ECDD), decided to remove Cannabis and Cannabis Resin from Schedule IV of the 1961 Convention so that both remained on Schedule I of the 1961 Convention. The results of the meeting were submitted to the Commission on Narcotic Drugs (CND) which is a commission under the auspices of UNODC. In a meeting that took place on December 2, 2020, ago, CND decided to follow the WHO decision which was received negatively by some countries - including Indonesia - because it was considered an effort to legalize cannabis (CND 63/17).

Quoted from the National Narcotics Agency (BNN) page, if it is studied more deeply regarding the recommendations related to the critical review of cannabis and cannabis-related substances, WHO only recommends the removal of Cannabis and Cannabis Resin from schedule IV to be regulated in schedule I. However, other parts of cannabis such as the six isomers of tetrahydrocannabinol and delta-9-tetrahydrocannabinol regulated in the Psychotropic Convention of 1971. Cannabis and Cannabis resins are the flowers or fruit parts of the cannabis plant (cannabis) (except the seeds and leaves if not with the top). While the resin has not been extracted and separate resin, either raw or pure obtained from the cannabis plant.

Regarding the recommendations of WHO and CND, the Government of Indonesia took the attitude of rejecting these recommendations. Some reasons the Government did not comply with these recommendations were conveyed in a webinar organized by the Indonesian Ministry of Foreign Affairs and the National Narcotics Agency (BNN) together with the Indonesian Ministry of Health and the ITB School of Pharmacy Lector with the theme "Socialization of the Follow-Up Transfer of Cannabis and Cannabis Resin Scheduling". In a webinar held on Friday (6/25/2021), Director of Pharmaceutical Production and Distribution of the Indonesian Ministry of Health Agusdini Banun Saptaningsih explained that Cannabis has two ingredients, namely THC and Cannabidiol (CBD). Meanwhile, Cannabis and Cannabis Resin referred to by WHO are those that have a higher proportion of CBD than THC. CBD has no psychoactive characteristics and the potential for dependence and can be used in the treatment of certain diseases. While cannabis plants that can be used as Medical Cannabis are cannabis plants that have been genetically engineered, to get plants with higher CBD levels than THC levels.

"Unfortunately, cannabis from Indonesia (Southeast Asia) has a higher THC content and lower CBD content when compared to marijuana originating from other countries. Therefore, the Indonesian government until now will not implement CND's decision to transfer Cannabis and Cannabis Resin to schedule 2 & 3 narcotics," Agusdini said as quoted from the BNN website.

Cannabis, Schedule I Narcotics

Legally, Indonesia categorizes marijuana in Narcotics Group I as regulated in Article 6 paragraph (1) letter a and Elucidation of Article 6 paragraph (1) of Law Number 35 of 2009 concerning Narcotics and derivative rules in number 8 of Regulation of the Minister of Health Number 50 of 2018 concerning Changes in Narcotics Classification.

Article 6
(1) Narcotics as referred to in Article 5 are classified into: (a) Schedule I Narcotics;
Law Number 35 Year 2009

Elucidation of Article 6 paragraph (1) letter a
In this provision what is meant by "Narcotics Group I" is Narcotics that can only be used to develop science and not used in therapy, and has a very high potential to cause dependence.
Law Number 35 Year 2009

LIST OF Schedule I Narcotics
8. Cannabis plants, all plants of the cannabis genus and all parts of plants including seeds, fruit, straw, processed cannabis plants including cannabis resin and hashish.
Permenkes 50 of 2018

Although there are regulations regarding the prohibition of cannabis as mentioned above, in fact, the long road to legalizing the use of marijuana in Indonesia started in 2010. People who are members of an organization that calls themselves, Lingkar Ganja Nasional (LGN) sought the legalization of marijuana in 2010. The organization provides information and education about the cannabis plant, types of cannabis, the benefits of marijuana, and the effects of marijuana use.

COUNTRIES LEGALIZING MEDICAL CANNABIS

No.	Country	Purpose of Cannabis Use	
		Recreational	Medical
1	South Africa	Legal	Legal
2	United State	Legalized in 19 states and 2 jurisdictions. Not subject to criminal penalties in the other 12 states.	Legal in 37 states and 4 territories.
3	Australia	Illegal in Northern and Southern Territories of Australia. Legal in the Australian Capital Territory for personal consumption not for sale.	Legal in some states with certain conditions depending on each region
4	Barbados	Illegal	Legal
5	Bermuda	Not subject to criminal sanctions for the use of 7 grams	Legal
6	Netherlands	Legal to be consumed and sold in stores that have a sales license. For the general public, possession of 5 grams is still allowed.	Legal

7	Brazil	Illegal	Legal for patients with chronic disease and has no other treatment option than using marijuana.
8	Canada	Legal	Legal
9	Chili	Illegal if used for personal consumption	Legal
10	Columbia	Illegal if used for personal consumption	Legal
11	Costa Rica	No criminal sanctions	Legal
12	Croatia	No criminal sanctions	Legal
13	Cyprus	Illegal	Legal
14	Chechen Republic	Not subject to criminal sanctions for the use of 10 grams or planting more than 5 trees	Legal
15	Denmark	Illegal	Legal with a 4-year trial project starting in 2018.
16	Ecuador	There is no criminal sanction for the use of up to 10 grams	Legal
17	Finland	Illegal but sanctions are not imposed	Legal under permission
18	Georgia	Legal for personal consumption, not for sale according to the Georgian Constitutional Court Decision in 2018	Legal
19	Germany	Illegal, but penalties can be waived if for personal use in small quantities.	Legal only for patients with chronic diseases without any other treatment process
20	Greece	Illegal	Legal
21	Ireland	Illegal	Legal with a 5-year trial project starting in June 2019
22	England	Illegal	Legal for cannabis-based drugs that have been previously consulted
23	Israel	Not subject to criminal sanctions	Legal
24	Italy	Not subject to criminal sanctions	Legal
25	Jamaica	There is no criminal sanction for the use of up to 57 grams	Legal
26	Lebanon	Illegal	Legal
27	Lithuania	Illegal	Legal
28	Luxembourg	Not subject to criminal sanctions	legal
29	Malawi	Illegal	Legal
30	Malta	Legal	Legal
31	Mexico	Legal for personal consumption, not for sale	Legal
32	Morocco	Illegal	Legal
33	New Zealand	Illegal	Legal
34	North Macedonia	Illegal	Legal

35	Norway	Illegal	Legal
36	Panama	Illegal	Legal
37	Poland	Illegal, but not subject to criminal sanctions for minor uses as well as legal for THC dosage sizes below 0.2%	Legal
38	Portugal	Not subject to criminal sanctions for the use of up to 25 grams and 5 grams of hash	Legal
39	Rwanda	Illegal	Legal
40	Saint Vincent and the Grenadines	Not subject to criminal sanctions for the use of up to 57 grams	Legal
41	San Marino	Illegal	Legal
42	Sri Lanka	Illegal	Legalized through 1980 colonial law changed and the Ayurveda Act
43	Sweden	Illegal	Legal for patients who already have permission to use
44	Swiss	Legal use under 1.0% THC	Legal
45	Spain	Not subject to sanctions as long as cannabis is planted for personal consumption and is grown in a private area.	Legal for use of sativex
46	Thailand	Legal to own, sell and grow at home. 0.2% THC limit for use in processed products such as oils and foods, not for plants	Legal
47	Turkey	Illegal	Legal for use of Sativex
48	Uruguay	Legal, but forbidden for foreigner	Legal
49	Vanuatu	Illegal	Legal
50	Zambia	Illegal	Legal
51	Zimbabwe	Illegal	Legal
52	Malaysia	Illegal	Legal must meet certain permits and requirements

Source: wikipedia

Until 2020, efforts to legalize cannabis for medical purposes were still ongoing. One of the efforts was through legal channels taken, namely through a material review of Law Number 35 of 2009 concerning Narcotics (Narcotics Law) by some NGOs together with mothers and children who suffer from Cerebral Palsy to the Constitutional Court (MK). Indonesia prohibits the use of marijuana/cannabis for the benefit of health services as regulated in the Elucidation of Article 6 paragraph (1) letter a and Article 8 paragraph (1) of the Narcotics Law whose use may be subject to criminal sanctions. This provision is the object of application Number 106/PUU-XVIII/2020.

Sad Stories of Mothers

Dwi Pertiwi is listed as Petitioner I and has a 16-year-old child named Musa IBN Hassan Pedersen who suffers from Cerebral Palsy. To provide the best treatment for Musa, she looked for other types of treatment/therapy other than medication through a doctor. In November 2016, he gave cannabis oil to her son while seeking medical care for his son in Daylesford, Victoria, Australia. The cannabis treatment or therapy is carried out with a smoking system (burning incense) and cannabis oil is obtained from a friend who is doing treatment with marijuana in Australia. During one month of treatment, Musa's condition became much better, for example, the condition of his muscle tone/muscles and bones became softer, and his seizure symptoms stopped completely. During that period, Musa also did not take any medicine from the doctor at all.

However, Dwi had to stop the treatment process upon her return to Indonesia. This is because cannabis is included in Schedule I Narcotics whose use can be subject to criminal sanctions. On December 26, 2020, Musa breathed his last due to his illness.

Meanwhile, Santi Warastuti as Petitioner II is the mother of Pika Sasikirana who suffers from Japanese Encephalitis. It is an infection of the brain caused by a virus. Santi's struggle to cure Pika is pursued by participating in some therapies and taking drugs under BPJS (Social Security Administrator) coverage. However, Pika's therapy process was stopped due to the issuance of BPJS rules which stipulate the age limit for patients who can be treated is 7 years, while Pika is 12 years old. He received information that cannabis oil could be used as an alternative medicine for Pika from a friend who is a foreign national—who had also offered to bring it for Santi. However,



Dwi Pertiwi, Santi Warastuti, and Nafiah Muharyanti as Petitioners I, II, and III judicial review of the Narcotics Law/Photo: Instagram Lingkar Ganja Nusantara (@lgn_id)

this effort was rejected by Santi because of the rules for the use of medical marijuana as regulated in the Narcotics Law.

It was also experienced by Nafiah Muharyanti as Petitioner III who is the mother of Masayu Keynan Almeera who suffers from Epilepsy and Spactic Diplegia. Keenan—called Masayu—who is 10 years old takes regular medication every day in the form of seizure medication, Diazepam, and several vitamins for nerves. In addition, Keenan also undergoes physiotherapy every day from the age of 4 months to 4 years, but currently, the intensity is reduced to three times a week due to limited time, energy, and money as well as Nafiah's condition. After exchanging ideas with Dwi Pertiwi, Nafiah was interested in using cannabis oil as an alternative treatment for Keenan. However, because it was hindered by the rules in the Narcotics Law, Nafiah canceled her intention.

In addition to the three individual Petitioners above, there are also some NGOs as Petitioners, namely Perkumpulan Rumah Cemara (Petitioner IV), Institute for Criminal Justice Reform (ICJR) (Petitioner V); and the Association of Community Legal Aid Institutions or Community Legal Aid Institutions (LBHM) (Applicant VI).

Inaugural Hearing

In the inaugural hearing which was held on Thursday (12/16/2020), the Petitioners represented by Ma'ruf as attorney explained that the Elucidation of Article 6 paragraph (1) letter a and Article 8 paragraph (1) of the Narcotics Law had resulted in the loss of the right of applicants to obtain health services as regulated in Article 28H paragraph (1) of the 1945 Constitution. He explained that the right to obtain health services has been adopted in Article 4 letter of the Narcotics Law which states that the Law on Narcotics aims to ensure the availability of narcotics for the benefit of health services and/or the development of science and technology.

Furthermore, Ma'ruf continued, Article 7 of the Narcotics Law states that narcotics can only be used for the benefit of health services and/or the development of science and technology. Thus, based on the provisions of Article 4 letter a in



FOTO: INSTAGRAM LINGKAR GANJA NUSANTARA (@LGN_ID)

The inaugural hearing of the judicial review of the Narcotics Law was held on Thursday (16/12) in the Plenary Court Room. Photo: Public Relations/Ifa.

conjunction with Article 7 of the Narcotics Law, it is clearly stated that narcotics can be used and are an inseparable part of the right to health services guaranteed in the constitution.

Ma'ruf further said that Article 8 paragraph (2) of the Narcotics Law provides opportunities for research on Schedule I Narcotics with the provisions "In limited quantities, Schedule I Narcotics can be used for the benefit of developing science and technology and for diagnostic reagents, as well as laboratory reagents. after obtaining the approval of the Minister on the recommendation of the Head of the Food and Drug Supervisory Agency". The elucidation provisions of Article 6 paragraph (1) letter a and Article 8 paragraph (1) of the Narcotics Law have resulted in the loss of the rights of the Petitioners to benefit from the development of science and technology in the form of research results on the health benefits of Schedule I Narcotics.

Therefore, in their petition, the petitioners asked the Court to state that the Elucidation of Article 6 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics is contrary to Article 28C paragraph (1) and Article 28H paragraph (1) of the Law. The 1945 Constitution of the Unitary State of the Republic of Indonesia as long as it does not read "In this provision what is meant by "Narcotics Group I" is Narcotics that can be used to develop science and health services and or therapy, and has a very high potential to cause dependence."



Petitioner I is showing a photo of the condition of his son who has cerebral palsy in the trial which was held on Thursday (12/16/2020). Photo: Public Relations/Ifa.



Taufik Basari yang mewakili DPR menyampaikan

It Needs Research

Taufik Basari who represented the House of Representatives said that each country has its characteristics in deciding the legalization of marijuana

or marijuana oil for health services which are included in the narcotics class. The House of Representatives stated that legalizing cannabis requires clear scientific research with definite knowledge and it takes time to carry out such research.

"So, it cannot be immediately equated the characteristics of several countries with the state of Indonesia in legalizing cannabis oil for health services, but must go through several stages first, including the stage of scientific research," said Taufik.

In addition, Taufik conveyed that the classification of narcotics and the prohibition of Narcotics Group I for the benefit of Health as referred to in the Elucidation of Article 6 paragraph (1) and the formulation of Article 8 paragraph (1) of the Narcotics Law is an open legal policy. Classification of narcotics is important to be able to make further arrangements in terms of their use, testing, and law enforcement when abuse occurs, as well as research. Meanwhile, in terms of determining the types of narcotics assigned to a certain narcotic class, it is a policy that must be based on the scientific method.

"Therefore, to change the policy on a type of narcotic to be placed in a certain Schedule Narcotics, there are important steps that must be carried out, namely scientific research," said Taufik in a hearing of the testimony of the House of Representative and the Government which was held on Tuesday (10/8/2021).

In the House of Representatives' statement, Taufik also said that the House of Representatives requested that the Government not only reject the CND Decision 63/17, but that it must be followed up with in-depth research on the WHO-Expert Committee on Drugs Dependence studies.

"Don't just stop at the attitude of rejection, so that the government's attitude and policies are still based on the scientific method. The results of this follow-up research will also be useful as input for the revision of the Narcotics Law which has been included in the Prolegnas of the 2021 Priority Bill," added Taufik.

Taufik also considered that the arguments and data presented by the Petitioners in the trial are important information that must be followed up





by the Government. The government, he continued, must carry out an advanced scientific research process as material for the formulation of future narcotics policies—including the formation of future laws.

It Is Not a Problem of Norm Constitutionality

In the same hearing, the Government represented by the Director General of Health Personnel Arianti Anaya explained that the Government considered that there were no constitutional losses experienced by the Petitioners. Moreover, the argument of loss described by the Petitioners is the implementation of the norm.

"The government considers it inappropriate if this is a reason to file a judicial review in the Constitutional Court. The Petitioners can provide input or data to the government, either to the National Narcotics Agency, BPOM, and the Ministry of Health regarding the research or use of narcotics that can be accounted for to be applied in Indonesia," said Arianti.

Furthermore, Arianti emphasized the dangers arising from the effects of using narcotics, to the emergence of dependence, which is very detrimental and endangers the health of individuals or society, especially the younger generation. In fact, there is a greater danger to the life and cultural values of the nation which will ultimately weaken national resilience. "Therefore, according to the Government, it becomes a logical reason to regulate its use," he said.

Encourage The Research

Regarding the petition, the Court also issued Decision Number 106/PUU-XVIII/2020 on July 20, 2022. In that decision, the Panel of Constitutional Justices rejected the Petitioner's request. In the legal considerations read out by Constitutional Justice Suhartoyo said that the Court can understand and have a high sense of empathy for sufferers of certain diseases which "phenomenon" according to the Petitioners can be cured by therapy using Schedule I Narcotics, as experienced by the Petitioner's child. I, Petitioner II, and Petitioner III. However, considering that this is not yet a valid result of scientific study and research—considering the effects or impacts that can be caused if the Court accepts the arguments of the Petitioners a quo—then there is no other choice for the Court to encourage the use of Schedule I Narcotics previously. a scientific study and research are carried out relating to the possibility of the use of Schedule I Narcotics for health services and/or therapy.

"Furthermore, the results of scientific studies and research can be used as material for consideration for legislators in formulating possible policy changes regarding the use of Schedule I Narcotics," Suhartoyo said in the decision reading session which was held on Wednesday Afternoon (7/20/2022).

Suhartoyo continued, that the studies and research can be carried out by the government or the private sector after obtaining permission from the Minister of Health as regulated in Article 13 paragraph (1) of the Narcotics Law. Article 13 paragraph (1) of the Narcotics Law states, "Scientific institutions in the form of educational and training institutions as well as research and development organized by the government or the private sector may acquire, plant, store, and use Narcotics for the benefit of science and technology after obtaining a permit. Minister". Furthermore, regarding the requirements and procedures for obtaining a permit and the use of Narcotics as intended, it is based on a Ministerial Regulation, following the spirit of Article 13 paragraph (2) of the Narcotics Law. This means, he continued, government and private institutions jointly or the government separately conduct studies and research to examine scientifically relating the types of Schedule I Narcotics for the benefit of health services or therapy.

"Furthermore, studies and research conducted on the type of Schedule I Narcotics are concretely carried out based on professional health research standards as regulated in laws and regulations. In addition to the results of the study and research, it can provide a scientific study that proves the truth of the 'hypothesis', namely the use or utilization of Schedule I Narcotics can be intended for health services and/or therapy for the treatment of certain diseases, which is then continued by testing its application to practical interests," said Suhartoyo.

Suhartoyo then explained the results of the study and research if it turns out that the type of Schedule I Narcotics can be used for health services and/or therapy and implementing regulations are needed. The government together with stakeholders must regulate in detail about anticipating the possibility of misuse of Schedule I Narcotics.

"Therefore, through a quo decision, the Court also reminds that legislators, including implementing regulations, must be very careful and careful in anticipating these things, considering the culture and legal structure in Indonesia still requires comprehensive education. continuously," said Suhartoyo. ■

(LULU ANJARSARI P.)

SCHEDULE OF NARCOTICS

SCHEDULE I NARCOTICS

Narcotics that can only be used for scientific development purposes are not used in therapy and have a very high potential to cause dependence.



Such as Heroin/Putaw, Marijuana, Cocaine, Opium, Amphetamines, Methamphetamine/meth, Mdma/extacy/ecstasy, and so on

NARKOTIKA GOLONGAN II

Narcotics that have medicinal properties are used as a last resort and can be used in therapy and/or to develop science and have a high potential to cause dependence.



Such as Morphine, Pethidine, Methadone, etc

NARKOTIKA GOLONGAN III

Narcotics that have medicinal properties are widely used in therapy and/or scientific development purposes and have mild potential to cause dependence.



Such as: Codeine, Ethyl Morphine, etc

Sumber: Badan Narkotika Nasional

Experts' Opinion About Medical Cannabis

The Constitutional Court held 11 hearings for Case Number 106/PUU-XVIII/2020 regarding the material review of Law Number 35 of 2009 concerning Narcotics against the 1945 Constitution. The hearing resulted in various opinions from experts. The following is a summary of expert opinions presented at the trial as Experts by the Petitioners and the Government.

Asmin Fransiska

Indonesia Misinterprets the Single Convention on Narcotics 1961

The Government of Indonesia needs to interpret the right to health in the 1961 Single Convention on Narcotics and the implementation of the Narcotics Law. Unfortunately, in interpreting the context of the 1961 Single Convention on Narcotics, the Government of Indonesia only interprets the prohibition of the use of narcotics. The meaning is only limited to the context of the legal movement and not the right to health.

"As a result of the prohibition on the use of health services, Indonesia has misinterpreted the 1961 Single Narcotics Convention," said Asmin Fransiska as the Expert presented by the Petitioners in the trial held at the Constitutional Court on Monday (8/30/2021).

Narcotics on the one hand are drugs and materials that are useful in the field of treatment or health services and the development of science. International classifiers are returned to each participating country to be regulated in their domestic law while still informing the United Nations organization to exercise control over narcotics. This means that the classification is intended to be seen, reviewed, and reported in the context of coordinating cooperation on narcotics control for global security and health. The reading of the article that narcotics are not allowed for health services is very detrimental to the State of Indonesia which is only based on the security context and forgets that the purpose of the Single Convention on Narcotics 1961 and the Narcotics Law must also be based on health and scientific aspects that aim to ensure the welfare and health of citizens and world citizens.

David Nutt

Medical Cannabis in the UK is Moved to Schedule II

Cannabis has been used as medicine in many countries for 5,000 years. It was first discovered in China, but then spread and used widely. Then since the 1961 Convention, for political reasons, its use has been banned in many countries.

In England 3 years ago, control over these drugs was opened and it was used as medicine. This medical cannabis has been shown to have significant uses that other medicines cannot provide.

"So, in the UK, medical cannabis was then moved to category/schedule II, which means it's a drug. Any specialist doctor is allowed to prescribe with evidence that there is safety and efficacy or efficacy of the drug for a particular disease. And England does have the freest arrangement because it can be prescribed by any specialist," said David Nutt as the Petitioner's Expert who delivered an online presentation in English at the trial held at the Constitutional Court on Monday (30/08/2021). David Nutt is a Professor of Neuropsychopharmacology at Imperial College London.

In the UK, there is very strong evidence for the effectiveness of medical cannabis and there is overwhelming evidence that this substance has been recategorized as having unique medical properties. I hope that what I

have shown can give confidence to the Honorable Panel of Judges to do the same in Indonesia because it will provide many benefits to patients and also not harm them.

Musri Musman

About 73 Disease Compounds are Treated with Cannabis

Several studies report the use of cannabis for medical treatment. The results of my meta-analysis showed that there are about 73 compounds of diseases that have been treated with cannabis. One of them is epilepsy. Epilepsy is very popular using cannabis. Many sufferers have put their hands up, and have given up enough with synthetic medicine, treatments that are not based on cannabis. "So, they are looking for a solution by using this cannabis," said Musri Musman an expert presented by the Petitioners in the trial held at the Constitutional Court on Monday (30/08/2021).

For cancer, there have been 34 recent medical papers in recent years from leading institutions around the world reporting on the use of cannabis for treatment, for example, brain cancer, oral cancer, throat cancer, breast cancer, lung cancer, prostate cancer, colon cancer, treated with cannabinoids.

Stephen Rolles

Cannabis Active Components with Potential Medical Uses

There are two important observations about the United Nations drug control framework. First, the drug conventions of The united Nations, namely the 1961, 1971, and 1988 Conventions, did not impose an absolute prohibition on any drugs for medical and scientific use, even those considered to be the riskiest. "Specifically, these conventions state that drugs that are riskier should be subject to stricter controls, but are not prohibited for medical and scientific use," Stephen Rolles the Petitioner's Expert who delivered an online presentation in English at the trial held at the Constitutional Court, Tuesday (9/14/2021).

Second, the system also has a mechanism for reviewing the classification of certain drugs. Mechanisms for transferring a drug to a specific class or removing it from a class altogether as our understanding of the risks and benefits of that drug change as new evidence emerges.

"This occurred recently with cannabis which after a detailed review of the evidence from the WHO and heated debate among UN member states, was recently removed from class IV of the 1961 Convention. And this effectively recognizes the potential medical use of cannabis. while still recommending strict control over it. WHO also confirmed that CBD, which is a medically active component of cannabis, does not have a low-risk psychoactive effect and does not need to be subject to international control," he explained.

The new decisions are very useful in highlighting the many challenges that have been faced, both in the UN and domestic debates around the regulation of cannabis-based drugs. Because cannabis is a plant that contains many active components with potential medical uses and various forms of the plant can then be made into various extracts and preparations. Some of these may be standard pharmaceutical products, while others may be informally manufactured herbal products. "We need to be careful when using broad general terms like "medical cannabis" which can include hundreds of different types of medical products," he stressed.

Sung Seok Kang
Rules for the Use of Psychotropics in Korea

As in Indonesia, Korea has regulations and laws regarding the medical use of narcotics. Efforts to change the regulations began in mid-2017 intending to protect patients, especially children and families. Thus, they can receive appropriate legal provisions.

"And thankfully, in 2018 the new law on the use of psychotropic drugs in the medical world was successfully promulgated," said Sung Seok as the Petitioner's Expert who delivered an online presentation in Korean at the trial held at the Constitutional Court, Tuesday (10/12/). /2021).

The discussion about the legalization of narcotics use was discussed by the legislature, but at that time, cannabis was not included in the discussion. However, his party seeks to continue to research the use of cannabis for medical purposes with several foreign experts.

The Korean government is following up on the legislative decision by compiling rules or regulations so that the use of psychotropic drugs can be used properly. One of them is the existence of regulations regarding only certain people or certain institutions that can make prescriptions for the use of these psychotropic drugs.

Pekong Kwan Khao
Thailand Legalizes Medical Marijuana

Thailand has legalized medical cannabis since February 2019. Thailand has legalized cannabis due to increased research and experience using marijuana, especially for standard treatment cases such as cancer. There is a movement to decriminalize and legalize marijuana globally.

"There is a high demand for marijuana among Thais. Before we legalized it, people in Thailand had to go to the black market to get unqualified cannabis products. We know that products on the black market are unqualified and that's certainly not good for our population. And marijuana is actually part of our traditional knowledge," said Pakakrong Kwankhao as the Petitioner's Expert who delivered an online presentation translated by Miki Rusindaputra Salman at the trial held at the Constitutional Court, Tuesday (10/12/2021).

Patients who need cannabis in their treatment are required to meet certain conditions that are verified by hospitals in Thailand. Thailand has also included cannabis on the national list of essential medicines.

"If patients meet the requirements or medical indications, they will get medicines like this from hospitals or health care facilities. We have cannabis extracts, either THC, or CBD, or a combination of THC or CBD. We also have prescriptions for traditional medicines that contain marijuana as well," explained Pakakrong.

Rianto Setiabudy
Drug Use Must Be Based On Scientific Evidence

The use of good and correct drugs must be based on scientific evidence that shows the benefits exceed or are at least balanced with the risks. Justification for the use of a drug by the state must be based on sufficient scientific evidence that the drug is safe, effective, and made of good quality. The use of good and correct drugs must be supported by research data on both animals and humans carried out with a methodology that meets scientific principles. The granting of approval for the use of a drug or substance can vary between countries because there are differences in society at the level of education, the level of community compliance with law, culture, religion, and others.

Furthermore, when a choice is made between individual interests and the interests of the community at large, the interests and safety of the community are mostly placed in a higher place than individual interests and of course, this is carried out without forgetting the interests of the individual. In assessing the feasibility of a drug or a treatment, the sequence is to be proven first by research and then allowed to use, not the other way around.

"We are not in a hurry to state that cannabis can be used for medicinal purposes. Because we are dealing with a time that has the potential to cause big social problems, especially regarding the quality of our young generation. In addition, there are many choices of drugs available in the national formulary and the national list of essential drugs for the indications mentioned for cannabis," said Rianto Setiabudy a Government Expert who delivered an online presentation at the trial held at the Constitutional Court, Thursday (1/20/ 2022).

Aris Chess Bintoro
No Need for Cannabis to Treat Epilepsy

The use of cannabis is still a matter of debate. There is no agreement from many experts about cannabis drugs as antiepileptic drugs. In addition, we also tried to release some guidelines or protocols that exist in several countries, it turns out that there are only a few countries that have provided regulations for the use of cannabis, but most of us have not received it.

Epilepsy treatment strategies rely on diagnosis, administration of drugs, and improvement of several other factors that can be used to treat seizures. The availability of antiepileptic drugs in Indonesia has been evenly distributed and the management of epilepsy in Indonesia is said to be good. "The use of cannabis as one of the antiepileptic drugs in Indonesia is currently not needed, considering that research support is still lacking, there are not many guidelines for the management of epilepsy treatment that state cannabis. There are side effects in long-term use as well as other therapeutic options, such as medication, surgery, and the ketogenic diet, "said Aris Catur Bintoro as a Government Expert who delivered an online presentation at the trial held at the Constitutional Court, Thursday (1/20/2022).

Gamayani Union
Pediatric Epilepsy Patients Do Not Need Cannabinoid Drugs

Currently, there are several studies on treating spasticity using cannabinoids in cerebral palsy patients. In 2020, there was a study on 72 pediatric cerebral palsy and head trauma patients aged 8 to 18 years given the cannabinoid nabiximols within 12 weeks. The results showed that there was no significant difference between patients who were given the drug and patients who did not receive the drug. Side effects that occur are neuropsychiatric disorders. "The conclusion is that nabiximols cannabinoids cannot be used to treat spasticity in children with cerebral palsy or head trauma," said Uni Gamayani, a Government Expert when delivering an online presentation at the trial held at the Constitutional Court, Thursday (1/20/2022).

In 2018, there was also a study on 20 patients aged 1 to 17 years with the severe complex motor disorder for 5 months. This study involved 25 people, but 5 people were excluded from the study for various reasons, namely because there was no improvement during 2 months of therapy, increased seizure frequency experienced severe irritability, and underwent emergency orthopedic surgery. The results were improvements in spasticity and dystonia, difficulty sleeping, headache, and quality of life. The weakness

of this study is the small number of subjects, only 20, there is no control group, so there is no comparison, and there is no examination of side effects on cognitive and psychological disorders in patients. "Based on the description above, two things can be stated, namely that the administration of cannabinoid drugs to pediatric epilepsy patients is not needed at this time, considering that the existing drugs are adequate. There is insufficient research to assess the effectiveness and safety of these drugs. Second, the administration of cannabinoid drugs as a therapy for spasticity in cerebral palsy patients is currently not needed, considering the results of the research are still inconsistent, he concluded.

Mufti Djusnir
Need a Deeper Study of Cannabis Character

The Commission on Narcotic Drugs (CND) agreed to accept the WHO-ECDD (Expert Committee on Drug Dependence) recommendation to remove cannabis and cannabis resin from Schedule IV. However, cannabis and cannabis resin are still under Schedule I of the 1961 Narcotics Convention.

"It means, it still has to be under a very strict international control regime because of the high risk of abuse. The placement of cannabis and cannabis resin in Schedule I of the 1961 Convention does not mean that cannabis is a legal substance to be used for recreational purposes," said Mufti Djusnir, a Government Expert when delivering an online presentation at the trial held at the Constitutional Court, Thursday (3/07/2022).

The 1961 Narcotics Convention recognizes state sovereignty in the domestic application, following Article 39 of the 1961 Narcotics Convention, member states have the right to apply stricter domestic regulations, according to their respective considerations, if a substance is deemed dangerous.

"Indonesia still has Law Number 35 of 2009 concerning Narcotics, where cannabis and its derivatives are included in Schedule I, which is very dangerous. The results of studies conducted by Indonesian health experts also show different results from the WHO ECDD recommendations, which means that a more in-depth study of certain cannabis characters is needed," he explained.

Rahmana Emran Kartasasmita
Schedule I Narcotics Are Not Prohibited for Science and Technology Development

The state needs to regulate substances or substances that have potential or toxic properties, including regulating drugs, especially drugs that are included in the category of narcotics which have addictive effects and also have the potential for abuse. Indonesia has regulated narcotics in Law Number 35 of 2009, which in essence narcotics are classified into Schedule I, Schedule II, and Schedule III Narcotics

"Schedule I Narcotics is indeed prohibited from being used for health purposes. However, it is not prohibited for the sake of developing science and technology," said Rahmana Emran Kartasasmita, Government Expert when delivering an online presentation at the trial held at the Constitutional Court, Thursday (07/03/2022).

Safety, efficacy, and quality of a substance used as a drug are requirements that must be met by a substance or substance before it can be used as a drug for the benefit of health services and/or in other words used clinically. Proof of safety, efficacy, and quality must be carried out since a substance or substance is still in the drug discovery and development stage.

"It is a research activity that includes a series of preclinical and clinical testing stages. The process of drug discovery and development is a scientific development activity or in other words research and development activities to obtain drugs that are suitable for use in health services for humans, "explained Rahmana.

Ahmad Redi

The Narcotics Law is in line with the Spirit of the Constitution

Article 4 letter a of the Narcotics Law has regulated the availability of narcotics for the benefit of developing science and technology. The Narcotics Law provides the widest opportunity for various stakeholders to conduct research and development on narcotics.

This is stated in the provisions of Article 13 paragraph (1) of the Narcotics Law which regulates that scientific institutions in the form of educational and training institutions as well as research and development organized by the Government or the private sector can obtain, plant, store, and use narcotics for the benefit of science and technology after obtaining permission from the Minister. The Ministry of Health also issued the Decree of the Minister of Health Number HK.02/Menkes/118/2015 concerning Permits to Obtain, Plant, Store, and Use Cannabis and Coca-Cola Plants.

Furthermore, in order to conduct research and development in the field of Health, institutionally following the Minister of Health Regulation Number 25 of 2020 concerning OTK, the Ministry of Health has also established Health Research and Development Agency (Balitbangkes). This agency is tasked with conducting research, and development in the health sector which generates innovations in health development. Of course, the results of this innovation are used for the development of people's health.

"Based on this case, it is clear that the Narcotics Law is in line with the spirit of the constitution, especially regarding the guarantee of citizens' rights to benefit from science and technology," said Ahmad Redi, Government Expert when delivering an online presentation at the trial held at the Constitutional Court. Thursday (3/07/2022).

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JUDICIAL REVIEW DECISIONS IN JULY 2022

No.	Case Number	Case Subject	Petitioners	Decision	Date	Decision Link
1	19/PUU-XX/2022	Material judicial review of Law Number 7 of 2021 concerning Harmonization of Tax Regulations	Dr. Ir. Priyanto, S.H., M.H., M.M., C.L.A., C.I.R.P., C.T.L.C	1) Stating the Petitioner's application as long as Article 4A paragraph (2) letter b, Article 4A paragraph (3) letter a, Article 4A paragraph (3) letter b, Article 4A paragraph (3) letter g, Article 7 paragraph (1) in Article 4 number 2, Article 16B paragraph (1a) letter j number 1, number 2, number 3 and number 6 along with the explanation in Article 4 number 6, Article 5 to Article 12 in CHAPTER V TAXPAYER VOLUNTARY DISCLOSURE PROGRAM, the word "can" in Article 40B paragraph (3) in Article 14 point 2 and the word "can" in Article 64 paragraph (1) in Article 14 point 3 of Law 7/2021 cannot be accepted; 2) Reject the Petitioner's application for other requests.	July 7, 2022	CLICK DECISION
2	33/PUU-XX/2022	Material judicial of Law Number 40 of 2004 concerning the National Social Security System which has been changed to Law Number 11 of 2020 concerning Job Creation	Samiani	Reject the Petitioner's application in its entirety	July 7, 2022	CLICK DECISION

3	35/PUU-XX/2022	Material Judicial Review of Law Number 7 of 2017 concerning General Elections	The Indonesian People's Wave Party (PARTAI GELORA INDONESIA), in this case, is represented by H. M Anis Matta, Lc (General Chair), and Drs. Mahfuz Sidik, M.Si (Secretary General)	Reject the Petitioner's application in its entirety	July 7, 2022	CLICK DECISION
4	52/PUU-XX/2022	Material judicial review of Law Number 7 of 2017 concerning General Elections	1. The Regional Representative Council of the Republic of Indonesia (DPD RI), represented by Ir. H. Aa Lanyalla Mahmud Mattalitti (Chairman of DPD RI), Dr. Nono Sampono, M.Si (Vice Chairman of DPD RI), Dr. H. Mahyudin, S.T., M.M. (Vice Chairman of DPD RI), Sultan Baktiar Najamudin (Vice Chairman of DPD RI), as Petitioner I; 2. The Crescent Star Party (PBB), represented by Prof. Dr. Yusril Ihza Mahendra, S.H., M.Sc. (General Chairperson of the UN Central Executive Board) and Afriansyah Noor, M.Sc. (Secretary General of the United Nations Central Leadership Council), as Petitioner II	1. To declare that the application of Petitioner I is unacceptable; 2. Reject Petitioner II's application in its entirety.	July 7, 2022	CLICK DECISION

5	57/PUU-XX/2022	Judicial review Material of Law Number 7 of 2017 concerning General Elections	The People's Party of Justice and Prosperity (PRIMA), represented by Agus Priyono (as General Chair) and Dominggus Oktavianus Tobu Kiik (as Secretary General)	Reject the Petitioner's application in its entirety	July 7, 2022	CLICK DECISION
6	44/PUU-XX/2022	Material Examination of Law Number 2 of 2008 concerning Political Parties as amended by Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties	E. Ramos. Petege, Yanuarius Mote, Elko Tebai, and Muhammad Helmi Fahrozi	Reject the Petitioner's application in its entirety	July 7, 2022	CLICK DECISION
7	63/PUU-XX/2022	Formal Examination of Law Number 5 of 2022 concerning North Sulawesi Province	Imanuel Mahole	Stating the Petitioner's application cannot be accepted	July 7, 2022	CLICK DECISION
8	65/PUU-XX/2022	Material Judicial Review of Law Number 20 of 2003 concerning the National Education System	Mochamad Mashuri	Accept Withdrawal Application	July 20, 2022	CLICK DECISION
9	66/PUU-XX/2022	Judicial review Material of Law Number 3 of 2022 concerning the State Capital	Muhammad Yuhiqqul Haqqa Gunadi, Hurriyah Ainaa Mardiyah, Ackas Depry Aryando, Rafi Muhammad, Dea Karisna, and Nanda Trisua Hardianto	Accept Withdrawal Application	July 20, 2022	CLICK DECISION

10	106/PUU-XVIII/2020	Judicial Review Material of Law Number 35 of 2009 concerning Narcotics against the 1945 Constitution	Dwi Pertiwi, Santi Warastuti, Nafiah Murhayanti, A.Md., Rumah Cemara Association, Institute for Criminal Justice Reform (ICJR), and Association of Community Legal Aid Institutions or Community Legal Aid Institute (LBHM)	1. To declare that the applications of Petitioner V and Petitioner VI cannot be accepted. 2. Reject the petition of the Petitioners in its entirety	July 20, 2022	CLICK DECISION
11	25/PUU-XX/2022	Formal Examination of Law Number 3 of 2022 concerning the Capital City	Dr. Abdullah Hehamahua, M.H., Dr. Marwan Batubara, M.Sc., Dr. H. Muhyiddin Junaidi, M.A., et al	In Provisions: Rejecting the petition for provisions of the Petitioners. In the Principal of the Application: Reject the petition of the Petitioners in its entirety.	July 20, 2022	CLICK DECISION
12	34/PUU-XX/2022	Formal and Material judicial review of Law Number 3 of 2022 concerning the State Capital	Prof. Dr. Azyumardi Azra, M. Sirajuddin Syamsuddin, Prof. Dr. Nurhayati Djamas, Prof. dr. Didin S. Damanhuri, Jilal Mardhani, et al.	Reject the Petitioner's application in its entirety	July 20, 2022	CLICK DECISION
13	49/PUU-XX/2022	Formal judicial review of Law Number 3 of 2022 concerning the Capital City	Ir. BC. Phiodias Marthiasv	Reject the Petitioner's application in its entirety	July 20, 2022	CLICK DECISION

14	36/PUU-XX/2022	Material judicial review of Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions	Eriko Fahri Ginting, S.H., Leon Maulana Mirza Pasha, S.H., Ferdinand Sujanto, S.H., Andi Redani Suryanata, Belgis Shafira, et al.	Reject the Petitioner's application in its entirety	July 20, 2022	CLICK DECISION
15	37/PUU-XX/2022	Material Review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to become Laws	A. Komarudin, Eny Rochayati, Hana Lena Mabel, Festus Menasye Asso, Yohanes G. Raubaba, and Prillia Yustiati Uruwaya	Declare the petition of the Petitioners cannot be accepted	July 20, 2022	CLICK DECISION

35 MEMBERS OF THE NATIONAL HUMAN RIGHTS COMMISSION IN CONDITIONALLY INCONSTITUTIONAL

Questioning the constitutionality of the selection process for the Chair and Members of the National Human Rights Commission, Achmad Kholidin who is a Lecturer in the Faculty of Law, Muhammadiyah University of Jakarta, and Tasya Nabila, who is an activist with the Indonesian Human Rights Lentera, tested Law No. 39 of 1999 on Human Rights (UU HAM). In this Case Number 30/PUU-XX/2022, the Petitioners argue that Article 83 paragraph (1), Article 85 paragraph (1), Article 86, and Article 87 paragraph (2) letter d of the Human Rights Law are contrary to the 1945 Constitution.

Creating Legal Uncertainties

Creating Legal Uncertainty In the first hearing of the case which was held on Wednesday (23/3/2022) led by the Chief Justice of the Constitutional Court Anwar Usman, Andy Winanto as the attorney for the Petitioners said the provisions of Article 83 paragraph (1) had created legal uncertainty due to the emergence of space for interpretation which vary in its formulation, especially along the phrase "Members of National Human Rights Commission are 35 (thirty-five) people". According to him, this provision is contradictory and has no binding legal force as long as it is not interpreted as "nine members of the National Human Rights Commission who are elected by the House of Representatives and determined by a Presidential Decree".

In addition, the Petitioners also emphasized that the phrase "based on the recommendation of the





National Human Rights Commission" is contrary to the 1945 Constitution. However, in its implementation, Andy continued, the Petitioners were disturbed by the existence of a quo article that according to the 1945 Constitution, Indonesian citizens should be given the same opportunity in government and given equal recognition before the law in participating in the election process for the chairman and/or members of National Human Rights Commission. Based on these reasons, the Petitioners asked the Court to grant the petition and stated that Article 83 paragraph (1), Article 85 paragraph (1), Article 86 and Article 87 paragraph (2) letter d of the Human Rights Law is contrary to the 1945 Constitution and have no binding legal force.

Conditionally Unconstitutional

The rule regarding the number of members of the National Human Rights Commission (Komnas HAM) as stated in Law Number 39 of 1999 concerning Human Rights (UU HAM) was declared conditionally unconstitutional by the Constitutional Court (MK).

In the legal considerations presented by Constitutional Justice Daniel Yusmic P. Foekh, the Constitutional Court assessed that the addition of the number of National Human Rights Commission members in the Human Rights Law was a reflection of efforts to deal with various demands for human rights protection which were increasing in the reform era from 25 (twenty-five) to 25 (twenty-five) 35 (thirty-five). He added that the number of National Human Rights Commission members is often related to the area and population of Indonesia which is considered to need many members to solve various human rights problems. However, the question is that there is a regulation on the number of National Human Rights Commission members who use the diction or the word "amount" to 35 (thirty-five) people, but the number of National Human Rights Commission members is never filled up to 35 (thirty five) people. For example, in the 2002-2007 period there were 23 members, in the 2007-2012 period there were only 11 members.

Based on these facts, Daniel mentioned, in particular, the fact that so far, the number of members of the National Human Rights Commission which has never been filled is 35 (thirty-five) people. Thus, according to the Court, the regulation regarding the word "amount" to 35 (thirty-five) people becomes legal uncertainty because literally, the meaning of the word "amount" has an imperative nature that must be fulfilled. while the fact that so far, the 35 members of the National Human Rights Commission have never been fulfilled and this is considered a justification, has created legal uncertainty. Whereas the norm of Article 83 paragraph (1) of the Human Rights Law imperatively regulates National Human Rights Commission members because they use the word "amount" instead of the phrase "at most" 35 (thirty-five) people because the provisions of the word "amount" which indicate the imperative have never been fulfilled.

Daniel said that according to the Court to be able to provide fair legal certainty, the norm of Article 83 paragraph (1) of the Human Rights Law should not be imperative, but facultative so that when it cannot be fulfilled it does not violate the imperative norm. Nevertheless, the determination of the amount in the norms of law is an open legal policy for legislators, but in its determination, it must provide legal certainty.

"The court to provide legal certainty to the Court, the word 'amount' in Article 83 paragraph (1) of the Human Rights Law is interpreted as 'the highest number'. Thus, if in its implementation National Human Rights Commission only consists of 7 (seven) people or 9 (nine) people as requested by the Petitioners, it does not violate the norms of the law. Therefore, according to the Court, the arguments of the Petitioners' petition as long as the word 'amount' is legally grounded in part," said Daniel.

Open Legal Policy

The Court also considered the constitutional issue regarding the election, the dismissal of National Human Rights Commission Members by the House of Representatives by not involving the President, which the Petitioners argued had harmed the presidential system in Indonesia. According to the Court, the arrangement that seems very heavy for the House of Representatives and leaves the role of executive power cannot be separated from the history of the establishment of the National Human Rights Commission. Daniel revealed that the Court can understand the choice of policy makers to give authority to the House of Representatives to elect National Human Rights Commission members because the House of Representatives as the people's representative represents the people's voice. Thus, the election for National Human Rights Commission members is returned to the people's representative institution.

Regardless of the Petitioners' argument regarding the choice of the Human Rights Commission member election system which cannot balance the powers of the House of Representatives and the President, Daniel said that according to the Court the method of selecting Human Rights Commission members was an open legal policy of the legislators. The constitution does not regulate the system and procedure for selecting members of the state commission. Hence, the constitution gives the legislators the freedom to regulate it, adjusting to the dynamics of the development of the state administration and the social life of the community.

"It is realized that this discretion will change from time to time so that lawmakers can make effective and efficient policy choices. This policy choice becomes an open legal policy which is the domain of legislators as long as the choices made do not exceed the authority of the legislators, do not constitute an abuse of authority, do not actually conflict with the 1945 Constitution, and have rationality that can be accounted for," said Daniel.

Prioritizing Changes to Human Rights Law

Furthermore, Daniel said that although the Court stated that Article 85 paragraph (1), Article 86, and Article 87 paragraph (2) letter d of the Human Rights Law were constitutional, the Court considered the importance of monitoring and reviewing the Human Rights Law as stipulated in Article 95A of the Law. Number 12 of 2011 concerning the Formation of Invitation Regulations, which states that monitoring and review of the implementation of law are carried out by the House of Representatives, the Government, and the Regional Representative Council. The results can be a proposal in the preparation of the National Legislation Program. The Court also emphasizes that legislators can prioritize the process of changing the Human Rights Law.

"Thus, material related to the rational size of Human Rights Commission members and the procedure for selecting, appointing, and dismissing Komnas HAM membership, which is an open legal policy in the realm of legislators, can be included in the material for the change," said Daniel.

In addition, the Court also emphasized that in determining the choice of policy to amend the Human Rights Law, it is necessary to pay attention to the selection/recruitment procedure for Komnas HAM members with the values of democracy and justice that are developing in society, the development of political dynamics of the state administration and adapting to the model/process of filling state commission members. others by taking into account the peculiarities of Komnas HAM which are different from commissions from other countries. The policy choices taken need to consider the risk of violations or abuse at the implementation level so that the goal of increasing human rights protection for Indonesian citizens can be achieved and the National Human Rights Commission can carry out its duties and functions effectively and efficiently. (Utami Argawati/Lulu Anjarsari)



PSI QUESTIONS ON THE VERIFICATION OF POLITICAL PARTY DIFFERENCES

THE CONSTITUTIONAL Court (MK) held an inaugural hearing to review Law Number 7 of 2017 concerning General Elections (Election Law) on Monday (20/6/2022). Case Number 64/PUU-XX/2022 was requested by the Indonesian Solidarity Party (PSI), represented by Giring Ganesha Djumaryo (General Chair of PSI) and Dea Tunggaesti (Secretary General of PSI). The Petitioner examined Article 173 paragraph (1) of the Election Law which was deemed to be contrary to Article 27 paragraph (1), Article 28D paragraph (1) and paragraph (3), as well as Article 28I paragraph (2) of the 1945 Constitution.

Rian Ernest as the Petitioner's attorney stated that during the verification of political parties (parties) participating in the general election, the General Election Commission (KPU) referred to Article 173 paragraph (2) of the Election Law. This norm requires several things, including the fulfillment of the management of political parties at the provincial to sub-district levels, permanent offices for management at the central, provincial, and district/city levels, until the final stages of the election, and a minimum of 30% women's representation in the central management. For parliamentary political parties, this provision is only examined by document, while for non-parliamentary political parties, document examination is carried out followed by factual verification. Thus, the Petitioners consider this to have become a distinction as well as discrimination against non-parliamentary political parties. According to him, this is not in line with Article 28I paragraph (2) of the 1945 Constitution. Based on this, PSI believes that the implementation of factual verification for all political parties will not burden the country's economy. Thus, this will fulfill the constitutional rights of the Petitioners to obtain equality before the law as regulated in Article 28D paragraph (1) of the 1945 Constitution and obtain equal opportunities in government as regulated in Article 28D paragraph (3) of the 1945 Constitution. (Sri Pujianti/Nur R)



JUDICIAL REVIEW OF HALAL PRODUCT CERTIFICATE

THE HEARING for the preliminary examination of the review of Law Number 33 of 2014 concerning Halal Product Guarantee (UU JPH) in conjunction with Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja) was held by the Constitutional Court (MK) on Tuesday (7/5/2022) online. The Petition for Case Number 67/PUU XX/2022 was filed by Ainur Rofiq, Achmad Mutohar, and Muhamad Yusuf (Petitioner I); Mohamad Dahlan Moga, Oheo Kaimuddin Haris, Safril Sofwan Sanib (Petitioner II); Khoirul Umam and Laily Irmayanti (Petitioner III) and 20 other Petitioners.

Some articles were examined by the Petitioners, including Article 5 paragraph (3), and Article 6 of the JPH Law. The Petitioners, represented by Anwar Rachman's attorney, argued that a quo Law could not guarantee the independence of each resident to embrace their religion and to worship according to their religion and beliefs as well as to provide protection and guarantees regarding the halal of the products consumed in question due to the norms the law in the two a quo Laws is not following legal theories and legal principles that the Petitioners give to students while teaching on campus, thus, the Petitioners have violated their constitutional rights to obtain guarantees of legal certainty and justice to prepare the younger generation successor of the nation with quality and integrity.

According to the Petitioners, the enactment of the JPH Law in conjunction with the Job Creation Law will create the potential for political intervention because the Halal Product Guarantee Agency (BPJPH) is unprofessional and not independent. This is because BPJPH is structurally under the Ministry of Religion and the position of the Minister of Religion is a political position. This results in Indonesian products being rejected abroad. In addition, it can disrupt the continuity of people's lives who have been living well and peacefully, especially micro, small and medium businesses will be threatened with bankruptcy due to the flood of products from large producers and also products from abroad. According to the Petitioners, the existence of the JPH Law in conjunction with the Job Creation Law does more harm than good. Therefore, the Petitioners ask the Court to revoke and declare that it has no binding force on the articles being tested, namely Article 5 paragraph (3), Article 6 of the JPH Law, Article 29 paragraph (1) of the JPH Law in conjunction with Article 29 paragraph (1) The Job Creation Law, Article 35 of the JPH Law, Article 42 paragraph (1) of the JPH Law in conjunction with Article 42 paragraph (1) of the Job Creation Law, and Article 48 of the JPH Law in conjunction with Article 48 of the Job Creation Law. (Nano Tresna Arfana/Nur R)



QUESTIONING THE MINISTER TO BE CANDIDATE FOR PRESIDENT

THE INDONESIAN Change Movement PARTY (Garuda Party) has submitted a request for a review of Law Number 7 of 2017 concerning General Elections (Election Law). The preliminary examination hearing on the application for Case Number 68/PUU-XX/2022 submitted by the Garuda Party was held online at the Constitutional Court (MK) on Thursday (7/7/2022).

Chairman of the Garuda Party Ahmad Ridha Sabana and Secretary General of the Garuda Party Yohanna Murtika through their attorney Munathsir Mustaman stated that the material requested for review in the Constitutional Court was Article 170 paragraph (1) of the phrase "state official" of the Election Law. Munathsir conveyed the argument of the Petitioners that the minister is a state official who is not exempt from resigning from his position if he is nominated as a presidential or vice-presidential candidate by the Petitioner or a combination of political parties. The minister who is currently serving in the Advanced Indonesia Cabinet, as well as the Petitioner who nominates the minister to become a presidential or vice-presidential candidate, has the potential to experience constitutional losses according to reasonable reasoning which can certainly occur. Unlike the case with governors or vice governors, regents or deputy regents, mayors or deputy mayors, if they are nominated as presidential or vice -presidential candidates, they only need permission from the President as regulated in the provisions of Article 171 paragraph (1) of the Election Law. (Nano Tresna Arfana/Nur R.)



THE P3 (FORMATION OF LEGISLATION) LAW IS ASSESSED AS HAVING THE POTENTIAL TO REACTIVATE THE JOB CREATION LAW

LAW NUMBER 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation (UU P3) was tested formally and materially to the Constitutional Court (MK) on Thursday (14/7/2022). The Labor Party, represented by the President of the Labor Party Said Iqbal, and the Secretary General of the Labor Party, Ferri Nurzali, were listed as Petitioners in Case Number 69/PUU-XX/2022. In their petition, the Petitioners argue that Article 64 paragraph (1b); Article 72 paragraph (1a), paragraph (1b), paragraph (2), and Article 73 paragraph (1) and paragraph (2) are contrary to the 1945 Constitution.

In the hearing, Said Iqbal said that the ratification of the P3 Law was initiated to "revive" Law No. 11 of 2020 concerning Job Creation (Ciptaker Law) which had been decided to be formally flawed by the Constitutional Court. Therefore, said Said Iqbal, the Labor Party has an interest and is part of the previous Petitioners in the formal and material review of the Job Creation Law, namely KSPI itself, KSPSI, FSPMI, KSBSI, KPBI, and others.

The legal counsel for the Petitioners, Said Salahudin, said that in essence, for a formal review of the petition, the Petitioners had firmly stated that the *objectum litis* in the Petitioner's petition was a formal review of the P3 Law against the 1945 Constitution. In essence, the petition filed by the Petitioner was still within the deadline. 45 days for a formal review, the P3 Law was promulgated on June 16, 2022, and submitted by the Petitioner to the Court on June 27, 2022. It means that it is still 12 days from the 45-day deadline. Based on the description above, the Constitutional Court has the authority to examine, hear, and decide on a quo case.

Meanwhile, in material testing, Said Salahudin said, there is one additional norm, namely Article 2 paragraph (4) PMK. In essence, the Petitioners firmly state that the *objectum litis* of the Petitioners' petition is a material review of Article 64 paragraph (1b), Article 72 paragraph (1a), paragraph (1b), and paragraph (2), as well as Article 73 paragraph (1), paragraph (2) P3 Law which, according to the Petitioners, is contrary to the 1945 Constitution. Therefore, in its petitum, the Petitioners ask the Court to state Article 64 paragraph (1b); Article 72 paragraph (1a), paragraph (1b), paragraph (2), and Article 73 paragraph (1) and paragraph (2) contradict the 1945 Constitution. (Nano Tresna Arfana/Lulu Anjarsari)



Open Up to the Public, Constitutional Court Invites Followers to 'Enjoy Coffee Together'

For the first time during the pandemic, the Constitutional Court (MK) finally opened up to the public. The Constitutional Court warmly welcomed the invitation, with 50 Instagram account followers to come to the Court. The courtroom lobby, which was usually empty since the pandemic, is now prepared in such a way to welcome the arrival of the selected guests.

The existence of social media as part of the development and transformation of the digital era is inevitable. The ease of social media in providing access to information and being presented quickly to internet users is believed to be a positive impact on the development of information and communication technology (ICT). In addition, social media also eases humans to communicate and form networks that are hindered by distance and time.

The Constitutional Court can't escape the development of ICT. As part of transparency and providing easy services to the community, the Constitutional Court seeks to optimize the use of media including Facebook, Instagram, Twitter, Youtube, and the MKRI website. In addition, the use of social media in every publication regarding the Constitutional Court will increase awareness and public awareness of the existence of the media platform owned by the Constitutional Court.



Recognizing the importance of the role of social media activists as a source and link of information from the Constitutional Court (MK) to the public or vice versa, the Court held a "*Ngopi Bareng Courtizen* " event on Friday afternoon (7/22//2022). The event was attended by the Chairman of the Constitutional Court for the period 2013 – 2015 Hamdan Zoelva accompanied by a public figure who had joined politics, Tsamara Amany.

On that occasion, Tsamara said that the presence of the Court was not the first. His first appearance to the public was precisely in the Constitutional Court in 2015 to sue regarding the rules for independent presidential candidates.

At that time, I was still studying semester 2 or 3 and sued an independent candidate. Because at that time it was a matter of judicial review, there were three judges, I remember Pak Palguna. It was the first time I came to the House of Representatives. So, when someone no longer believes in the House of Representatives and the government, it means that there is still trust that the Constitutional Court has built both through media and social media. Many people are suing (the law), like myself," said Tsamara.

Furthermore, Tsamara argued that when the law could no longer be revised through political channels, the Constitutional Court was believed to be able to provide a solution. This means, she continued, although this is considered a legal consequence, she sees that the Constitutional Court is able to build a good image so as not to cause anti-certainty for people who want to submit a judicial review.

"In the current situation, many young people are suing (the law). I remember three students sued the Constitutional Court. They have no lawyer acquaintance and are only law students whose applications may not be very good. But they advanced to the Constitutional Court. Again, this goes back to the Constitutional Court which is able to build an open space that the Constitutional Court is an open space, whoever you are, whatever your age, whatever your gender, you are a citizen and you have the ability to challenge the law in the eyes of the law. The social media is already follower friendly," explained Tsamara.



"There are many cases where parties have never been present at the Court, but have used video conferencing facilities. So long before the pandemic, the application of ICT was not a new thing for the Constitutional Court," said Hamdan.

Participants Appreciation

Present on the occasion, University of Indonesia Faculty of Law student, Nur Fauzi Ramadhan, who is a person with a visual disability as one of the selected participants. Answering a written interview with the Editor of KONSTITUSI Magazine, Fauzi explained his reason for joining the "Coffee with Courtizen" event.

"I think this is a rare opportunity to be able to learn from the former chairman of the Constitutional Court directly and experience the atmosphere of the Constitutional Court Building. I can also learn a lot from the invited speakers. Besides, I can meet and discuss with other Courtizens from universities

Magnets in Society

Meanwhile, Chairman of the Constitutional Court for the period 2013 – 2015 Hamdan Zoelva, who is now active as an academic, said that he is still monitoring the Constitutional Court and its decisions. Most recently, he said that he followed the Constitutional Court's decision regarding the examination of the Job Creation Act, the IKN Law, and the Narcotics Law. "I follow the hearing and its decision. News about Constitutional Court is always sexy and eagerly awaited. For example, the decision regarding (testing) the IKN Law, the Job Creation Act, and the latest regarding medical marijuana. This Constitutional Court will always be a magnet," said Hamdan.

Regarding the application of ICT, Hamdan who took the oath as a constitutional judge on January 7, 2010 said that the Court had taken advantage of the development of ICT in the trial. Before the pandemic, the Constitutional Court had held a hearing via video conference or vicon which was the result of collaboration with many universities throughout Indonesia



throughout Indonesia," wrote Fauzi.

According to Fauzi, the Constitutional Court has demonstrated a judicial institution that is following its vision, namely a modern and trusted judiciary. He said that the Constitutional Court can also take advantage of the information system with easier access to decisions, regulations, journals, and research results. He also stated that the Court was quite friendly in providing services for people with disabilities. For example, he continued, the Constitutional Court has made access to pages that are friendly to people with visual impairments.

As far as I know, the Constitutional Court also regularly conducts socialization on the constitutional rights of citizens with the target of people with disabilities. If I may give a range from 1-10, for me the Court is already at 8.5. Now, for the remaining 1.5 to be more perfect, Constitutional Court can be more friendly with people with disabilities, namely the provision of sign language interpreters in every trial at the Constitutional Court, access to websites and social media



Nur Fauzi Ramadhan/ Photo: Private Instagram



Nur Fauzi Ramadhan/ Photo: Private Instagram

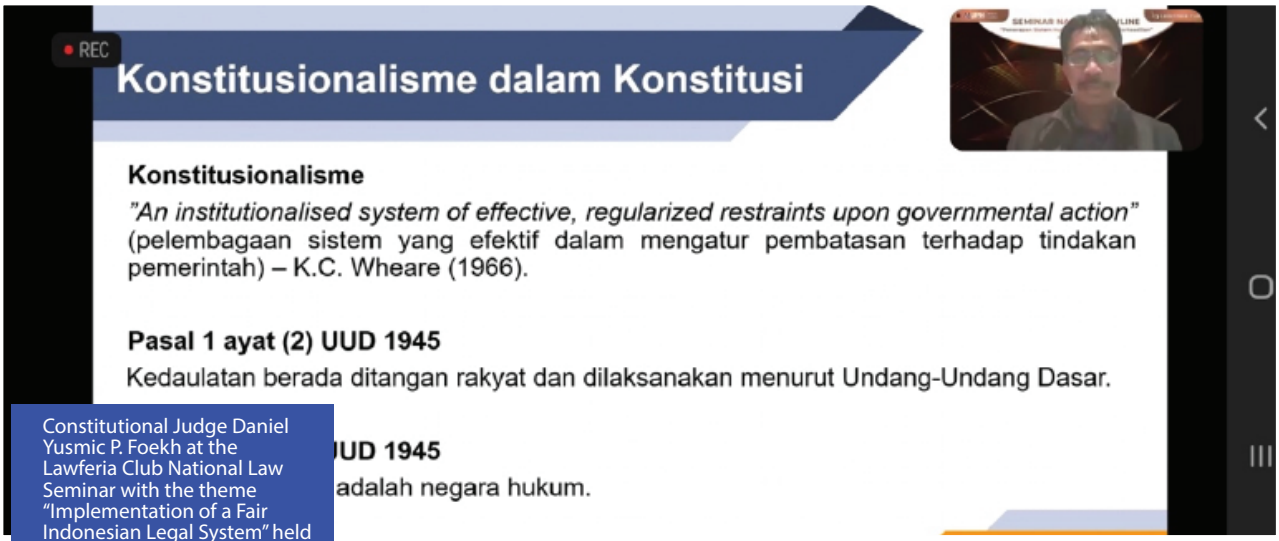
accounts that pay more attention to 'universal design' such as the use of the 'add text' facility to explain the meaning contained in the uploaded photo so that it can be accessed by people with visual impairments using a screen reader, and in terms of building access, perhaps the Constitutional Court can maximize the number and function of vertical ramps for wheelchair users and guiding blocks to facilitate access for people with disabilities," he said

Once, the bestselling author of all time, Napoleon Hill once said, "Don't wait; the time will never be 'just right'. Start where you stand, and work with whatever tools you may have at your command, and better tools will be found as you go along. (Don't wait; the time will never be right. Start where you are, and work with whatever tools you have, and better things will be found as you go along)". It is expected the first step of opening up to the public during this pandemic will continue in the future!

Understanding The Concept of The Legal System to Narrate The Values of Pancasila

From June to mid-July 2022, constitutional judges became speakers in online and offline discussion forums in front of students and academics in the field of law. Various themes related to law and constitution as well as ideology were chosen as the topic for the discussion. The following is a summary of the documentation of the judges and discussion participants.

The Role of the Constitutional Court in the Development of the Legal System



Constitutional Judge Daniel Yusmic P. Foekh at the Lawferia Club National Law Seminar with the theme "Implementation of a Fair Indonesian Legal System" held online by the Faculty of Law, Universitas Pelita Harapan Medan (UPH) on Friday (6/24/2022).

The Urgency of Judicial Review



Constitutional Justice Saldi Isra in the Advocate Profession Special Education (PKPA) held by the Law Faculty of Halu Oleo University (FH UHO) in collaboration with the Indonesian Advocates Association (Peradi) online on Friday (6/24/2022).

The Constitutional Court in the Indonesian Constitutional System



Constitutional Justice Wahiduddin Adams as a speaker in a public lecture themed "The Position of the Constitution in the State" in the Seminar Room of the Faculty of Law, University of IBA (FH UIBA), Palembang, South Sumatra, on Saturday (6/25/2022).

he Importance of Increasing Citizens' Constitutional Understanding



The Constitutional Court (MK) collaborated with the Kadiri Islamic University (Uniska) Kediri as well as signed a memorandum of understanding on Saturday (6/25/2022) at the Uniska Campus, Kediri. In line with this, Constitutional Justice Daniel Yusmic P. Foekh was present to deliver material at a national seminar on improving the understanding of citizens' constitutional rights, accompanied by the Secretary General of the Constitutional Court M. Guntur Hamzah, and Uniska Chancellor Ali Maschan Moesa.

Scientific Oration by Wahiduddin Adams



Constitutional Justice Wahiduddin Adams gave a scientific oration during the inauguration of the Coordinator Board of the Indonesian Islamic Student Movement (PMII) South Sumatra Province (Sumsel) on Saturday (6/25/2022) at Griya Agung Palembang.

The Role of the Constitutional Court as a College of Constitutional and Autonomous Colleges



Constitutional Justice Manahan MP Sitompul discussed the role of the Constitutional Court (MK) as a constitutional campus and the Constitutional Court's decisions related to higher education autonomy in a public lecture on constitutional law at the Faculty of Law, Simalungun University, Pematangsiantar, North Sumatra on Monday (6/27/2022). The public lecture was titled how the role of the Constitutional Court in supporting the Merdeka Learning - Independent Campus program in universities.

Judges in Law Enforcement and Justice



Constitutional Justice Suhartoyo was a key speaker at the Legal Profession Workshop organized by the Student Executive Board of the Faculty of Law, the University of Mataram with the theme "Preparing Young Practitioners Who Can Compete" online on Tuesday (6/28/2022). On this occasion, Suhartoyo conveyed the duties of a constitutional judge in his legal role in the Constitutional Court.

Justice is more important than legal certainty



Deputy Chief Justice of the Constitutional Court (MK) Aswanto was the speaker of the Public Discussion with the theme "Legal Efforts for Judicial Review in the Perspective of Justice and Human Rights". This event was organized by the Riksawan Institute and the Nusakom Pratama Institute on Saturday (6/25/2022) at the Science and Technology Building, Hasanuddin University, Makassar, South Sulawesi.

Meaning of Constitution with Divine Light



Constitutional Justice Arief Hidayat was the key speaker in a public lecture themed "Improving the Understanding of Citizens' Constitutional Rights" which was held at the Muhammadiyah University of North Sumatra (UMSU) on Friday (7/15/2022).

Non-compliance with the Constitutional Court's Decision



Constitutional Justice Wahiduddin Adams gave a Public Lecture "Compliance of State Institutions in Obeying the Decisions of the Constitutional Court" organized by the Faculty of Law, University of Muhammadiyah Jember (FH Unmuh Jember) online on Saturday (7/16/2022).

Narrating Pancasila Values on Social Media

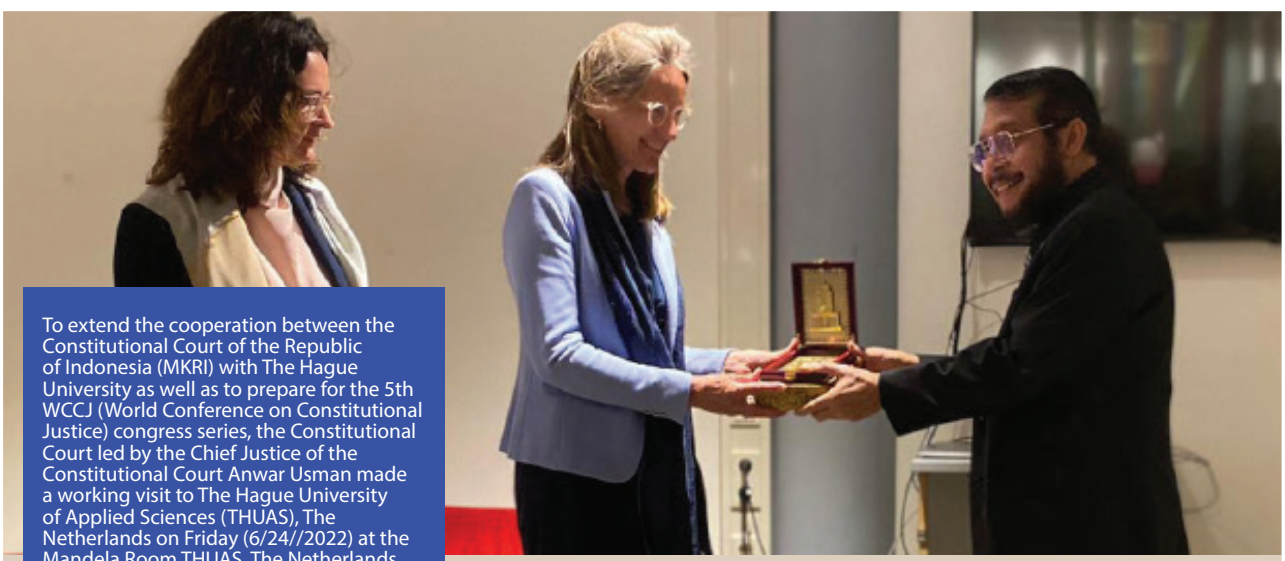


Constitutional Justice Arief Hidayat was a key speaker in a public lecture held in collaboration between the Constitutional Court (MK) and the Faculty of Law, University of Medan Area (UMA) on Saturday (7/16/2022)

Institutional Visit

As a judicial institution that does not only has a role in upholding the judiciary and the constitution in the country, the Constitutional Court also has an international role in advancing the role of law and judicial institutions at the international level. In carrying out this role, the Constitutional Court on this occasion carried out institutional visits with relevant agencies to further strengthen cooperation. The following is a portrait of the state visit carried out by Chief Justice of the Constitutional Court Anwar Usman which took place warmly.

Getting ready for the 5th WCCJ Congress



To extend the cooperation between the Constitutional Court of the Republic of Indonesia (MKRI) with The Hague University as well as to prepare for the 5th WCCJ (World Conference on Constitutional Justice) congress series, the Constitutional Court led by the Chief Justice of the Constitutional Court Anwar Usman made a working visit to The Hague University of Applied Sciences (THUAS), The Netherlands on Friday (6/24//2022) at the Mandela Room THUAS, The Netherlands. The Constitutional Court delegation was received directly by the Dean of the Faculty of Public Management, Law & Safety THUAS L.M. Bremer.

Invite The Hellenic Council of State to Join WCC



Chief Justice of the Constitutional Court Anwar Usman held a bilateral meeting with The Hellenic Council of State on Tuesday (6/28/2022) in Athens, Greece. Received directly by President Dimitrios Skaltsounis, the meeting of the two institutions was held in the office of the President of the Council of State and followed by a closed meeting in the main meeting room at The Hellenic Council of State Building in Panepistimiou Str. 47-49, Athens.

Legal Analysts, GMNI (Indonesian National Student Movement), and People with Disabilities Learn about Law and Constitution

The Center for Education and Constitution of the Constitutional Court (Pusdik MK) invited legal analysts, GMNI, and disability to listen to legal and constitutional issues from experts. Although it was carried out in a hybrid, it did not mitigate the enthusiasm of the technical guidance participants and presenters to share legal and constitutional insights.

Constitutional Court Procedural Law for Legal Analysts



Chairman of the Constitutional Court Anwar Usman, Head of National Legal Analysis and Evaluation of BPHM Yunan Hilmy, and Plt. The Head of the Center for Education and Constitution of the Constitutional Court Imam Margono held the opening of the Legal Guidance for Legal Review for Legal Analysts Batch I which was held on Monday (4/7) offline from the Center for Education and Constitution of the Constitutional Court and was attended by participants online.



Constitutional Justice for the Period 2003 – 2008 and 2015 - 2020 I Dewa Gede Palguna also became a speaker on the second day of the Legal technical guidance on Judicial Review for Legal Analysts Batch 1 held by the Pancasila and Constitutional Education Center of the Constitutional Court (Pusdik MK), Tuesday (7/5//2022).

GMNI (Indonesian National Student Movement) Learns Procedural Law of Election Results Disputes



Chief Justice of the Constitutional Court Anwar Usman officially opened the Technical Guidance on the Procedural Law of General Election Disputes for the Alumni Association of the Indonesian National Student Movement (PA GMNI) on Friday (7/8/2022) at the Pancasila and Constitutional Education Center (Pusdik MK), Cisarua, Bogor.

People with Disabilities Understand the Concept of Citizens' Constitutional Rights



The Chief Justice of the Constitutional Court Anwar Usman opened an online understanding of Citizens' Constitutional Rights (PPHKWN) for the Monitoring Community Forum for Disability Inclusive Indonesia (Disability Formation) on Tuesday (7/12/2022).



The second day of the event to Improve Understanding of Citizens' Constitutional Rights (PPHKWN) for the Monitoring Society Forum for Disability Inclusive Indonesia (Disability Formation) was attended by some speakers including the Chief Justice of the Constitutional Court for the 2003-2008 period Jimly Asshiddiqie, 2008-2018 Constitutional Justice Maria Farida Indrati, Head of Section Public Relations and Domestic Cooperation of Constitutional Court Fajar Laksono, and Director of the Disability Legal Aid Institute, Hari Kurniawan.

Portrait of Constitutional Court Justices

As statesmen, constitutional judges do not only carry out the mandate as judges in the courtroom. Outside of the judiciary, judges also have social and institutional roles. Here are some portraits of the judges outside the hearing agenda.

Attending the Inauguration of Professor of Law



Chief Justice of the Constitutional Court Anwar Usman, Constitutional Justices Wahiduddin Adams, Suhartoyo and other Constitutional Justices, and the Secretary General of the Constitutional Court M. Guntur Hamzah attended the Inauguration of the Permanent Professor of Law at Tarumanagara University Prof. Dr. Tundjung Herning Sitabuana, S.H., C.N., M.Hum on Saturday (2/7/2022) at the Auditorium of Tarumanagara University, Jakarta.

Achieving Unqualified Opinion Again



The Constitutional Court (MK) won an Unqualified Opinion (WTP) on the Financial Statements of the Constitutional Court for the 2021 Fiscal Year and recorded the 16th consecutive year. The announcement of the WTP Opinion was held during the Submission of the Examination Results Report (LHP) on the 2021 Constitutional Court Financial Statements, on Friday (8/7/20222). Member III of BPK Achsanul Qosasi directly submitted the Report of Submission of Examination Results (LHP) on the Financial Statements of the FY 2021 Constitutional Court to the Chief Justice of the Constitutional Court Anwar Usman who was accompanied by the Secretary General of the Constitutional Court M. Guntur Hamzah.

ELECTION WITH DIGNITY (REORIENTATION OF NEW IDEA ON DEMOCRACY)

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

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



BOOK TITLE : PEMILU BERMARTABAT (REORIENTASI PEMIKIRAN BARU TENTANG DEMOKRASI)

AUTHOR : PROF. DR. TEGUH PRASETYO, S.H., M.SI.

PAGE : 269

PUBLISHER : PT. RAJAGRAFINDO PERSADA, ED. 1, CET. 1, DEPOK

The book entitled "*Pemilu Bermartabat (Reorientasi Pemikiran Baru Tentang Demokrasi)*" explains the general philosophical understanding of elections with dignity. The credibility and integrity of the organizers, especially the election management institutions are only elements of a dignified election. On the other hand, elections with integrity are a necessity (automatic); as long as the principle of dignity is adhered to, especially in terms of its institutional arrangements, it is certain that there will be elections with credibility and integrity.

According to the author, the general view that pegs a dignified election on two utilitarian (general) values (virtues), namely credibility and integrity, seems theoretical to shift the perspective of a dignified election to an election with integrity. It can't always be said to be a mistake. However, the meaning given to the concept of dignity according to the law that is embedded like an election, especially the ideal election management institution in the Pancasila legal system cannot be reduced by only relying on issues of credibility and integrity, which according to public perception, can be found in (owned by) every member of the state administration.

This book describes that justice with dignity is a theory (grand theory) that emerged because of concerns about the use of Western theories that are mushrooming in Indonesia. Dignified justice as a legal grand theory views Pancasila as the highest basic postulate, such as a source of all sources of juridical inspiration to make political ethics (democracy), especially the institutional ethics of election administration as the most concrete manifestation of democracy that can create a dignified society. Thus, the law is able to humanize humans. From the perspective of dignified justice, a government from and for the people must have been infused or

filled with the spirit of Pancasila as the Indonesian *Volksgeist*. Hence, a dignified election is an election described by the dignified justice theory which contains a theoretical view with the postulate that all activities in a country must be based on applicable laws and regulations.

The institutional aspect of election management is the concern of this book because it appears in the Election Law that the good or bad elections of a country cannot be separated from the capacity and credibility and other legal values that election administrators must possess and implement. Furthermore, to obtain direct, general, free, confidential, honest, and fair elections, election administrators must adhere to legal values, such as independence, professionalism, and integrity. From any perspective, there is no reason whatsoever for election management institutions not to apply these values in the conduct of elections. Thus, the task of the election administrator is only to implement the laws and regulations, especially the Election Law.

The author explains it is necessary to find a common thread between elections and the reorientation of new thinking about democracy which is manifested in the institutional arrangements for implementing or organizing elections according to the perspective of dignified justice. Election organizers determine the shape of the face of the election as a means of people's sovereignty or a dignified democracy. Without good election management institutions, there will be no good democratic processes and outcomes, and there will be no good governance either. Equality before the law (equality before the law) is a very fundamental idea for democracy in a state of law, as regulated in Article 1 paragraph (3) of the 1945 Constitution.

This book describes that in the original idea, the power and authority of democratic decisions lie in the fact that decisions are made according to the prevailing law by the majority of society; but the unified society turns out to be not determined by democracy, society, or nation. It can become one bound by the same beliefs of almost everyone in that society, and that is why it is an important condition for the majority to submit themselves to common principles – the Indonesian context, namely Pancasila – even though what the majority may do is contrary to or violates the interests of the majority, namely when the interests that exist at the time it must or cannot but submit to common principles.

This book also describes, by building a building or construction/legal understanding of elections in Indonesia about the institutional aspect of election management, in the perspective of Dignified Justice, the Election Law must be prioritized or take precedence over other sources as the most concrete manifestation of the nation's soul (*Volksgeist*). The existence of elections can be a sign of guarantees for achieving national goals and objectives. When those who are in the election management institutions carry out their duties, authorities, and obligations according to the Election Law, they are realizing the guarantee of achieving national goals and objectives.

Election organizers, which in this book are understood as election management institutions are institutions that organize elections, consisting of General Election Commissions, Election Supervisory Agency, and Honorary Council of the General Election Organizer. The three parties constitute a unified function of organizing elections to elect members of the House of Representatives, members of the Regional Representative Council, the president, and vice president, and elect members of the Regional People's Representative Assembly directly by the people. In the Election Law, it is stated that there are two important elements in the implementation of elections, namely: (1) activities to carry out the stages of the election; and (2) the legal object that organizes the stages of the election, namely the party referred to as the election organizer. Related to the committees and groups of election organizers at home and abroad, among others: sub-district election committees, voting committees, voting organizing groups, overseas election committees, overseas voting groups, membership requirements for PPK, PPS, KPPS, PPLN, KPPSLN, dismissal of members of PPK, PPS, KPPS, PPLN, and KPPSLN.

The author describes Election Supervisory Agency as an election management institution that oversees the implementation of elections throughout the territory of the Republic of Indonesia. These election supervisory institutions consist of Election Supervisory Agency, Provincial Election Supervisory Agency, Regency/City Election Supervisory Agency, Sub-district Election Oversight Committee, Urban/Village Election Oversight Committee, LN Election Oversight Committee, and Poll/voting place Supervisors. toward Election Supervisory Agency in stages, according to the Election Law, it is known as the Oath/Promise of Election Supervisory Agency members in stages. It was further explained that to support the smooth running of the duties and authorities of the Election Supervisory Agency in stages, a tiered Secretariat General of the Election Supervisory Agency was formed. However, the Sub-district Election Oversight Committee Secretariat is *ad hoc*.

The appointment of election supervisory institutions carried out on Election Supervisory Agency members starts from the selection stage which is carried out simultaneously with the completion of General Election Commissions members. Therefore, a selection team consisting of eleven people, and was formed by the president after taking into account the requirement of thirty percent women representation to assist the president in determining the candidates for General Election Commissions members to be submitted to the House of Representatives also selected candidates for Election

Supervisory Agency members at the same time. The selection team carried out their duties openly by involving community participation. In carrying out their duties, the selection team can be assisted by or coordinated with institutions that have competence in the required fields.

The selection team carries out the activity stages objectively within a maximum of three months after the selection team is formed. The selection team reports the implementation of each selection stage to the House of Representatives. The President submits the names of ten candidates for Election Supervisory Agency members to the House of Representatives no later than fourteen days from the receipt of the documents for candidates for Election Supervisory Agency members. The names of the candidates are arranged alphabetically and submitted along with a copy of the administrative file. Furthermore, it also describes the appointment of Election Supervisory Agency members, the appointment of the Provincial Election Supervisory Agency, the appointment of the Regency/City Election Supervisory Agency, the appointment of the district Election Oversight Committee, the Sub-district/Village Panwaslu, the Overseas Panwaslu, and the Poll Supervisor, the dismissal of the election supervisory institution, and the accountability of the election supervisor.

The author describes the Honorary Council of the General Election Organizer (DKPP) in charge of dealing with violations of the code of ethics of election organizers in the perspective of dignified justice. Honorary Council of the General Election Organizer conducts ethical justice for election organizers according to the spirit of the nation (*Volksgeist*), according to applicable law. Together with General Election Commissions and Election Supervisory Agency, DKPP has contributed to strengthening the argument that dignified elections also depend on dignified election management institutions. According to the perspective of the theory of dignified justice or dignified justice. DKPP implements and maintains the law or guarantees compliance with material law with the DKPP decision. The material law in question is the ethical values that have been determined in DKPP Regulation No. 2 of 2017. DKPP decides cases with a justice whose function is to place them in the proper position following their actions and DKPP is also referred to as ethical justice according to law, namely according to Law Number 7 of 2017.

The formation of Honorary Council of the General Election Organizer (DKPP) is no later than two months after General Election Commissions members and Election Supervisory Agency members take oaths/promises. The DKPP has seven members, consisting of: one ex officio from the General Election Commissions, one ex officio from the Election Supervisory Agency, and five community leaders. Two members of the DKPP who come from community leaders are proposed by the president and three people from the House of Representatives elements. The DKPP membership proposal from each element is submitted to the president.

Honorary Council of the General Election Organizer (DKPP) carries out the function of determining the Code of Ethics for Election Organizers according to the Election Law or in the perspective of Dignified Justice according to the most concrete manifestation of *Volksgeist* or the nation's soul derived from Pancasila. It is to maintain at least three values. This function can be said to be a function to maintain the purity of values - the function of purifying values for election management institutions. Violation of ethics is seen as a violation of values. Election organizers are required to always have purity of values. Violation of ethics is considered a violation of values if the election administrator is unable to behave in the election administration following the existing values, which are detailed in the DKPP Regulation. The sanction of dismissal can't be interpreted as a termination of employment but is an act of purification of values by removing the Defendant/Reported from the group of election administrators who must monitor the purity of the values of the election organizers.

This book also describes the duties, authorities, and obligations of the Honorary Council of the General Election Organizer (DKPP); DKPP secretariat; code of ethics and conduct guidelines for election administrators; terminology in DKPP Regulation Number 2 of 2017; objectives, foundations, and principles for election administrators; guidelines for the conduct of election administrators as material law; the procedural law of the code of ethics for election organizers; terminology in the procedural law of the code of ethics for election administrators; the principle and scope (jurisdiction) of the trial; complaints, reports, and recommendations; examination of complaints and/or reports; trial of violations of the code of ethics for election administrators; regional examination hearings; determination of the decision on the violation of the code of ethics for election administrators.

This book is highly recommended for teachers of constitutional law, state administrative law, political science, and government science, especially those who want to enrich elections, students, legal practitioners, and the general public as a reference, not to be missed.

Happy reading!
"Science will develop along with the development of human life. There is no reason whatsoever that stands in the way of self-development. It is not others who determine our style, but ourselves who determine the direction of our life journey."

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

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

Harga : Rp112.000



Catatan Hukum Maria Farida Indrati

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

Harga : Rp97.000



Dinamika Negara dan Islam dalam Perkembangan Hukum dan Politik di Indonesia

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

Harga : Rp108.000



Living and Evolving Constitution of Indonesia

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

Harga : Rp280.000



Cultural Constitution and Constitutional Culture

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

Harga : Rp125.000



Hukum Sengketa Pemilu

Mekanisme Penyelesaian Sengketa di Mahkamah Konstitusi

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

Harga : Rp74.000



Hukum Acara Sengketa Pemilukada Dinamika di Mahkamah Konstitusi

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

Harga : Rp95.000



Berhukum di Indonesia

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

Harga : Rp83.000



Bung Karno, Islam, dan Pancasila

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

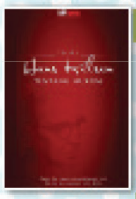
Harga : Rp54.000



Mengawal Konstitusionalisme

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

Harga : Rp60.000



Teori [illegible] tentang Hukum

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

Harga : Rp50.000



Konsep Hukum [illegible]

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

Harga : Rp60.000



Pergulatan Konstitusi Hamdan

Penulis : Rita Triana Budiarti
ISBN : 9786027995130
Terbit : Cetakan ke-1, Januari 2015
Tebal : 256 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp65.000



Pergeseran Pemikiran Hukum dari Era Yunani Menuju Postmodernisme

Penulis : Prof. Dr. Ps. Adji Samekto, S.H., M.Hum
ISBN : 9786027995239
Terbit : Cetakan ke-1, Februari 2015
Tebal : 250 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp45.000



Impeachment Presiden

Alasan Timbul Pikiran Pembentukan Pemberhentian Presiden Menurut UUD 1945

Penulis : Hamdan Zoelva
ISBN : 978-602-7995-08-6
Terbit : Cetakan ke-1, 2014
Tebal : 310 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp60.000



Perkembangan Pembentukan Undang-Undang di Indonesia

Penulis : Dr. Bayu Dwi Anggono, SH, MH
ISBN : 9786027995603
Terbit : Cetakan ke-1, Agustus 2014
Tebal : 384 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp65.000



Penyelesaian Masalah Diskriminasi Terhadap Etnis Cina

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

Harga : Rp90.000



Kontroversi Mahfud MD Jilid 1

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

Harga : Rp55.000



Kontroversi Mahfud MD Jilid 2

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

Harga : Rp59.000



Biografi Mahfud MD: Terus Mengalir

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

Harga : Rp80.000



Politik Hukum Agraria

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

Harga : Rp58.500



Hukum Pemilu dalam Yurisprudensi Mahkamah Konstitusi

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

Harga : Rp48.000



Demokrasi dan Pemilu di Indonesia

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

Harga : Rp45.000



Demokrasi Konstitusional Praktik Ketatanegaraan Indonesia setelah Perubahan UUD 1945

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

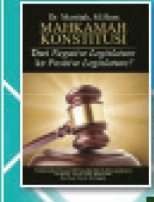
Harga : Rp49.000



Politik Hukum Pemilu

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

Harga : Rp53.000



Mahkamah Konstitusi, dari Negative Legislature ke Positive Legislature

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

Harga : Rp57.000



Pembentukan Peraturan Perundang-Undangan yang Responsif

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

Harga : Rp55.000



Politik Hukum Pembentukan Undang-Undang Pasca Amandemen UUD 1945

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

Harga : Rp72.500



Reformasi Birokrasi dan Isu-isu Investasi

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

Harga : Rp59.000



Mahfud MD: Hakim Aktivis

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

Harga : Rp71.500

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Formation of Electoral Districts and Gerrymandering

LUTHFI WIDAGDO EDDYONO
Peneliti Mahkamah Konstitusi

On 27 July 2022, the Association for Elections and Democracy (Perludem) and the International Institute for Democracy and Electoral Assistance (the International IDEA) launched the Electoral Redistricting App or ERA. This software-based application is a universal technology tool that is deliberately created as an instrument to assist the process of forming a boundary delimitation following universal standards and principles for the formation of an electoral district.

This is indeed very important considering it is related to the interests of the right to vote and the right to be elected which are important things in the implementation of elections and their legitimacy. Therefore, if it is traced in the debate on the amendment of the 1945 Constitution, there is also a discussion regarding the determination of the electoral district.

At the 13th PAH I BP MPR Meeting on 24 April 2001, Member of the Expert Team, Afan Gaffar. briefly described the district model election system and the determination of electoral districts. Afan Gaffar's explanation in the 13th meeting as set out in the Minutes of the Meeting is as follows.

> *"Regarding the existence of the People's Consultative Assembly, if we adopt a bicameral system for legislative institutions in Indonesia, we must consider the meaning of representation. There are representative institutions that directly represent the population with a general election mechanism that uses a simple majority system, single ballot, known as the district system. An electoral district is the number of registered residents divided by the number of seats in the DPR. So, if our population is 220 million, we have five seats. There are 500 seats in the DPR, so one district is 228,000,000 divided by 500 seats, that's the district size. Because the distribution of our population is uneven, between one government area and another, the idea arises to provide a place for representatives who accommodate regional aspirations, so regional representative institutions are considered, and between one region and another, the number of representatives is the same. For example, in the United States, each state is represented by two members of the Senate who are elected through a district system with the entire state being one district."*

Affan Gaffar relates the existence of the People's Consultative Assembly as well as the determination of electoral districts in the district system. He also stated that there was a problem in determining the electoral district using a method known as gerrymandering politics. The following is his view as quoted from, Comprehensive Manuscript of Amendment to the 1945 Constitution of the Republic of Indonesia, Background, Process, and Discussion Results in 1999-2002, Book V General Elections, (Jakarta: Secretariat General and Registrar of the Constitutional Court, Revised Edition, July 2010).

> "If this system is adopted by the new Constitution, what about the existence of the People's Consultative Assembly? We from the Political Team take the position that with the existence of the House of Representatives and Regional Representative Council or whatever the name will be, the People's Consultative Assembly must change, both regarding its functions and also regarding its position and responsibilities. The Political Team believes "That the MPR is only a joint session where the House of Representatives and Regional Representative Council hold joint meetings, but the People's Consultative Assembly is not a legislative institution, so it does not have the power to carry out legislation or other functions of the people's representative institution".

The joint session can be held once a year, for example when the President conveys his program plans for that year, or when a special guest or leader is specially invited to appear in the joint session. For example, General Douglas Mc. Arthur has appeared and given a speech before congress. Thus, the People's Consultative Assembly can be in the form of a congress in America consisting of a Senate with 100 people and a House of Representatives with 435 people.

The Senate serves six years and is represented by each state, while the House of Representatives serves two years and represents the district and is determined by the number of residents. Because at this moment the members of the state congress are doing re-districting activities. So, rearranging the district due to increased population mobilization, due to population changes from one state to another, there needs to be a change in the number of members of each House of Representatives, so re-districting is held. However, it does have a weakness.

In United State, there is such a thing as the Jerry Mandring practice. The practice of Jerry Mandring is the intentional act of creating a district with certain objectives in order to ensure that representatives of one political party are elected to a congress. For example, in an area where the majority of black people are, even though the population is divided into several districts or cities, re-districting happens to be made so that black people can be directed to be incorporated into one district, this is Jerry Mandring's practice that is widely questioned in America. Are we going there too? Later we will see how the General Election Commissions will do that."

Affan Gaffar discussed "gerrymandering". What is gerrymandering? In Usep Hasan Sadikin's writing "Electoral College = Gerrymandering?", the term "gerrymandering" is a satirical designation for The Boston Gazette in March 1812 for the results of the Massachusetts Governor Election which was still a British Colony at that time. The Democratic-Republican Party Governor candidate, Elbridge Gerry, who lost in a landslide, won the election whose victory was determined by the distribution of areas that did not differentiate between the number of residents. Gerrymandering is a combination of two words "Gerry" and "Salamander". Gerry means the candidate for governor Elbridge Gerry., while Salamander is the distribution of the electoral district won by Gerry whose plot resembles or it is illustrated as a giant lizard.

Scientifically, Usep Hasan Sadikin argued that gerrymandering is the systemic engineering of electoral system variables that aims to convert votes into seats that favor certain election participants. According to him, the size of the electoral district (district magnitude) in gerrymandering has been tweaked to include the drawing of lines or the area of the area taking into account the population. The allocation of seats and the determination of the electoral districts of this manipulative practice overrides the proportionality of the population between the selected regions.

"We can easily suspect the practice of Gerrymandering in an electoral system. There are electoral districts whose area is separated or jumped. In Indonesia, this is commonly called the Superman constituency. Second, the neglect of population proportionality between electoral districts. There are electoral districts that, when compared to other electoral districts, do not match the proportion of the population and the number of seats/representatives. Thus, there are electoral districts that have an excess of seats/representatives, and there are electoral districts that lack seats/representatives. Third, there is a mismatch between the results of the election victory and the number of elections," said Usep Hasan Sadikin.

History of Special Regions Establishment (1)

LUTHFI WIDAGDO EDDYONO
Constitutional Court Researcher

Special areas are a necessity in our constitutional system. Article 18B paragraph (1) of the 1945 Constitution states, "The state recognizes and respects special or special regional government units that are regulated by law." However, to see the conception of the special region, it is necessary to pay attention to the beginning of the presence of the Special Region in Indonesia in our constitutional system, especially those rooted in the era of the Vereenigde Oostindische Compagnie (VOC) in the archipelago.

Anggara in the book *Daerah Istimewa dalam Sistem Ketatanegaraan Indonesia* (2020) describes this history very well. According to Anggara, during the VOC's reign, independent kingdoms were still found in the archipelago. Yet, this independence became minimal when the VOC combined military pressure and trade, which led the original leaders to make agreements with the VOC. As mentioned by David Henley in Nationalism and Regionalism in Colonial Indonesia: The Case of Minahasa quoted by Anggara, the kingdom became a vassal state of the VOC and subsequently became a vassal state of the Dutch East Indies. Vassal countries can be considered as either a colony or conquered countries.

How did the VOC have this authority? The VOC's authority stemmed from the Charter made by the Dutch Government in 1602 below:

1. The power to create government organizations in the areas it occupies, complete with civil-military personnel on land and at sea;
2. The power to enter into war and peace and to conclude treaties and other international treaties with kings in the areas of their expansion;
3. The power to print and circulate money independently.

Memories of the Sipadan and Ligitan Cases in the International Court of Justice, although recognizing the sovereignty of the VOC, these kingdoms and sultanates continued to live as sovereign states that also tried to control bases, trade routes, and hinterlands. History showed that the world's first multinational company went bankrupt. Based on Article 247 Staatsregeling1798, the VOC charter must be terminated and all rights, and obligations of the territorial ownership of the VOC transferred to the Dutch government on January 1, 1800.

Anggara explained that in the Dutch East Indies the Reglement Op het Beleid der Regering van Nederlands Indie or better known as Regeringsrgellement 2 September 1854 came into effect on 1 May 1855 (Ind. Stbl. 1855 No 2) and brought a new pattern. Regeringreglement 1854 can be said to be the Constitution of the Dutch East Indies from a material point of view. With the enactment of the RR, for the first time, according to Bayu Surianingrat in the book Sejarah Pemerintahan di Indonesia: Babak Hindia Belanda dan Jepang, as a reference by Anggara, the Governor-General and the Dutch East Indies government were bound by law in issuing government administration policies.

Regeringreglement 1854 until 1925 had been amended 29 times where the most important constitutional changes of the Dutch East Indies were:

1. Wet 23 July 1903 (Ind. Stbl. 1903 No 329: Decentralisatiewet) which added 3 new articles (68a, 68b, and 68c) which opened up the possibility to form autonomous regions with local House of Representatives and were given limited autonomy. The principles in this provision are further regulated through

the Decentralisaiebesluit (Ind. Stbl 1906 No. 137) and Locale Raden Ordonantie (Ind. Stbl. 1905 No. 181);
2. Wet 16 December 1916 (Ind. Stbl. 1917 N o 114) which added a new chapter (Chapter X) which opened up the possibility of forming the Volksraad;
3. Wet 6 February 1922 (Ind. Stbl. 1922 No 216 Wet op Bestuurshervorming) which amends and adds to Chapter IV and opens the possibility for massive decentralization and deconcentration of power

After the territorial ownership of the VOC was transferred to the Dutch government, some areas in the archipelago were still considered independent regions and the agreement between the Dutch East Indies government and local rulers, which was basically to ensure the power of the Dutch Crown, was subject to formal provisions based on the Dutch Constitution. Furthermore, according to Anggara, the agreement between the local authorities and the Dutch East Indies government was carried out through a political contract signed by the Governor-General based on government regulations for the Dutch East Indies. The treaty is frequently updated with certain changes which generally concern the scope of autonomy of these local rulers.

Anggara explained that when a new local ruler took office, confirmation (*Akte van bevesgeting*) was required by the Dutch East Indies government when the new ruler had signed a statement of allegiance (*Akte Verband*), and all confirmations and statements were always communicated with the Dutch Parliament. All of these areas were governed by local rulers with varying degrees of autonomy. Until the end of the 19th century, part of the territory of the Dutch East Indies was a "self-governing territory", with the remainder being ruled directly by the Dutch East Indies government.

According to H.F. van Panhuys, et. al (eds), International Law in the Netherlands Vol 1 quoted by Anggara, the position of self-governing territories can also be seen in the provisions of Article 25 of Regerings-Reglementen van Nederlandsch-Indie. The Governor-General of the Dutch East Indies was given the authority to declare war on local rulers and its people who have declared war or are preparing for war against parts of the Dutch East Indies or the dependent rulers of the Netherlands.

Therefore, in general, according to Bayu Surianingrat in the book entitled *Sejarah Pemerintahan di Indonesia: Babak Hindia Belanda dan Jepang*, quoted by Anggara, during the Dutch East Indies period, the Dutch East Indies region was distinguished between (1) gubernatorial areas, namely areas directly ruled by officials governor; and (2) the Swapraja Region (*Zelf besturende Landschappen*) where the government in this region is handed over to the King (native) which is stated in a statement or statement. Although the autonomous regions have the authority to organize their government and manage their households, the Heads of Swapraja must make a statement that confirms that the Head of Swapraja:

1. Recognizing that the supreme power lies with the Dutch crown;
2. Obey all rules and orders from the government;
3. Will not make treaties with foreign powers or countries;
4. Giving full authority to the Governor General of the Dutch East Indies to interfere in the internal affairs of the self-government.

CONSTITUTIONALITY REQUIREMENTS TO BE APPOINTED AS AUDIT BOARD MEMBER

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In realizing the goals of the state to achieve a just, prosperous and prosperous society as mandated by the Preamble to the 1945 Constitution of the Republic of Indonesia, one of the main elements in the administration of state government is the management and responsibility of state finances that are free, independent, and professional in order to create a government that is clean and free from corruption, collusion, and nepotism. The regulation of a good and fair state financial system is a condition sine qua non in the context of implementing and growing development so that it is right on target and has a real impact on people's welfare as the ideals of the Indonesian state as a welfare state.

To achieve the goals of the welfare state, one of the important elements is the management and responsibility of state finances. The Audit Board (BPK) is a state institution tasked with examining the management and accountability of state finances, which is elected by the House of Representatives taking into account the considerations of the Regional Representative Council, and inaugurated by a Presidential Decree. The existence of the Audit Board in the Indonesian constitutional system is constitutionally stipulated in Article 23E of the 1945 Constitution. The existence of the Audit Board institution is related to the supervisory function carried out by the House of Representatives, because the results of the Audit Board examination must be submitted to the DPR for proper follow-up. The affirmation of the relationship between the supervisory function of the House of Representatives and the Audit Board can be seen through Article 7A of the Third Amendment of the 1945 Constitution, which states: "The President and/or Vice President may be dismissed during their term of office by the People's Consultative Assembly at the proposal of the People's Representative Council, either if they are proven to have violated the law in the form of betrayal of the state, corruption, bribery, other serious crimes, or disgraceful acts or if it is proven that they no longer meet the requirements as President and/or Vice President." Thus, the report on the results of the examination conducted by the Audit Board must be reported or submitted to the House of Representatives for proper follow-up. The existence of this institution in the institutional structure of the Indonesian state is auxiliary to the function of the House of Representatives in the field of supervision of government performance.

According to Jimly Asshiddiqie, the Audit Board's function consists of three areas, there are the operative function, the judicial function, and the advisory function. The operative function means the form of inspection, supervision, and investigation of the control, management, and management of state assets. Furthermore, the judicial function is in the form of the authority to sue the treasury and claim compensation for treasurers and non-treasury civil servants who because of their actions violate the law or neglect obligations that cause financial losses and state assets. While the advisory function is to consider the government regarding the management and management of state finances.

The Audit Board has the task of examining the management and responsibilities of state finances carried out by the Central Government, Regional Governments, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, Regional-Owned Enterprises, and other institutions or bodies that manage state finances. In carrying out its duties and functions, Audit Board has 9 (nine) members. To be elected as a Member of the Audit Board, one must meet various requirements. Concerning the requirements to be elected as a Member of the Audit Board, a judicial review has been submitted to the Constitutional Court, specifically related to educational requirements, minimum age limit, and the requirement to have left office as an official in the management of state finances and has been decided by the Constitutional Court through a Constitutional

Court Decision. Number 29/PUU-XX/2022, dated June 20, 2022.

Constitutional Court Decision Number 29/PUU-XX/2022

In the Decision of the Constitutional Court Number 29/PUU-XX/2022, dated June 20, 2022, filed by the Petitioners: Boyamin and Marselinus Edwin Hardhian, S.H., domiciled as individual taxpayers of Indonesian citizens. They feel that their constitutional rights have been impaired by the enactment of Article 13 letter f, letter i, and letter j of Law 15/2006 contradicts Article 23E, Article 23F, Article 23G, Article 27 paragraph (1), Article 28D paragraph (1) and paragraph (3), and Article 31 paragraph (5) 1945 Constitution. In its legal considerations, the Court stated regarding the legal standing of the Petitioners as follows:

1. Regarding Article 13 letter f of Law 15/2006, Petitioner I considers that his constitutional rights have the potential to be harmed when he wants to nominate himself as a member of the Audit Board because Petitioner I has not yet obtained an undergraduate degree even though the provisions of Article 13 letter f of Law 15/2006 provide a minimum education limit of Bachelor degree or equivalent as a condition for can participate in the election of Audit Board members. They said the constitutional loss will not occur again if the petition of Petitioner I a quo is granted.

Meanwhile, Petitioner II has obtained a bachelor's degree, but Petitioner II is unable to describe the direct linkage relationship with the requested Law and specifically the causal relationship between the application of the norms of Article 13 letter f of Law 15/2006 with the assumption that Petitioner II's constitutional loss is regulated in Article 27 paragraph (1) and Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution. Thus, there is no loss of the constitutional rights of Petitioner II in a quo article.

2. Regarding Article 13 letter i of Law 15/2006, Petitioner II has been able to describe the constitutional disadvantages of the Petitioner as regulated by Article 27 paragraph (1) and Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution, namely Petitioner II has the potential to have his constitutional rights impaired if he wishes to candidate himself to become a member of the Audit Board because Petitioner II is currently 28 years old. The provisions of Article 13 letter i of Law 15/2006 provide a minimum age limit of 35 years as a condition to be able to participate in the election of Audit Board members.

Meanwhile, Petitioner I is 54 years old. Petitioner I can't describe the direct linkage relationship with the Law being applied for and cannot specifically describe the causal relationship between the application of the norms of Article 13 letter i of Law 15/2006 with the assumption that the constitutional loss of Petitioner I as regulated in Article 27 paragraph (1) and Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution. Therefore, there is no loss of the constitutional rights of Petitioner I in Article a quo.

3. Regarding Article 13 letter j of Law 15/2006, both Petitioner I and Petitioner II have been able to describe a direct linkage relationship with the Law requested and describe specifically the existence of a causal relationship (causal verband) between the enactment of the norms of Article 13 letter j of Law 15/2006 and the assumption of constitutional losses of the Petitioners as regulated by Article 27 paragraph (1) and Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution. They said the constitutional loss will no longer occur if a quo petitions of Petitioner I and Petitioner II are granted.

Based on these considerations, the Court thinks that Petitioner I has the legal position to act as the Petitioner in the review of Article 13 letter f and letter j of Law 15/2006 and does not have the legal position to act as the Petitioner in the review of Article 13 letter i of Law 15/2006. Meanwhile, Petitioner II has the legal position to act as the Petitioner in the review of Article 13 letter i and letter j of Law 15/2006 and does not have the legal position to act as the Petitioner in the review of Article 13 letter f of Law 15/2006.

The Petitioners argue for the unconstitutionality of the norms of Article 13 letter f, letter i, and letter j of Law 15/2006, the Petitioners put forward the arguments for the petition which, if formulated by the Court, are basically as follows:

1. According to the Petitioners, the requirement to be appointed as a member of the Audit Board as regulated in Article 13 of Law 15/2006 is a requirement that is cumulative or not alternative;
2. According to Petitioner I, the quality of candidates for Audit Board members can be judged based on their experience of activities and knowledge. Thus, Article 13 letter f of Law 15/2006 is contrary to the 1945 Constitution as long as it is not interpreted as smart and clever based on science and technology;
3. Whereas according to Petitioner II, the age-based quality of prospective members of the Audit Board can't be measured only

through the age limit, which if at the age range of convicts of criminal acts of corruption, the perpetrators are actually over 40 (forty) years old. Thus, the implementation of Article 13 letter i of Law 15/2006 is contrary to the 1945 Constitution as long as it is not interpreted as an adult based on science and technology.

4. Whereas according to the Petitioners, Article 13 letter j of Law 15/2006 is actually an effort to avoid conflicts of interest between the examining party and the party being examined. However, the quality of the Audit Board candidate can't be seen only based on the last term he served, without also looking at his track record during his tenure as the manager of state finances (the party being examined). Thus, the implementation of Article 13 letter j of Law 15/2006 is contrary to the 1945 Constitution as long as it is not interpreted as having never committed a deviation or a criminal act of corruption while serving as a State Financial Management Officer;
5. based on the reasons mentioned above, the Petitioners request the Court to:
   a. To state that Article 13 letter f of Law 15/2006 is contrary to the 1945 Constitution as long as it is not interpreted as smart and clever based on science and technology;
   b. To state that Article 13 letter i of Law 15/2006 is contrary to the 1945 Constitution as long as it is not interpreted as an adult based on science and technology;
   c. To state that Article 13 letter j of Law 15/2006 is contrary to the 1945 Constitution as long as it does not mean that he has never committed any irregularities or criminal acts of corruption while serving as a State Financial Management Officer.

For the argument Petitioner I showed that Article 13 letter f of Law 15/2006 is contrary to the 1945 Constitution as long as it is not interpreted as "smart and clever based on science and technology" because the quality of candidates for Audit Board Members can be judged based on their experience of activities and knowledge. One important condition is needed to be able to measure a person's competence to occupy a certain position. Meanwhile, the determination of the level and qualification of formal education is also intended, thus, the implementation of tasks in certain positions can be carried out professionally, especially in the effort to apply theoretical frameworks, analyses, and methodologies for implementing tasks. Determining the level and qualification of formal education in a position has actually gone through an in-depth study process. Thus, it is expected to produce maximum performance. The existence of a minimum education requirement of Bachelor Degree or its equivalent for prospective Audit Board Members as stipulated in the provisions of Article 13 letter f of Law 15/2006 is one of the efforts so that Audit Board members can carry out the task of examining the management and responsibilities of state finances as mandated in Article 23E of the 1945 Constitution comprehensively. Based on these considerations, according to the Court, Petitioner I's argument related to Article 13 letter f of Law 15/2006 is contrary to the 1945 Constitution as long as it is not interpreted as "smart and clever based on science and technology" is groundless according to law.

Petitioner II argued that Article 13 letter i of Law 15/2006 is contradictory to the 1945 Constitution as long as it is not interpreted as "adult based on science and technology". Age-based quality for prospective members of the Audit Board can't be measured only by age limit, which when looking at the age range of the convict's corruption, the perpetrator is over 40 (forty) years old. Against the argument of Petitioner II, a quo, the Court stated that the determination of age as a requirement to become a member of the Audit Board as regulated in the provisions of Article 13 letter i of Law 15/2006 is aimed at ensuring that Audit Board members have emotional or psychological maturity, intellectual and in the academic field. In addition, members of the Audit Board are expected to have prior experience in various fields related to the duties of their positions, including economics, law, and state administration before taking office as members of the Audit Board. Thus, the person concerned can carry out his duties in his position professionally. Moreover, this is because the duties and authorities of the Audit Board are very heavy and broad as the provisions regarding the duties and authorities of the Audit Board are regulated in Chapter III of Law 15/2006. In addition to the legal considerations mentioned above, related to the issue of determining the age limit, the Court has repeatedly held the opinion that this is an open legal policy.

Hence, based on these considerations, it is relevant if the age restriction as referred to in Article 13 letter i of Law 15/2006 is used as one of the requirements in the election of Audit Board members. Based on the description of these considerations, according to the

Court, Petitioner II's argument regarding Article 13 letter i of Law 15/2006 is contrary to the 1945 Constitution as long as it is not interpreted as "adult based on science and technology" is groundless according to law.

The Petitioners argued that Article 13 letter j of Law 15/2006 is contradictory to the 1945 Constitution as long as it does not mean "never committed any irregularities or criminal acts of corruption while serving as a State Financial Management Officer" because the quality of the Audit Board candidate can't be seen only based on his or her last term. in office, regardless of his track record during his tenure as the manager of state finances (the party being examined). Regarding the arguments of the Petitioners a quo, the Court believes that the provisions of Article 13 letter j of Law 15/2006 were established to avoid potential conflicts of interest and abuse of previously held powers that could be carried out by elected Audit Board members if the person concerned came from a state financial management official. This may lead to the possibility of disruption of independence, integrity, and professionalism as members of the Audit Board in carrying out their duties and authorities. Therefore, there need to be requirements, candidates for Audit Board members are required to have at least 2 (two) years left their position as officials in the state financial management environment. This includes aiming to break the chain of conflicts of interest between the parties concerned, namely between those who are examining and those being examined, and to avoid abuse of authority. This is because such a situation is possible when an elected Audit Board member uses his/her authority to evaluate the results of his/her past work before he/she becomes a member of the Audit Board. Therefore, it is very important to limit the time when officials managing state finances can participate in the election of Audit Board members.

The existence of a provision regarding a period of "at least 2 (two) years" in Article 13 letter j of Law 15/2006 has been considered by the Court in the Decision of the Constitutional Court Number 106/PUU-XII/2014, which states:

> **"[3.9.6]** ... Besides, there is a minimum period of 2 (two) years so that the candidates who are elected as members of the Audit Board will be able to carry out their duties independently and freely because, in terms of financial accountability, the person concerned will never check the financial management which has been implemented for 2 (two) years. The financial audit is conducted on financial management carried out 1 (one) year earlier."
>
> Based on these considerations, the elected BPK members can only conduct a financial audit of the financial management carried out 1 (one) year earlier. This prevents BPK members from self-examining the results of their work as financial management officials before they are elected as members of the BPK.

Furthermore, concerning the Petitioners' petition requesting that Article 13 letter j of Law 15/2006 be interpreted as "never committed any irregularities or criminal acts of corruption while serving as the State Finance Management Officer", basically it has been accommodated in the provisions of Article 13 letter g of Law 15/ 2006 which states:

> "g. has never been sentenced to imprisonment based on a court decision that has permanent legal force for committing a crime punishable by a sentence of 5 (five) years or more."

These conditions are not only attached to prospective Audit Board members who come from state financial management officials but also to prospective Audit Board members who are not from state financial management officials. In other words, this requirement is attached to all prospective participants who wish to participate in the election of Audit Board members without exception.

Meanwhile, the Petitioners' argument regarding the existence of 2 (two) names that should not have been passed by the House of Representatives of the Republic of Indonesia to be promoted as a candidate for Audit Board members to take part in the fit and proper test stage was due to not meeting the requirements as stipulated in Article 13 letter j of Law 15/2006. This is not a matter of the constitutionality of norms but rather the implementation of norms that are not within the jurisdiction of the Court to assess them.

Based on the description of these considerations, according to the Court, the Petitioners' argument related to Article 13 letter j of Law 15/2006 is contrary to the 1945 Constitution as long as it does not mean "never committed any irregularities or criminal acts of corruption while serving as the State Financial Management Officer" is groundless according to law.

Therefore, the Court concludes that concerning Article 13 letter f, the letter i, and letter j of Law 15/2006, it has not created legal uncertainty and does not prevent citizens from getting equal opportunities in government so that it does not conflict with Article 27 paragraph (1) and Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution and therefore the arguments of Petitioner I and Petitioner II are not legally grounded. As for other matters, because they are irrelevant, the Court will not consider them further.

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

WE ARE BULLETPROOF?

Immanuel B.B. Hutasoit
Head of Subdivision of Foreign Cooperation

Take your light and take your love into the world as the only weapons that we need to make this world truly glorious, truly beautiful, and astonish all of life. (Hafsat Abiola)

The word shootout has become very familiar to our ears these days. From within the country, we are presented with an enigmatic story that happened some time ago when a member of the police (Brigadier J) was killed in a shooting tragedy with his junior (Birgadir E) who is also a member of the National Police. Brigadier J died, but recently there was quite a commotion in the news about how the Police, National Human Rights Commission, and National Human Rights Commission also tried to unmask the riddle with their respective powers. Everyone hopes that the facts that happened can be clearer, thus, a sense of justice for the bereaved family can be realized.

Different police are the different armies. No less excited, the story of a TNI (Indonesian national army) member who hired an assassin for 120 million to kill his wife also leaves many questions. What kind of incompatibility makes the husband decide to end their marriage by hiring a hitman to shoot his wife dead? Even though in the end it was the husband who died, it needs to be a reflection, on why shooting becomes something that seems easy and close to the people of Indonesia.

From abroad, some time ago, on May 24, 2022 in Texas, United States, 19 Uvalde Elementary School students were killed by a gunshot by a man who suddenly entered the school and opened fire indiscriminately at the students. Still, in the same month, a brutal shooting also occurred in a supermarket in the city of Buffalo, New York, United States. The perpetrator was an 18-year-old boy. As a result, 10 people died in the action. In this case, the Governor of New York quickly raised the age limit for buying semi-automatic rifles from 18 years to 21 years in early June 2022.

The title of this article is a bit of satire, opening with a dark and violent story. If we refer to the Indonesian Dictionary, the word shooting is defined as releasing bullets from each other with firearms. The word “mutual”, we need to understand that it does not only comes from one party but also the other party. Of course, Hi-MK is not designed to provide a treasure trove of pistols, bullets, or anything related to firearms. However, it is interesting to illustrate how life becomes cheaper and easier to remove from the body in which it is inhabited.

Then, is there no hope left for humans to live side by side in peace and prosperity?

In the context of the Constructional Court (MK) presence in the world of MK’s social arena, that hope is still there. At the extraordinary bureau meeting of WCCJ last June, the hope for peaceful coexistence was still maintained. The extraordinary meeting was designed to discuss the fate of the Russian Constitutional Court in the World Conference on Constitutional Courts, known as the World Conference on Constitutional Justice (WCCJ). This is the aftermath of the war, attack, and Russian invasion of Ukraine which until now has not ended. Due to the war, several Courts in Europe submitted a proposal to the WCCJ Bureau to immediately freeze the membership of the Russian Constitutional Court in the WCCJ. Some Constitutional Courts from European countries think that the Russian Constitutional Court has failed to participate in upholding justice and human rights by allowing the Russian government to initiate attacks. Therefore, the Russian Constitutional Court is deemed appropriate to terminate its membership and existence in the association of the world Constitutional Court. The letter

requesting the suspension of the Russian Constitutional Court's membership was submitted in March 2022, but the WCCJ Bureau needed time to discuss it more deeply until it was finally decided 3 months later.

Before making the decision, the Constitutional Court, which is a member of the WCCJ Bureau and the host of the 2022 WCCJ congress, expressed its opinion on the proposed termination of membership.

Indonesia has clearly reminded that the Constitutional Court is a judicial institution whose role is to uphold human rights and the rule of law. The Constitutional Court has the responsibility to contribute to peace and create global constitutional justice in support of democracy. In particular, regarding the relationship between the Russian Constitutional Court and the Ukrainian Constitutional Court, relations between the Constitutional Courts need to be updated and strengthened in the future, because this is the best way to achieve peace and constructive cooperation. It can be conducted by prioritizing universal values and equality before the law.

Therefore, Indonesia believes and underlines that all members of the WCCJ, including the Constitutional Court of the Russian Federation, must still be invited to the 5th WCCJ Congress in Bali in October 2022. Because peace can only be realized if there is a bridge of communication between the two warring parties.

The opinion of the Republic of Indonesia which tends to swim freely and actively without any personal interests is following the mandate of the 1945 Constitution, Indonesia is always committed to being able to participate in maintaining world peace.

This principle is the basis for Constitutional Court's active participation in establishing close relationships with various institutions that play an important role in advancing democracy, human rights, and law enforcement throughout the world.

For Constitutional Court, WCCJ is a world-class forum that always prioritizes constructive dialogue. Therefore, the upcoming WCCJ congress in Bali will play an important role in facilitating dialogue between members who have different views. The results of the dialogue are expected to become inputs/recommendations that need to be submitted to the governments in each country.

WCCJ needs to focus on humanitarian issues and uphold transparency in the implementation of the duties and authorities of the Constitutional Court, without being further involved in issues that are motivated by political aspects in the realm of government.

Indonesian – Russia – Ukraine

The steps taken by the Constitutional Court of the Republic of Indonesia seem in sync with the steps taken by the Indonesian government. President Jokowi's working visit to Ukraine and Russia is a big step that should be noted by the world. Jokowi's a visit to the two countries is a manifestation of Indonesia's impartial diplomacy practice. Efforts to stand in a neutral position and not lean towards any bloc is a hope that is targeted so that Indonesia can be well received by all conflicting parties.

The visit of the Head of Government of Indonesia to these two countries shows the maturity of Indonesia. We have different attitudes that the world can't underestimate. This further confirms Indonesia's position in the perspective of the world because it is this kind of concrete movement that the world community has been waiting for with the hope that the conflict will subside.

As a country guided by Pancasila and the 1945 Constitution, it is appropriate that Indonesia must participate in maintaining world order based on independence, eternal peace, and social justice. In addition, according to the mandate of the opening of the 1945 Constitution, independence is the right of all nations, and therefore, colonialism in the world must be abolished, because it is not following humanity and justice.

Furthermore, MKRI's next steps to ensure concrete communication between the Russian Constitutional Court and the Ukrainian Constitutional Court? We should wait for the WCCJ Congress in Bali on 4-7 October 2022. One thing is certain, as a first step, MKRI has succeeded in opening the door of communication by stressing that disputes can only be resolved using communication bridges. The Russian Constitutional Court and the Ukrainian Constitutional Court have been officially invited by the Chairperson of the Republic of Indonesia to attend in Bali.

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