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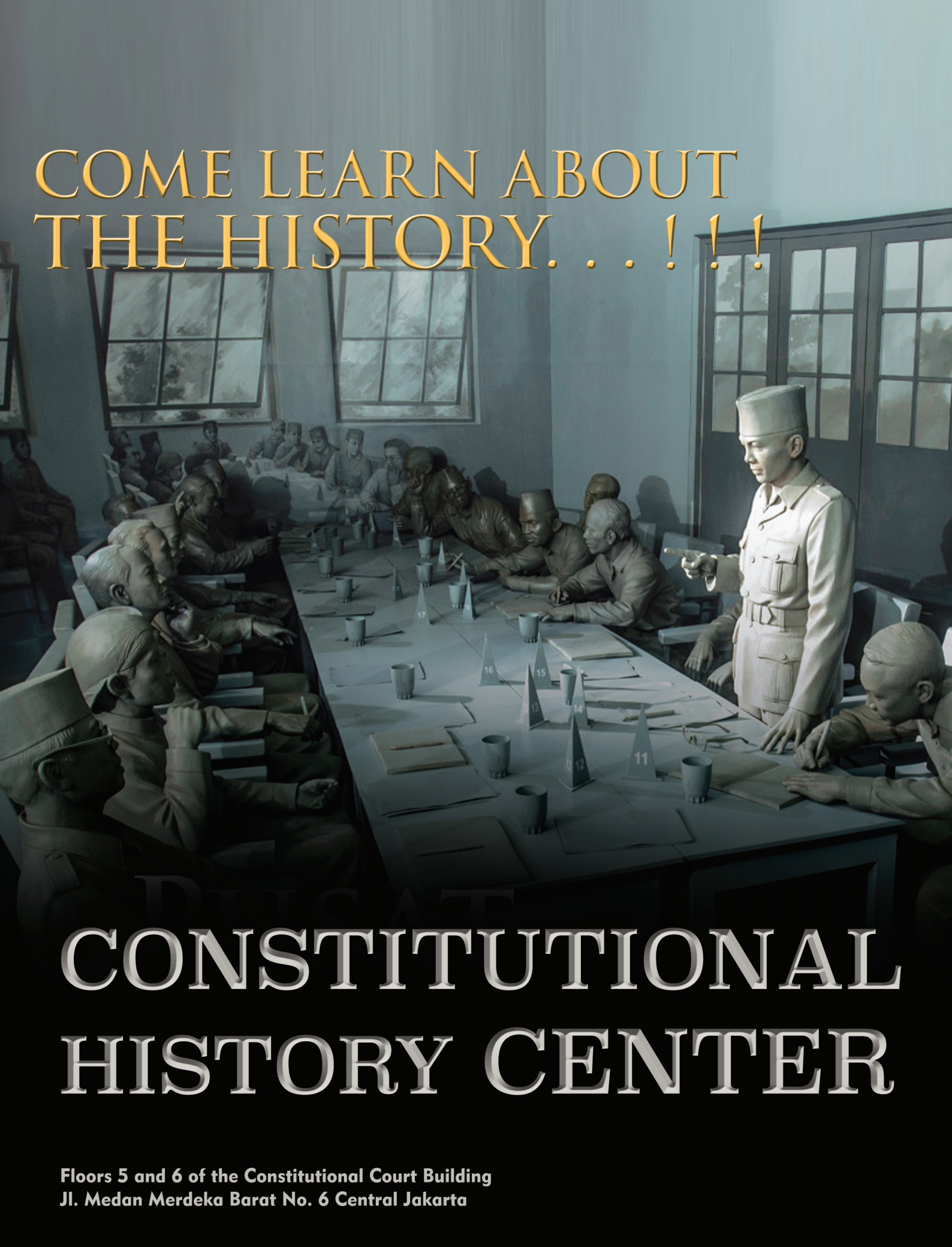
E-MAGAZINE

KONSTITUSI



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Editor's Foreword

Every case must come to an end (litis finiri opportet). The provisions of the Criminal Procedure Code regarding indictment allow for multiple filings. In Decision Number 28/PUU-XX/2022, the Court stated that the phrase 'null and void' in Article 143 paragraph (3) of the Criminal Procedure Code is contrary to the 1945 Constitution and is not conditionally binding as long as it does not mean that "the public prosecutor's indictment which has been declared null and void by the judge can be adjusted and re-filed at hearing once. If the defendant/legal adviser continues to file objections, the judge immediately examines, considers, and decides on them together with the subject matter of the case in the final decision." This review is the HEADLINE NEWS of the November 2022 issue of CONSTITUTION Magazine.

Then, under the "Window" column, I D.G. Palguna presents a manuscript with a straightforward title, "Yapi." Palguna depicts the figure of a seasoned artist, Yapi, Yusbal Anak Perang Imanuel Panda Abdiel Tambayong, better known as Remy Sylado. Palguna sees art practice and speech as ordinary things that, in Yapi's hands, have become extraordinary. Of course, this did not happen overnight, but was the result of extensive thought, language knowledge, and contemplation. Yapi is now lying sick. Hopefully, Yapi will recover soon.

The "Opinion" column discusses health and safety aspects in the implementation of the 2024 Simultaneous Elections. This is reflected in the 2019 Simultaneous Elections. One of the issues that is in the spotlight is that the implementation of the 2019 Simultaneous Elections has caused 894 local election organizers (KPPS) to die, and 5,175 are sick due to fatigue.

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In addition, there are many other columns presented in the CONSTITUTION Magazine, such as the columns of the Courtroom, Case Overview, Minutes of Amendments, Traces of the Constitution, and others.

Akhirulkalam, I hope that KOSTITUSI Magazine will contribute to readers' knowledge. Happy reading. Long Live the Constitution!

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EDITOR'S ADDRESS:
Gedung II Mahkamah Konstitusi
Republik Indonesia
Jl. Medan Merdeka Barat No. 7
Jakarta Pusat
Telp. (021) 2352 9000 ▪ Fax. 3520 177
Email: majalahkonstitusi@mkri.id
Website: www.mkri.id

@officialMKRI
@officialMKRI
Mahkamah Konstitusi RI
mahkamahkonstitusi
mkri.id

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AN INDICTMENT DECLARED NULL AND VOID CAN BE RE-FILED ONCE

The provisions of the indictment in the Criminal Procedure Code that allow for multiple filings are deemed to violate a defendant's constitutional rights. Umar Husni is a citizen who believes that the provisions in Criminal Procedure Code Article 143 paragraph (3) violate his constitutional rights. He reviews the norms in the Criminal Procedure Code materially.

54 CONSTITUTIONAL DOCUMENTATION

ASYMMETRIC DECENTRALIZATION

THE NEW MEANING OF "NULL AND VOID"

The provisions of the norms of Article 143 paragraph (3) of the Criminal Procedure Code lead to legal uncertainty and injustice. This was confirmed by the Constitutional Court in Decision Number 28/PUU-XX/2022. On October 31, 2022, the Constitutional Court announced the decision in a plenary session that was open to the public. What does Article 143 paragraph (3) of the Criminal Procedure Code read? *An indictment that does not comply with the provisions mentioned in paragraph (2) letter b is null and void by law.* At first glance, the provision seems clear. In practice, however, this provision has given rise to multiple interpretations, resulting in legal uncertainty, which is contrary to Article 28D paragraph (1) of the 1945 Constitution and can lead to arbitrariness, which is contrary to the principle of due process of law as outlined in Article 1 paragraph (3) UUD 1945.

At least, that is the argument raised by the Petitioner in the Constitutional Court's judicial review. The petitioner is a person who has personally experienced the consequences of multiple interpretations of Criminal Procedure Code Article 143 paragraph (3). The Petitioner has been charged three times since February 2020. The indictment was declared null and void by six court decisions, including 3 decisions of the Purwokerto District Court and three decisions of the Semarang High Court. Furthermore, 8 decisions on other people's cases were discovered and investigated. The question is, what is meant by null and void in the provisions? What are the ramifications for the Defendant's status? Is the Defendant's status as a free citizen restored as a result of the indictment being declared null and void? Is it logical for the public prosecutor to only revise the charges to be re-filed, up to three volumes of the indictment against the defendant to be retried if the defendant has the status of being without criminal law status?

According to the Constitutional Court, the problem that must be considered is that an indictment is declared null and void if it does not meet the formal or material requirements and the indictment is *obscuur libel*. How many times can it be filed against the defendant in court? Bearing in mind, if an indictment is declared null and void, the public prosecutor can file legal countermeasures with the high court via the district court concerned. Another critical issue is the lack of a period during which the indictment can be adjusted, as well as the number of times the judge can declare the public prosecutor's indictment null and void. Another critical issue is the lack of a period during which the indictment can be adjusted, as well as the number of times the judge can declare the public prosecutor's indictment null and void. Therefore, without clarity on the status and time limit for when the case will be completed, this causes non-criminal defendants and/or victims to lose their constitutional rights due to legal uncertainty and injustice.

In the decision, the Constitutional Court emphasized the new meaning of the phrase "null and void" in Article 143 paragraph (3) of the Criminal Procedure Code to create legal certainty and justice. The phrase is certain and fair if it is interpreted as "the indictment of the public prosecutor which has been declared null and void by the judge can be adjusted and re-filed in court 1 (one) time, and if objections are still filed by the defendant/legal counsel, the judge immediately examine, consider, and decide the subject matter of the case in the final decision".

The Constitutional Court also gave constitutional mandates, including (1) Cases that have already been declared null and void in the public prosecutor's indictment by the judge, either once or multiple times, may be re-filed 1 (one) more time, and the judge will examine them alongside the subject matter of the case; (2) cases in which the public prosecutor has never filed an indictment during a hearing shall be subject to the provisions of this decision; (3) to avoid errors in the preparation of the indictment, the public prosecutor shall conduct a thorough and gradual examination of the indictment before being re-filed to a hearing in the district court; and (4) in handling cases, judges must always maintain integrity while prioritizing legal certainty and justice. As a result, the possibility of an interlocutory decision declaring the public prosecutor's indictment null and void will no longer occur. This new meaning should serve as a guide for all parties. Long Live the Constitution!

Window

YAPI

I D.G.Palguna

"It seems that it is easiest for Indonesians to involve God in matters that can be solved by Pak RT (Head of Neighborhood Association)"

Remy Sylado

Even though the Constitution guarantees freedom of expression and opinion, few people are truly brave and able to use this constitutional right independently and consistently in its truly substantive meaning—in daily behavior and (working), as Yapi Tambayong does. Yapi and his works truly exist as figures and expressions born of an independent spirit, a free spirit, from his multitalented figure. He understood and cared about the distinction between being independent or free and being an outlaw. He understands that the law protects that independence or freedom, not the other way around: the law is violated in the name of freedom or independence.

If his name is written as "Yapi Tambayong" (which has been spelled according to the Enhanced Spelling of the Indonesian Language), only a small circle of people will recognize it, despite the fact that it is a real name. It is also possible that those in small circles will also be even smaller to realize that the word "Yapi" is an abbreviation: Yusbal Anak Perang Immanuel. His fullname is Yusbal Anak Perang Imanuel Panda Abdiel Tambayong. There will undoubtedly be fewer of them who can identify it, and many will be confused. However, as soon as it is written as Remy Sylado, this figure's pen name, lots of people will raise their hands to show how familiar that name is.

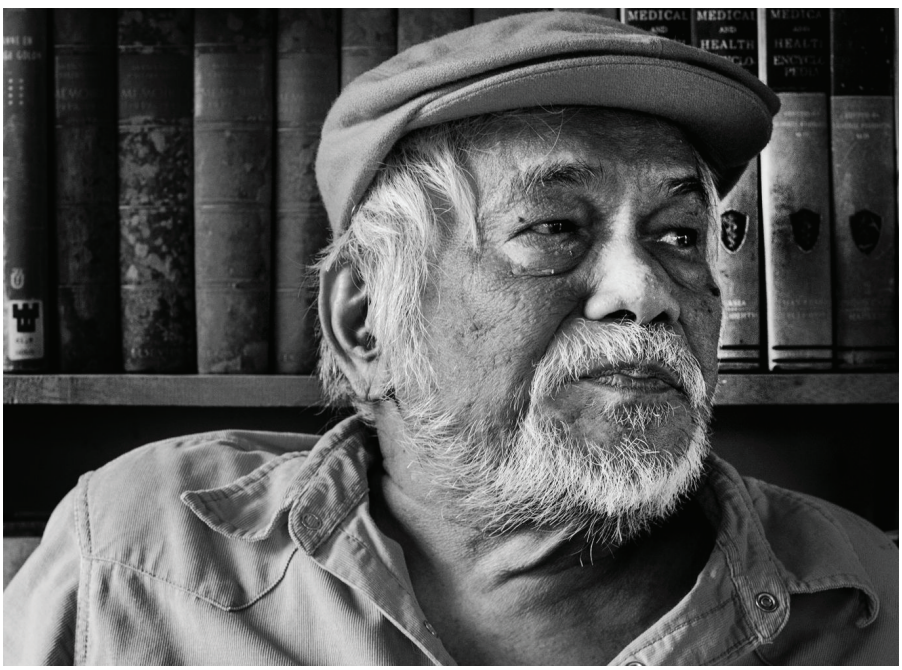
Remy Sylado is a multifaceted artist who has worked as an actor, playwright, musician, singer, short story writer, poet, novelist, painter, journalist, and—most notably—cinematography lecturer. In fact, this figure is associated with a variety of other abilities. One of them that astounds many people is his mastery of the language—which later leads to him being "crowned" as a munsyi alias expert in the field of language. He is also a polyglot. I'm not sure how many foreign languages he mastered.

Apart from Indonesian and various regional languages throughout the country which are spoken so fluently, he is said to have mastered at least six foreign languages, including English, Dutch, Japanese, Mandarin, Arabic, and Greek. However, if you read his books, "123 Ayat Tentang Seni" (where he uses his real name, Yapi Tambayong) and "9 dari 10 Kata Bahasa Indonesia adalah Asing" (here he uses the "pseudonym" Alif Danya Munsyi), especially if you have heard a cassette entitled "Dua R Baca Puisi" (which contains recordings of his voice and the voice of the late W.S. Rendra reading their respective poems), it should be "assumed" that he at least also mastered French, German, Latin, and Hebrew. What's also remarkable about Remy Sylado, despite the fact that he's never been referred to as a historian, is that if you ask him about history, he'll respond as smoothly as he "gossiped" about the rock band Led Zeppelin, without looking at the notes. His mind is an encyclopedia. His memory is photographic: what his brain has "recorded" is so easily "brought out" through speech or writing when needed, as if without recalling.

His works in any field of art, aside from being specific "tools" for conveying ideas, thoughts, intentions, and their aesthetic "energy," frequently awaken us—in surprising ways—to really pay more attention to our surroundings or understand the

existence of something with a unique-authentic perspective. Let's read his "preface" in the leaflet for an exhibition of his paintings at the Jakarta Cultural Center, 11-19 July 2019, which is titled "Apologia Tentang Martabat dalam Perbedaan Rasa Keindahan". "I paint on what I feel to be beautiful in my heart, and I don't care what your mind thinks about art." Note how beautifully he expresses his argument that art is a matter of beauty and beauty is a matter of taste, not a matter of reason. It is because it is unquestionably subjective. So, why seek "approval" of reasoning results from others in the first place? However, that "sharp" preface—apart from being a kind of "ideological" statement—apparently is also an expression of his annoyance towards those he refers to as hired curators or critics and considers arrogant, mischievous, resembling the behavior of naughty teenagers. As he says in the following lines, "I deliberately began my apology in this way because I am troubled by the present symptoms; the arrogance, smugness, and insolence of the juvenile delinquent class which has recently been very visible in the shadows of those who call themselves 'curators' or 'critics', both those who are paid by certain galleries or those who receive a month's salary from the government through certain councils. "They, God forbid, tend to be unconscious—and being unconscious psychologically means being possessed—and want to force their frustrations out through the shield of certain books in order for them to be accepted as truth. As a result, they believe he is the shepherd and the painter is the sheep. If that's the case, the dragons will need a tiger to pounce on both of them."

His "mischievousness" in constructing propositions when expressing arguments or criticisms of something, which frequently hit him right in the guts, is "moderated" by his use of words that actually trigger humor. This is also true when he writes poetry. He invented a type of poetry known as *Puisi Mbeling* (deceitful poetry), which is characterized by "rebellion" but is presented in a humorous manner. It is referred to as *mbeling* or deceitful because it refuses to follow the



"standard rules" of writing poetry. The name *Puisi Mbeling* comes from the name of a column he wrote in the now-defunct Aktuil Magazine—a music magazine that is considered the "holy book" of Indonesian music observers, and there is a saying that if you haven't read Aktuil Magazine, you aren't legally a music observer. As the name implies, this column was created to accommodate the "rebellion" of young poets who felt that their creativity was being hampered, or hindered, by never having a place in literary magazines that were "controlled" by famous poets who felt they had the right to set the standard of the poems that could be published in that magazine. Read how Remy Sylado's poem, titled "Olahraga", is deceitful. "olahraga/ orang kota/ mengangkat barbel/di fitness centre. olahraga/orang desa/ memacul tanah/di sawah ladang/yang satu/mencari sehat/ karena anjuran/ yang lain/menemukan sehat/karena telanjur". (The sport/city people/ lifting barbells/at the fitness center/ the sport/the villagers/staking the ground/in the paddy fields/one/seeks health/because of advice/others/find it healthy/because it's too late). Also read how he punches the glamorous lifestyles of officials' wives who like to spend extravagantly after their corrupt husbands are no longer in power—through his poem titled "Nalam tentang Tikus". Do you know the meaning of nalam? Another distinguishing feature of this priest's child is his penchant for

using "odd" words that seem to appear from nowhere. Nalam is another word for puisi/sajak (poetry or rhyme). So, "Nalam tentang Tikus" is poem about mice. This is what it says: Berfoya-foya dianggapnya harus/demikian gaya hidup bini pejabat. Sejak suami berhenti jadi tikus/ ia tak punya kesempatan mengerat. (Spree she thought it should be/the lifestyle of an official's wife/ Since his husband stopped being a mouse/she had no chance to gnaw).

Through art and speech, what was once commonplace, in Yapi's hands, suddenly becomes something special. He demonstrates his breadth of insight and knowledge in the field of language, in the book mentioned above, "9 dari 10 Kata Bahasa Indonesia adalah Asing". Importantly, the term *"asing"* / "foreign" here refers to languages other than Indonesian, so it includes regional languages as well as foreign (national) languages. To "prove" the validity of the proposition contained in the title of the book, he gives the following example (which has probably been quoted dozens of times): *"Meski hari gerimis, setelah sembahyang lohor, para santri mengayuh roda sepedanya ke pasar, disuruh paderi membeli koran dan majalah, tetapi ternyata kiosnya disegel sebab bangkrut, jadi mampirlah semuanya di toko buku yang uniknya malah menyediakan perabotan khusus keluarga yang ditaburkan di meja baca, antara lain teko porselen, peniti emas, lap, setrika listrik, serta kalender perfoto artis idola". (Despite the drizzle, the students rode their bicycles to the market after the Lohor prayer, where the religious leader had ordered them to buy newspapers and magazines. However, it was discovered that the stall was closed due to bankruptcy. So, everyone, stop by the unique bookstore, which instead provides special family furniture that is spread on the reading table, such as porcelain teapots, gold safety pins, rags, electric irons, and idol artist photo calendars.")*

Where are the "foreign" words in this sitcom-like story? Yapi (a.k.a. Alif Danya Munsyi) explains it this way: *meski* (Portugis: *masque*), *hari* (Sanskrit: the title of the solar god), *setelah* (Kawi: *telas*), *sembahyang* (Sanskrit: *sembah hyang*), *lohor* (Arabic: *dzuhur*), *para* (*Kawi: para*), *santri* (Tamil: *santri*), *mengayuh* (Minangkabau: *kayuh*), *roda* (Portuguese: *roda*), *sepeda* (French: *velocipede*), *pasar* (Persian: *bazar*), *disuruh* (Kawi: *suruh*), *paderi* (Spanish: *padre*), *membeli* (Campa: *blei*), *koran* (Dutch: *krant*), *majalah* (Arabic: *majalla*), *tetapi* (Sanskrit: *tad api*), *ternyata* (Javanese: *nyata*), *kiosnya* (English: *kiosk*), *disegel* (Dutch: *zegal*), *sebab* (Arabic: *sababun*), *bangkrut* (Italian: *bancarotto*), *jadi* (Sanskrit: *jati*), *mampirlah* (Javanese: *mampir*), *semuanya* (Sanskrit: samuha), *toko* (Chinese: *to-ko*), *buku* (Dutch: *boek*), *yang* (Austronesian: *ia + ng*), *uniknya* (French: *unique*), *malah* (Javanese: *malah*), *menyediakan* (Sanskrit: *sedya*), *perabotan* (Betawi: *perabot*), *khusus* (Arabic: *khusus*), *keluarga* (Sanskrit: *kula warga*), *ditaburkan* (Hebrew: *tabbwur*), *meja* (Portuguese: *meza*), *baca* (Sanskrit: *waca*), *antara* (Sanskrit: *antara*), *lain* (Kawi: *liyan*), *teko* (Chinese: *te-ko*), *porselen* (English: *porcelain*), *peniti* (Portuguese: *alfinete*), *emas* (Sanskrit: *amasha*), *lap* (Dutch: *lap*), *setrika* (Dutch: *strijkezer*), *listrik* (Dutch: *elektrisch*), *serta* (Sanskrit: *saratha*), *kalender* (Dutch: *kalender*), *berfoto* (Greek: *photo*), *artis* (English: *artist*), *idola* (Greek: *eidolon*).

Aren't these ordinary words extraordinary now that we know where they came from? That's the way Yapi shows us. He shares his vast knowledge in a witty, sometimes sharp, but never patronizing manner. If you like rock music, as I do, you might be surprised to hear Yapi explain how the famous song "A Whiter Shade of Pale" by the British rock group Procol Harum was heavily influenced by the composition of the German composer Johann Sebastian Bach, one of the frontmen of the time. Yapi defines Baroque as a period in Western culture history remembered for its cheerful artistic character, asymmetrical ornamentation, and ornate melodies known as *contrapuntic*. Regarding Bach's influence on "A Whiter Shade of Pale," Yapi writes, "The influence of the Baroque insight into rock music can be seen in the London band which became known worldwide in 1967 through their hit record "A Whiter Shade of Pale". They harmonized this song from Bach's cantata." This explanation can be found on page 85 of the book 123 Ayat Tentang Seni. By the way, do you know what the word "cantata" means (though you may be familiar with the Kantata Takwa band)? It actually meant "vocal composition with instrumental accompaniment," according to the dictionary.

Recently there was news that Yapi aka Remy Sylado aka Yusbal Anak Perang Imanuel Panda Abdiel Tambayong, a versatile artist who always thinks and acts independently, is sick. That is the reason this article exists. Through this Window rubric, we pray for him with a fragment of a poem that he reads himself on the Dua R Baca Puisi cassette, *"Pakatuan wo pakalawiren,"* wishing him long life and good health. Amen. Swaha. ****

Catalog

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penerbitkonpress@gmail.com penerbitkonpress konpress

HAKIKAH KONSTITUSI
Dasar Pemikiran, Kewenangan, dan Perbandingan dengan Negara Lain

Penulis : I. D. G. Palguna
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Ukuran : 14,8 x 21 cm
Tebal : 422 Halaman
Terbit : 2014

Harga : Rp112.000

Catatan Hukum
Maria Farida Indrati

Editor : Jilbin Fauzie & Achmad Edi Subiyanto
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Tebal : 312 Halaman
Terbit : 2014

Harga : Rp87.000

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Harga : Rp108.000

Living and Evolving Constitution of Indonesia

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Harga : Rp84.000

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ISBN : 9786027965147
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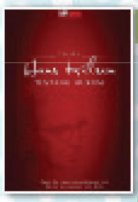
Harga : Rp99.000



Teori [illegible] tentang Hukum

Penulis : Prof. Dr. Jimly Asshiddiqie, S.H. dan Dr. M. Ali Safaat, S.H., M.H.
ISBN : 978-979-99869-4-3
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Konsep Hukum [illegible]

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Harga : Rp55.000

Kontroversi Mahfud MD Jilid 2

Penulis : Rita Triana Budiarti
ISBN : 978-602-18834-6-6
Terbit : Catakan ke-1, Juli 2014
Tebal : 312 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp58.000

Biografi Mahfud MD: Terus Mengalir

ISBN : 978-602-18834-8-0
Penulis : Rita Triana Budiarti
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Halaman: 412 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp80.000

Politik Hukum Agraria

Penulis : Prof. Achmad Sodiki, SH
ISBN : 9786027965054
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Ukuran : 14,8 x 21 cm

Harga : Rp58.500

Hukum Pemilu dalam Yurisprudensi Mahkamah Konstitusi

Penulis : Janedjri M. Gaffar
ISBN : 978-602-7995-09-0
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Tebal : 284 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp68.000

Demokrasi dan Pemilu di Indonesia

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ISBN : 978-602-7995-05-2
Terbit : Catakan ke-1, 2012
Tebal : 312 hlm
Ukuran : 14,8 x 21 cm

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Demokrasi Konstitusional
Praktik Ketatanegaraan Indonesia Setelah Perubahan UUD 1945

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Tebal : 280 hlm
Ukuran : 14 x 21,5 cm

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Politik Hukum Pemilu

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ISBN : 9786022965420
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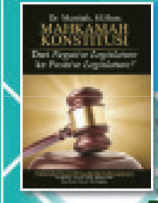
Harga : Rp93.000



Mahkamah Konstitusi, dari Negative Legislature ke Positive Legislature

Penulis : Dr. Maruarar
ISBN : 9786022965487
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Ukuran : 14,8 x 21 cm

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Pembentukan Peraturan Perundang-Undangan yang Responsif

Penulis : Ahmad Yani, SH, MH
ISBN : 978-602-7995-03-1
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Tebal : 404 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp55.000

Politik Hukum Pembentukan Undang-Undang Pasca Amandemen UUD 1945

Penulis : Dr. Fahmi Idris
ISBN : 978-602-18834-1-1
Terbit : Catakan Pertama, Oktober 2012
Tebal : 630 hlm
Ukuran : 19 x 32 cm

Harga : Rp72.500

Reformasi Birokrasi dan Iklim Investasi

Penulis : Taufik Effendi
ISBN : 978-602-18834-9-2
Terbit : Februari 2013
Tebal : 338 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp69.000

Mahfud MD Hakim Nyeleneh

Penulis : Jrtyanto
ISBN : 978-602-7995-00-0
Terbit : Catakan Pertama, Maret 2013
Tebal : 420 hlm
Ukuran : 14,8 x 21 cm

Harga : Rp71.500

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Jl. Medan Merdeka Barat No. 6 Jakarta Pusat
Telp. (021) 23529000,
Email: penerbitkonpress@gmail.com, Fb: @penerbit.konpress, Twitter: @konpress

Tri Sulistianing Astuti
Postgraduate Student,
Faculty of Social Sciences,
Indonesian International Islamic University (UIII)

THE URGENCY OF HEALTH AND SAFETY ASPECTS IN THE 2024 SIMULTANEOUS ELECTIONS

The first simultaneous general elections (elections held at the same time) in Indonesia were held on April 17, 2019. According to General Elections Law Number 7 of 2017 (UU Pemilu), the five-box design requires each voter to provide five separate ballots: one for the President, one for the House of Representatives (DPR), one for the Regional Representative Council (DPD), one for the Provincial House of Representatives (DPRD Province), and one for the District/City Regional House of Representatives (District/City DPRD). The 2019 simultaneous elections were held successfully, with both positive and negative achievements.

The achievements of the 2019 Simultaneous Elections contributed positively to Indonesia's global perception of freedom. Indonesia is classified as a partially free country by Freedom House (2021), with a rating of 59 out of 100. The process of holding the 2019 Simultaneous Elections as part of the implementation of political rights receives a high score on the Freedom Index. First, it was stated that the 2019 Simultaneous Elections were generally regarded as free and fair by international election monitors. There were also reports of minor voting irregularities. Second, members of the national legislature are currently thought to be elected in free and fair general elections. Third, the electoral laws and legal framework for elections are widely regarded as largely democratic and impartial. However, activists expressed concern about the independence of the authorities, Bawaslu, and the KPU, because these institutions are required to conduct binding consultations with parliament and the government before issuing regulations or making decisions related to election holding.

Aside from positive accomplishments, negative events occurred in the 2019 simultaneous elections and received attention from various groups. According to the KPU, the 2019 simultaneous elections killed 894 local election organizers (KPPS) and sickened 5,175 others from exhaustion. Another topic of discussion is the final voter list (DPT) and logistics distribution. For the first time, the Election Supervisory Body (Bawaslu) discovered that changes to the DPT had an impact on election logistics preparation. Furthermore, politicians believe that the five-box design creates difficulties because politicians must campaign for themselves, the party, and the presidential candidate all at the same time. This mechanism also makes identifying all of the candidates for people's representatives difficult for voters.

The decision of the Constitutional Court

These issues were brought to the Constitutional Court once more. After tracing back to the original intent in the 1945 Constitution, the Constitutional Court expanded and provided six optional models in simultaneous general elections in Decision Number 55/PUU-XVII/2019.

According to the Constitutional Court, the six models of simultaneous general elections aim to strengthen the presidential government system, as intended in Decision Number 14/PUU-XI/2013 and are constitutional under the 1945 Constitution. Furthermore, the Constitutional Court provided legislators with five guidelines for selecting the model of simultaneous general elections.

In the legal considerations of Decision Number 55/PUU-XVII/2019, it is stated that the Constitutional Court has retraced the original intent regarding simultaneous general elections; the relationship between simultaneous general elections in the context of strengthening the presidential government system; and exploring the meaning of simultaneous general elections in the Constitutional Court Decision Number 14/PUU-XI/2013, and determining the number of simultaneous general election model options that can still be judged constitutional based on the 1945 Constitution, including:

1. Simultaneous general elections to elect members of the DPR, DPD, President/Vice President, and DPRD members;
2. Simultaneous general elections to elect members of the DPR, DPD, President/Vice President, Governors, and Regents/Mayors;
3. Simultaneous general elections to elect members of the DPR, DPD, President/Vice President, DPRD members, Governors, and Regents/Mayors;
4. Simultaneous national elections to elect members of the DPR, DPD, President/Vice President; and followed by simultaneous local elections to elect members of the Provincial DPRD, members of the Regency/Municipal DPRD, governors and regents/mayors;
5. Simultaneous national elections to elect members of the DPR, DPD, President/Vice President; and followed by simultaneous provincial general elections to elect members of the Provincial DPRD and governor; and followed by simultaneous district/city general elections to elect members of the Regency/Municipal DPRD and the Regent and Mayor;
6. Other options as long as maintaining the simultaneous nature of general elections are to elect members of the DPR, DPD, and the President/Vice President. According to the Constitutional Court, with the availability

According to the Constitutional Court, with the availability of the various options for holding simultaneous general elections as stated above, the choice of the model becomes a matter for legislators to decide. However, when deciding on a model for simultaneous general elections, legislators must consider several factors, including: (1) selecting a model that has implications for legislative changes and is carried out with the participation of all parties interested in holding general elections; (2) the possibility of changing the law on the selection of these models is carried out earlier so that simulations can be carried out before the changes are effectively implemented; (3) Legislators carefully consider all of the technical implications of the available model choices so that their implementation remains within the limits of reasonable reasoning, particularly in order to realize quality general elections; (4) model selection always considers the convenience and simplicity for voters in exercising their right to vote as a form of exercising people's sovereignty; and (5) Not frequently changing the direct election model that is held concurrently in order to build certainty and stability in the implementation of general elections. In decision Number 55/PUU-XVII/2019, the Constitutional Court emphasized that it is not authorized to choose the model of simultaneous elections among the variants of

the model above that have been declared constitutional as long as the nature of simultaneity in the general election to elect members of the DPR, DPD, and the President and Vice President is maintained.

Furthermore, in its most recent decision, Decision Number 16/PUU-XIX/2021, the Constitutional Court stated that the determination of the chosen model is the territory for legislators to decide on. The Constitutional Court emphasized that all of the options presented in Constitutional Court Decision Number 55/PUU-XVII/2019 were ideas that emerged (original intent) during the 1945 Constitution amendment. In determining the choice of model or design of simultaneous general elections, the Court cannot completely avoid the interpretation of the original intent as a method of understanding the constitution.

The interesting thing in Decision Number 16/PUU-XIX/2021 is the response of the Constitutional Court to the Petitioner's argument which argues that the five-box general election causes the workload of ad hoc general election officials to be very heavy, irrational, and inhumane. According to the Court, the heavy, irrational, and inhumane workload as argued by the Petitioner is closely related to the management of general elections which is part of the implementation of norms. The Court believes this is related to the technical and management or governance of general elections, both of which are critical factors in the success of concurrent general elections. Therefore, whatever concurrent model legislators choose, it really depends on how general election management is designed by general election organizers, with the full support of legislators and related stakeholders.

Furthermore, the Constitutional Court stated that under the current structure, legislators and general election organizers have more opportunities to evaluate and review the technical implementation of simultaneous general elections on a regular basis, allowing technical problems associated with ad hoc general election organizers to be minimized and anticipated.

Aspects of Health and Safety

Currently, the COVID-19 pandemic is a scourge in a variety of societal activities. Even so, the implementation of the General Election, or Pilkada, must continue. Regarding the current situation, the Constitutional Court's normative perspective and reflection on the experience of holding elections during a pandemic in other countries, as well as the 2020 simultaneous regional elections, demonstrates that health and safety considerations must be an important factor in holding the 2024 simultaneous elections.

Health and safety are more important and guaranteed human rights in the Universal Declaration of Human Rights (UDHR) and the 1945 Constitution. This means that democratic elections must not only reflect the processes and outcomes of elections conducted with integrity and in accordance with the principles of Luber Jurdil (Direct, Public, Free, Confidential, Honest, and Fair) elections, but must also ensure the safety of organizers, election participants, voters, and the general public. As a result, it is critical to identify policies implemented during the COVID-19 pandemic that resulted in new habits to be implemented in administration and regulations for the 2024 simultaneous elections.

Given the likelihood that the new normal conditions will persist, the implementation of the 2024 election must consider the handling of the COVID-19 pandemic, particularly the rules of new habits within the framework of the health protocol. As a result, from the beginning of the 2024 Election, there must be a social restriction policy that includes rules governing certain conditions and capacity requirements for public areas and activities involving mass gatherings for a set period of time. Furthermore, the Covid-19 vaccination program must be prioritized and included in the implementation of the 2024 Election. As part of implementing the new normal in society, arrangements for the division of authority for the 2024 Election organizers and the COVID-19 Task Force must be further considered and studied.

51TH
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CONGRATULATION

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Republic of Indonesia Civil Service Corps

29 NOVEMBER 2022

AN INDICTMENT DECLARED NULL AND VOID CAN BE RE-FILED ONCE

The provisions of the indictment in the Criminal Procedure Code that allow for multiple filings are deemed to violate a defendant's constitutional rights. Umar Husni is a citizen who believes that the provisions in Criminal Procedure Code Article 143 paragraph (3) violate his constitutional rights. He reviews the norms in the Criminal Procedure Code materially.

Umar Husni's petition was documented in Case No. 28/PUU-XX/2022. The Petitioner argued in his petition that Article 143 paragraph (3) of the Criminal Procedure Code violates Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution. According to Criminal Procedure Code Article 143 paragraph (3), *"An indictment that does not comply with the provisions mentioned in paragraph (2) letter b is null and void by law".*

Regarding the concrete case, the Petitioner received an indictment that was declared null and void for a criminal case involving taxation. As a result, the Petitioner received three indictments, including one decision from the Purwokerto District Court and two decisions from the Semarang High Court. In this regard, the Petitioner believes that he may receive a fourth, fifth, and so on indictment in the future without any definite limitations on the process of amending the indictment that the court declared null and void. The problem in this case, however, continued Wahyu, is that the process of the indictment being null and void by law can then be adjusted by the Public Prosecutor or returned to the investigation process.

"Based on the criminal case process with three previous indictments, we can conclude that the Public Prosecutor is at a standstill in terms of making improvements. This is because the impasse must be resolved or the investigation must be restarted in order to organize and compile a comprehensive case dossier so that charges are not declared null and void again," Wahyu explained in a hearing presided over by Constitutional Justice Suhartoyo and accompanied by the Justices of the Constitutional Court, Saldi Isra, and Daniel Yusmic P. Foekh.

Furthermore, under the interpretation of Article 143 paragraph (3) of the Criminal Procedure Code, the Public Prosecutor has no limitations in adjusting and filing an indictment that has been declared null and void, and it can also be challenged under Article 156 paragraph (3) of the Criminal Procedure Code. As a result, the fast, simple, and low-cost judicial process did not occur, and the Petitioner did not obtain legal certainty.

"Without any restrictions on fixing the indictment, it can harm the sense of justice and legal certainty because the Public Prosecutor will almost certainly file an indictment for the fourth time, and there will almost certainly be resistance for the fourth time," Wahyu said.

As a result, the Petitioner demanded that the phrase "null and void" in Article 143 paragraph (3) of the Criminal Procedure Code be declared conditionally unconstitutional and have no binding legal force as long as it does not mean "the case file must be returned to the investigator with limitation of adjustment only 1 (once)."

No Limits

Meanwhile, DPR Commission III member, Taufik Basari, said that the Criminal Procedure Code did not set a maximum limit for public prosecutors to draw up a new indictment as a response to an indictment that was declared null and void by the court. It only regulates the formal and material requirements for preparing an indictment, so that as long as the subject matter of a case has not been examined further, the public prosecutor can make a new indictment in related cases.

Taufik went on to say that the indictment was part of the Criminal Procedure Code, and that, according to the Criminal Procedure Code, the indictment became the basis for examination by judges during the hearing.

Furthermore, he continued, this became the basis for the judge's decision. Concerning the concrete cases encountered by the Petitioner in several of these courts, the DPR in this case concludes that the losses and injustices suffered by the Petitioner are not the results of deviations from the norm being reviewed.

"Actually, this occurred as a result of the filing of the Criminal Procedure Code by law enforcers which caused injustice to the Petitioner. If it is true due to the ambiguity of the legal norms being reviewed, then the Constitutional Court can make a clearer interpretation. However, if the Petitioner's experience is due to an error in applying the law, the Petitioner can seek justice through other legal means. As a result, the DPR believes that the proposed article is not a matter of normal constitutionality and that the settlement must be carried out at the prosecutor's office," said Taufik during a session led by Chief Justice of the Constitutional Court, Anwar Usman, and eight other judges of the Constitutional Court from the Plenary Session Room of the Constitutional Court, which the DPR attended online.

The Petitioner was represented by Wahyu Budi Wibowo as one of the attorneys at the judicial review of the Criminal Procedure Code which was held on Thursday (17/3). Photo: public relations/Ifa

DPR Commission III member Taufik Basari conveyed the DPR's statement online at the follow-up session for the Criminal Procedure Code judicial review on Monday (30/5/2022) in the Plenary Session

Pemohon diwakili oleh Wahyu Budi Wibowo selaku salah satu kuasa hukum dalam sidang uji materiil KUHAP yang digelar pada Kamis (17/3). Foto: Humas/Ifa

Anggota Komisi III DPR Taufik Basari memberikan keterangan DPR secara daring pada sidang lanjutan uji materiil KUHAP pada Senin (30/5/2022) di Ruang Sidang Pleno. Foto: Humas/Panji

Room. Photo: public relations/Panji

Implementation Issues

The government, represented by Lucky Agung Binarto as Expert Staff to the Minister of Law and Human Rights in the Economic Sector, then stated that the judge had the authority to implement Article 143 paragraph (3) of the Criminal Procedure Code. "The judge has the authority to decide whose decision is based on an examination in accordance with his convictions and beliefs," before a Panel of Judges led by the Chief Justice of the Constitutional Court, Anwar Usman, on Thursday (9/6/2022).

Lucky stated that the Purwokerto District Court Decision and the Semarang High Court Decision which continued to declare the decision null and void had provided guarantees, protection, and fair legal recognition for the Petitioner.

"Therefore, this is in line with the constitutional protection in Article 1 Paragraph (3) of the 1945 Constitution and prioritizes *due process of law* as stipulated in Article 28D Paragraph (1) of the 1945 Constitution," said Lucky.

Defendant's Rights

The rules regarding indictments as stipulated in Article 143 paragraph (3) of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) emphasize the right for the Defendant to be charged with an indictment that meets the formal and material requirements. This was conveyed by the Deputy Attorney General for Civil and Administrative Affairs, Feri Wibisono, who conveyed the statement of the Attorney General's Office (Kejagung) as the Related Party in a follow-up session on Thursday (16/6/2022).

"Furthermore, returning an adjusted indictment is done to protect the rights of the Defendant in accordance with the provisions of Article 50 paragraph (2) of the Criminal Procedure Code, which basically states that a suspect has the right to have his/her case brought to court immediately by the public prosecutor. In addition to Article 50 paragraph (3) of the Criminal Procedure Code, which states that the Defendant has the right to be tried by a court as soon as possible," Feri explained before the Panel of Judges led by Deputy Justice of the Constitutional Court, Aswanto.

The Petitioner contends that the Criminal Procedure Code provides that, in the case of a null and void indictment, the prosecutor has the authority to file for examination at a court hearing one time by replacing the old indictment and filing a new indictment that has been adjusted to meet the indictment requirements under Article 143 paragraph (2) of the Criminal Procedure Code. Feri conveyed that the argument was inaccurate and had no legal basis because the limitation on the quantity of filing a one-time adjustment of the indictment by the public prosecutor was only related to indictments that had not yet been filed at the hearing, in accordance with the provisions of Article 144 paragraph (1) and paragraph (2) KUHAP that the public prosecutor can change the indictment before the court sets a hearing date.

"Changes to the indictment can

only be made once, no later than seven days before the hearing begins, so this only concerns changing the indictment," Feri explained.

New Interpretation

In response to this filing, the Court provided a new interpretation of the phrase "null and void" in Article 143 paragraph (3) of Law No. 8 of 1981 relating to the Criminal Procedure Code (KUHAP). According to the legal considerations read out by the Justice of the Constitutional Court, Suhartoyo, the Court believes that the phrase "null and void" in Article 143 paragraph (3) of the Criminal Procedure Code means that filing an adjusted indictment can only be done once after the indictment is declared null and void by law by a judge. Therefore, Decision Number 28/PUU-XX/2022 was read out in the Plenary Session Room of the Constitutional Court on Monday (31/10/2022).

Suhartoyo went on to say that the phrase "null and void" in Article 143 paragraph (3) of the Criminal Procedure Code will be able to create legal certainty if it is interpreted to mean that an adjusted indictment can only be filed once after being declared null and void. That is, if the public prosecutor files the second indictment while objections regarding the fulfillment of the formal requirements and materials of the indictment are still being filed, the judge must examine the indictment alongside the subject matter of the case that was decided jointly in the final decision.

"By giving a new interpretation by the Court to the norms of Article 143 paragraph (3) of the Criminal Procedure Code, in cases where the prosecutor's indictment has been declared null and void, either once or multiple times by the judge, it can be filed once more and then examined by the judge alongside the subject matter of the case. Meanwhile, for cases where an indictment has never been filed by the prosecutor in court, the provisions as decided here apply," said Suhartoyo.

Violation of Constitutional Rights

Suhartoyo went on to say that if there is no clarity on the status and time limit for a case to be completed, the parties' constitutional rights will be violated. Normatively, the cause of this is not solely the impact of the law's implementation, because, in legal practice, it is possible to file an indictment many times for the same case as an indictment that has previously been declared null and void. It may, however, occur as a result of the Criminal Procedure Code, which lacks clarity on the meaning of Article 143 paragraph (3), which was terminated based on an interlocutory decision. Therefore, Suhartoyo continued, there has been a gap in the arrangement regarding the improvement of the indictment, resulting in legal uncertainty and injustice for both the defendant and/or victims of criminal acts. Universally, this is not consistent with the *finiri opportet litis* principle which emphasizes that every case must have an end.

"As a result, it is quite reasonable for the Court to emphasize how many times the public prosecutor can file amendments to the indictment so that the defendant can be brought back to court hearings," Suhartoyo said.

The Justice of the Constitutional Court, Suhartoyo, read out Decision Number 28/PUU-XX/2022 on Monday (31/10).

Only The Right to Object to an Indictment

Furthermore, Suhartoyo stated that Article 156 paragraph (1) and paragraph (2) of the Criminal Procedure Code do not require judges to issue interlocutory decisions on any objections from the defendant or legal advisers related to the court not having the authority to try the case in question. Because the provisions of this norm are not optional, and in the interest of creating legal certainty and justice for defendants and victims of criminal acts, as well as the public interest, the existence of this article is the primary reason for implementing limitations on indictments that can be adjusted and re-filed in court by the defendant multiple times. Whereas the judge, in passing an interlocutory decision on the defendant's objections, lacks the authority to try the case because the indictment cannot be accepted or must be annulled.

Because the ability to object to the prosecutor's indictment is only a right, not an obligation, the existence of limitations on adjusting an indictment caused by being 'null and void' will not limit the defendant's rights, because judges can freely examine a criminal case alongside other formal requirements that a final decision may also be rendered simultaneously. This conforms to the principles of fast, simple, and low-cost justice. Aside from that, Suhartoyo continued, limitations on adjusting indictments can also avoid cases that have the potential to exceed the deadline for prosecution as stipulated in Articles 78 and 79 of the Criminal Code.

"To grant the petition of the Petitioner in part. Declaring the phrase 'null and void' in the provisions of the norms of Article 143 paragraph (3) of the Criminal Procedure Code is contrary to the 1945 Constitution of the Republic of Indonesia and has no conditionally binding legal force as long as it does not mean 'against the public prosecutor's indictment which has been declared null or null and void by the judge, it can be adjusted and re-filed in court once, and if an objection is still filed by the defendant/legal adviser, the judge immediately examines, considers, and decides on it alongside with the subject matter of the case in the final decision," said the Chief Justice of the Constitutional Court, Anwar Usman, reading out the decision filed by the Director of PT Karya Jaya Satria, Umar Husni. (Sri Pujianti/ Lulu Anjarsari).

The atmosphere of the Decision Reading Session Number 28/PUU-XX/2022 which took place Monday (31/10) in the Plenary Session Room in the virtual presence of the Petitioner. Photo: Public relations/Ifa.

JUDICIAL REVIEW DECISIONS IN NOVEMBER 2022

No.	Case Number	Case Subject	Petitioners	Decision	Date	Decision Link
1	95/PUU-XX/2022	The Judicial Review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to Become Law against Law	Muhammad Jafar Sukhairi Nasution	Denied in its Entirety	23 November 2022	Click Decision
2	101/PUU-XX/2022	The Judicial Review of Law Number 7 of 2017 concerning General Elections	Alliance/ association of 2024-2029 Joint Secretary of Prabowo-Jokowi	Unacceptable	23 November 2022	Click Decision
3	97/PUU-XX/2022	The Judicial Review of Law Number 17 of 2022 concerning West Sumatra Province	Dedi Juliasman (Petitioner I); Wahyu Setiadi (Petitioner II); Dicky Christopher (Petitioner III); and Basilius Naijiu (Petitioner IV)	Unacceptable	23 November 2022	Click Decision
4	102/PUU-XX/2022	The Judicial Review of Law Number 6 of 2014 concerning Villages	Hendra Juanda (Petitoner I), Wibowo Nugroho (Petitoner II), Yuliana Efendi (Petitoner III), Fredi Supriadi (Petitoner IV), and Utep Ruspendi (Petitoner V).	Unacceptable	23 November 2022	Click Decision

5	103/PUU-XX/2022	The Judicial Review of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court	Zico Leonard Djagardo Simanjuntak	Denied in its Entirety	23 November 2022	Click Decision
6	63/PUU-XIX/2021	The Material Review of Law Number 28 of 2014 concerning Copyright	PT. Musica Studios (Gumilang Ramadhan as the Director)	Denied in its Entirety	30 November 2022	Click Decision
7	61/PUU-XX/2022	The Material Review of Law Number 8 of 1981 concerning the Criminal Procedure Code	Octolin H. Hutagalung, et al.	Denied in its Entirety	30 November 2022	Click Decision
8	98/PUU-XX/2022	The Material Review of Law Number 22 of 2009 concerning Road Traffic and Transportation	Irfan Kamil	Denied in its Entirety	30 November 2022	Click Decision
9	100/PUU-XX/2022	The Material Review of Law Number 19 of 2008 concerning State Sharia Securities	Rega Felix	Denied in its Entirety	30 November 2022	Click Decision
10	87/PUU-XX/2022	The Material Review of Law Number 7 of 2017 concerning General Elections	Leonardo Siahaan	Grant the Petition partially	30 November 2022	Click Decision

QUESTIONING THE PUBLICATION OF INVESTIGATION ORDERS (SPRINDIK) REPEATEDLY

THE CONSTITUTIONAL Court (MK) held its first hearing for the judicial review of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) on Monday (17/10/2022) in the Plenary Session Room of the Constitutional Court. Case Number 96/PUU-XX/2022 was filed by Rudi Hartono Iskandar who argued that Article 7 paragraph (1) letter a, Article 5 paragraph (1) letter a 1st, Article 1 number 24, and Article 109 paragraph (1) Criminal Procedure Code is contrary to Article 28 paragraph (1) of the 1945 Constitution.

Alamsyah Hanafiah as the attorney for the Petitioner in this online hearing stated the concrete case of the Petitioner who received 11 investigation orders (SPRINDIK) for the same case and object in the Police Report Number LP/656/VI/2016/ BARESKRIM dated 27 June 2016. The Petitioner was named a suspect in the alleged corruption crime of land procurement for the construction of flats on January 17, 2022. Based on this determination, the Petitioner filed a pre-hiring filing with the West Jakarta District Court, filing that the court cancels the suspect's determination against the Petitioner. In short, the determination of the suspect was declared invalid and did not have binding legal force. As a result of the letter, the Petitioner was required to travel back and forth to be interviewed by investigators, indeed for up to seven years. According to the Petitioner, article *a quo* does not regulate letters of investigation, allowing the police to act arbitrarily and at will, potentially infringing on the Petitioner's rights.

Justice of the Constitutional Court, Wahiduddin Adams, in advising the Panel Session, stated that the systematics of the petition still lacked several rules relating to the Court's authority, such as the Constitutional Court Law, the P3 Law, and the latest PMK which needed to be explained on the filling sheet. Furthermore, the Petitioner needs to add to the sound of the four norms that want to be reviewed in full along with the arguments in the constitution that guarantee the constitutional rights of the Petitioner so that the intended contradiction is clear.

Meanwhile, the Justice of the Constitutional Court, Daniel Yusmic P. Foekh, in his advice stated the need to clearly describe the constitutional disadvantage of the Petitioner associated with the points of the norm being reviewed. Furthermore, the Justice of the Constitutional Court, Suhartoyo, emphasized the 11 investigation orders obtained by the Petitioner to pay more attention to the implementation of norms that were truly problematic, thereby harming the constitutional rights of the Petitioner. (Sri Pujianti/ Nur R./Muhammad Halim)

DAMAGED ROADS ARE NEVER REPAIRED, JOURNALISTS QUESTION THE ROLE OF STATE ORGANIZERS

THE CONSTITUTIONAL Court (MK) held its first hearing reviewing Law Number 22 of 2009 concerning Road Traffic and Transportation (UU LLAJ) on Tuesday (18/10/2022) in the Plenary Session Room of the Constitutional Court. Case Number 98/PUU-XX/2022 was filed by Irfan Kamil who works as a journalist. In his petition, the Petitioner argued that Article 273 paragraph (1) and Elucidation of Article 273 were considered to be contradictory to Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution.

According to Viktor Santoso Tandiasa, the Petitioner's attorney, the norm has the potential to create legal uncertainty in determining which state administrators will face criminal sanctions in the event of a violation. Because, in the course of their work as journalists, they frequently drive vehicles at speeds exceeding the speed limit in order to deliver news by the deadlines set by the editor. However, because many roads are in poor condition, there is a high risk of accidents (including for the Petitioner) due to the condition of the roads, which have been neglected for a long time.

It indicates that the phrases in these norms do not provide legal certainty for investigators, particularly when assessing the time used as a measure in accident reports caused by damaged roads. Because the report filed to the investigator cannot be processed, the public cannot demand responsibility when an accident occurs as a result of a damaged road, whether on a public road, a provincial road, or a regency/city road.

In advising the Panel Session, the Justice of the Constitutional Court, Saldi Isra, questioned the rationality of the Petitioner's petition, stating the occurrence of an accident is due to damaged roads, which has the potential to harm their constitutional rights. Because, in a simple analogy that when the road is damaged, drivers will be more cautious. in fact, accidents can occur in a variety of conditions, including on well-maintained toll roads. As a result, the Petitioner must provide reasons to support the Court's decision to correct the norms reviewed in this case.

Meanwhile, the Justice of the Constitutional Court, Daniel stated that the Petitioner must pay close attention to the petition concerning the intended accident caused by the damaged road, such as data from an official institution stating the number of accidents caused by the damaged road and the like. Following that, the Justice of the Constitutional Court, Suhartoyo, stated that it was critical for the Petitioner to draw an analogy between the 10-day time limit requested for the *a quo* norm. Because if the accident occurred on the second day or before the 10-day period, the Petitioner may have released the state administrator from liability. (Sri Pujianti/Lulu Anjarsari P/Raisa Ayuditha)

VAGUENESS OF SHARIA PRINCIPLES AND MUI LEGITIMATION

THE CONSTITUTIONAL Court (MK) held a hearing for the preliminary hearing of Article 25 and Explanation of Article 25 of Law Number 19 of 2008 concerning State Sharia Securities (SBSN Law) against the 1945 Constitution of the Republic of Indonesia. The first hearing of Case Number 100/PUU-XX/2022 was held on Wednesday (19/10/2022). This case was filed by an Indonesian citizen, Rega Felix.

Rega Felix stated in the online hearing that the Petitioner is an individual Indonesian citizen who is potentially and actually feeling disadvantaged by the implementation of Article 25 and explanation of Article 25 of the SBSN Law. According to the Petitioner, these articles grant the government the authority to determine Sharia principles, as well as the loss of the Petitioner's right to worship according to his beliefs and the right to equal legal certainty regarding Sharia principles. According to Rega, the phrase "Sharia principles" in Article 25 of the SBSN Law has several interpretations due to its plural meaning.

According to Rega, the explanation of Article 25 of the SBSN Law, which states, "the institution that has the authority to issue fatwas in the field of sharia is the Indonesian Ulema Council or other institutions appointed by the Government," indicates the large number of institutions that have been authorized to establish sharia principles. This shows that the plurality of Sharia principles is determined by the plurality of institutions that have authority.

In response to the petitioner's petition, the Justice of the Constitutional Court, Enny Nurbaningsih, requested that the petitioner includes the article being reviewed and its explanation in the subject section. Regarding the authority of the Constitutional Court, Enny suggested adding the Law on Formation of Legislatio. Meanwhile, Constitutional Justice Arief Hidayat asked the petitioner to develop arguments against the article being reviewed. (Utami Argawati/Lulu Anjarsari P/Fitri Yuliana)

THE JOINT SECRETARY OF PRABOWO-JOKOWI REVIEWED THE REQUIREMENTS FOR THE VICE PRESIDENTIAL CANDIDACY

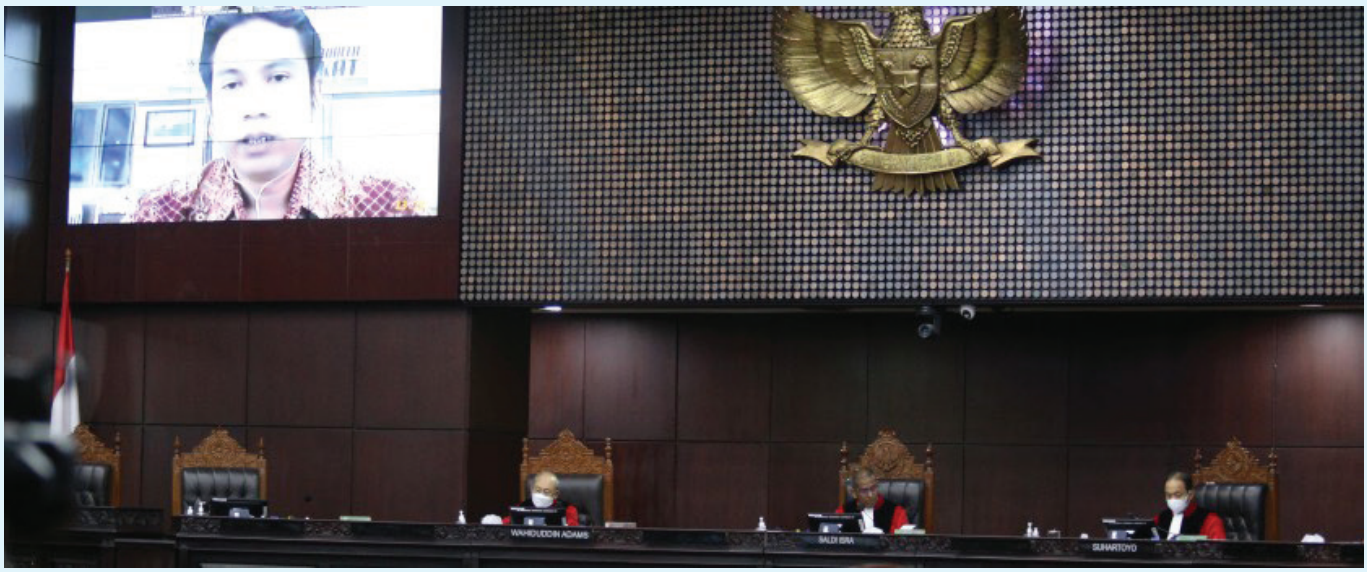
THE 2024–2029 Joint Secretary of Prabowo-Jokowi reviewed Article 169 letter n of Law Number 7 of 2017 concerning General Elections to the Constitutional Court (MK). The inaugural hearing to review the filing for case Number 101/PUU-XX/2022 was held on Wednesday (26/10/2022) in the Panel Court Room of the Constitutional Court led by the Justices of the Constitutional Court, Arief Hidayat, Suhartoyo, and Enny Nurbaningsih.

The Chief Coordinator of the 2024–2029 Joint Secretary of Prabowo–Jokowi, Ghea Giasty Italiane, said in court that the provisions contained in Article 169 letter n of the Election Law contradict Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution. In the view of the Petitioner, especially the phrase "President or Vice President" may provide meaning to the requirement to hold office for five years and then can be re-elected in the same position for only one term. One of which has been the same President and Vice President, both in the same or different terms of office.

The rules that exist in these norms, according to Ghea, can lead to multiple interpretations when compared to the provisions of Article 7 of the 1945 Constitution because they do not provide certainty regarding the nomination of the president and vice president. In short, vice presidents who have served for different periods as long as they have not served twice in the presidential and vice presidential elections can then be paired with other presidential candidates.

According to the advice of the Panel Session Council, the Justice of the Constitutional Court, Enny Nurbaningsih, it is necessary to know and study the procedures for filing a petition to the Constitutional Court, starting from the systematics to the procedural law. Regarding this petition, Enny noticed inconsistencies in the petition that stated the articles argued reviewed in this case. Following that, in terms of legal standing, the petitioner must explain the legal basis for the court representation. This is due to the description of his legal situation, which has harmed or has the potential to harm his constitutional rights.

Meanwhile, the Justice of the Constitutional Court, Suhartoyo, provided advice on the petition's systematics, which only included the Constitutional Court's authority, legal status, reasons for the petition, and *petitum*. Therefore, there is no need to include other substances; if something important is included, it can be attached to the relevant sections in the four major sections. The Justice of the Constitutional Court, Arief Hidayat asked the Petitioner to pay attention to the identity on the initial page of the petition. It must be consistent with the party whose legal position will be explained regarding the validity of the article being reviewed in this case. Meanwhile, regarding the *petitum*, it is hoped that it should be something that can be reached and carried out in a legal case. (Sri Pujianti/Nur R./Tiara Agustina)



UNCLEAR STATUS, THE VILLAGE OFFICIALS DEMAND THE VILLAGE LAW TO BE REVIEWED

THE CONSTITUTIONAL Court (MK) held a judicial review hearing for Articles 1 to Article 95 of Law Number 6 of 2014 concerning Villages (UU Desa) against the 1945 Constitution on Thursday (27/10/2022) with a Preliminary Examination agenda. This filing, which was registered with the Number 102/PUU-XX/2022, was filed by Hendra Juanda, Wibowo Nugroho, Yuliana Efendi, Fredi Supriadi, and Utep Ruspendi who work as village officials. In the first hearing chaired by the Justice of the Constitutional Court, Saldi Isra, Hendra Juanda, who is the village secretary, said that he filed the filing for a review of the Village Law. According to him, the Village Law had no effect on the welfare of village officials, who instead suffered losses.

In their petition, the Petitioners stated that the promulgation of the Village Law was extremely detrimental to the Petitioners and the Indonesian people as a whole. The losses suffered by the Petitioners and villagers throughout Indonesia as a result of the implementation of the Village Law are factual. The Village Law's political policies harmed Petitioners and villagers throughout Indonesia. Village officials are at a significant disadvantage because the state assigns them the task of enforcing laws but does not appoint them as civil servants. Villagers are at a significant disadvantage because they are not served by formal government units in the same way that city dwellers are. As a result, villagers are only served by quasi-government organizations staffed by incompetent and professional village officials because they are not state civil servants who are recruited, developed, assigned to career positions, paid, and retired in accordance with Law Number 5 of 2014.

The Justice of the Constitutional Court, Wahiduddin Adams, asked the petitioners to describe the legal standing of each petitioner. Meanwhile, The Justice of the Constitutional Court Suhartoyo advised the petitioners to improve the systematics of the petition. (Utami Argawati/Lulu Anjarsari P/M. Halim)

AN ADVOCATE QUESTIONS THE SUBSTITUTION OF CONSTITUTIONAL JUSTICES BY THE HOUSE OF REPRESENTATIVES

THE CONSTITUTIONAL Court (MK) held a hearing for judicial review of Article 10 paragraph (1) letter a of Law Number 24 of 2003 concerning the Constitutional Court, Article 57 numbers 1 and 2, and Article 87 letter b of Law Number 7 of 2020 concerning the Third Amendment Based on Law Number 24 of 2003 concerning the Constitutional Court (UU 7/2020), on Monday (7/11/2022) in the Plenary Session Room of the Constitutional Court. The filing for case Number 103/PUU-XX/2022 was filed by Zico Leonard Djagardo Simanjuntak who works as an advocate.

In the hearing which was held online, Zico filed a petition for provision. According to him, this petition is very urgent to be decided because it relates to the independence of the Constitutional Justices. The longer the case drags on, the more political pressure the House of Representatives, as a fellow state high institution, will exert on the Indonesian legal system. Furthermore, the House of Representatives has confirmed that it will not annul the replacement of the Justice of the Constitutional Court Aswanto at this time, so it is critical that the actions done by the House of Representatives are immediately investigated by the judicial authority, in *casu of* the Constitutional Court. The petition for provision for examination, as well as for the Court to suspend all actions aimed at replacing a serving Justice of the Constitutional Court in a manner or procedure outside of the provisions in Article 23 of the Constitutional Court Law, is of the utmost importance, and it is also not justified to issue a stipulation that legalizes said action, as the Petitioner requested in provisional *petitum*. The Petitioner's petition has strong grounds *non-nobis solum* in nature, *sed omnibus* (not for us alone, but for everyone) because The Constitutional Court's independence as a constitutional rights guardian is at stake.

Responding to Zico's petition, the Justice of the Constitutional Court, Manahan MP Sitompul, advised Zico to strengthen the petition by including other laws that could strengthen the authority of the Constitutional Court. Then, the Justice of the Constitutional Court Wahiduddin Adams advised Zico to spell out his constitutional disadvantage. Meanwhile, the Justice of the Constitutional Court Arief Hidayat also advised Zico to really strengthen his legal standing. (Utami Argawati/Nur R./Andhini SF)

THE ABSENCE OF A "CHECK AND BALANCES" MECHANISM WITHIN THE POLICE ORGANIZATION

CASES involving the Indonesian National Police (Polri) have repeatedly prompted Sandi Ebenezer Situngkir, an advocate, to question a mechanism of a check and balances within the Police. As a result, Sand reviews Article 15 paragraph (2) letter k, Article 16 paragraph (1) letter l, Article 18 paragraph (1), Article 38 paragraph (2), and Article 39 paragraph (2) of Law Number 2 of 2002 concerning the Indonesian National Police (Police Law) against the 1945 Constitution of the Republic of Indonesia. The first hearing of Case Number 104/PUU-XX/2022 was held by the Constitutional Court (MK), on Monday (7/11/2022).

In his filing, Sandi Ebenezer Situngkir conveyed that Article 15, Article 16, and Article 18 of the Police Law do not have unclear objectives and legal certainty as meant in the Law on the Formation of Legislation. According to him, the authority of the police in the law is not limited. He claimed that the parameter interpretation of police authority is very biased.

In addition, Sandi questioned the authority of the National Police Commission (Kompolnas) to only provide advice and opinions to the president. Therefore, the Petitioner believes that the Police Law lacks a function of a check and balances. In his petition, Sandy explained that Kompolnas is an institution that serves as the external police supervisor. However, none of the provisions in the Police Law related to Kompolnas have the authority to oversee performance and investigate police violations. The lack of an external oversight mechanism for the police, as stipulated in Article 28G paragraph, jeopardizes the constitutional rights granted by the 1945 Constitution, as stipulated in Article 28G paragraph (1). The Petitioner wants Kompolnas to be a police supervisory institution with the authority to investigate and prosecute police officers who abuse their authority.

Responding to the petition, the Justice of the Constitutional Court, Enny Nurbaningsih, advised the petitioner to describe the legal position of the Petitioner. Meanwhile, the Justice of the Constitutional Court, Daniel Yusmic P. Foekh, asked the Petitioner to attach his report to the Police. Meanwhile, the Justice of the Constitutional Court, Suhartoyo, stated that the Petitioner must complete the constitutional losses he suffered. (Utami Argawati/Lulu Anjarsari P/Fitri Yuliana)

CATTLE BREEDERS REVIEW THE ANIMAL IMPORT REGULATION

THE CONSTITUTIONAL Court (MK) held a hearing to review Article 36E paragraph (1) and paragraph (2) of Law Number 41 of 2014 concerning Amendments to Law Number 18 of 2009 concerning Animal Husbandry and Animal Health (UU PKH) against the 1945 Constitution Republic of Indonesia, on Monday (14/11/2022) in the Plenary Session Room of the Constitutional Court. The petition for case Number 105/PUU-XX/2022 was filed by Teguh Boediyana (Petitioner I), Gun Gun Muhamad Lutfi Nugraha (Petitioner II), Ferry Kusmawan (Petitioner III), and Irfan Arif (Petitioner IV) who are cattle breeders.

In a hearing that was held online, the attorney for the Petitioners, Hermawanto, stated that the PKH Law had been misinterpreted, misused, and deliberately used to continue importing animal products from countries with infectious diseases (PMK). Even though imports from non-FMD-free countries are only for emergency purposes. There is no emergency situation, but the government continues to import from FMD-infected countries, resulting in Indonesia becoming infected with FMD.

In response to the petition, the Justice of the Constitutional Court, Saldi Isra, advised that the Petitioners could modify the petition structure in accordance with the Constitutional Court's procedural law regarding the review of the Law against the 1945 Constitution. In accordance with the Justice of the Constitutional Court Saldi Isra, the Justice of the Constitutional Court Manahan MP Sitompul added that the structure of the petition of the Petitioners was guided by Article 10 of the Court Regulations Constitution (PMK) Number 2 of 2021 Procedures for Reviewing Laws. Meanwhile, the Justice of the Constitutional Court Daniel Yusmic P Foekh, who acted as chairman of the panel in this hearing, asked the Petitioners to pay attention again to the norms being reviewed, whether only Article 36E paragraph 1 and paragraph 2 or Article 36E paragraph 1 and paragraph 2 with the explanation. (Bayu Wicaksono/Nur R./Muhammad Halim)

A HOUSEWIVE REVIEWS THE SUPREME COURT REGULATION REGARDING POSTPONEMENT OF EXECUTION

THE CONSTITUTIONAL Court (MK) held its first hearing for reviewing Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court (UU MA) on Tuesday (15/11/2022) in the Plenary Court Room of the Constitutional Court. Karminah, a housewife from Semarang, has filed an appeal for hearing No. 107/PUU-XX/2022. Karminah reviews Article 79 and its Explanation as well as Article 31 paragraph (1) and its Explanation of the Supreme Court Law. The Panel Session on this petition consisted of the Justices of the Constitutional Court, Arief Hidayat, Suhartoyo, and Daniel Yusmic P. Foekh.

According to Pho Iwan Solomon, the Petitioner's attorney, Article 79 paragraph (1) of the Supreme Court Law grants the Supreme Court unlimited authority to make its own regulations. The Supreme Court regulations should not exceed the law (UU). In practice, however, the implementation of the Supreme Court regulation exceeds the law. In this regard, the Petitioner cited the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia (SK KMA) Number KMA/032/SK/IV/2006 dated 4 April 2006 regarding the suspension of extrajudicial executions.

In the concrete case, the Petitioner stated that she had filed a filing for execution to the Semarang Religious Court for the Determination of the Execution of the Semarang Religious Court Number 002/Pdt.Eks/2016/PA.Smg dated September 1, 2016. The execution was actually postponed during the confiscation stage by the appointment of the Deputy Chairperson of the Semarang Religious Court. In this regard, the Petitioner believes that the determination of the postponement of execution is arbitrary and thus invalid. The Deputy Chairperson of the Semarang Religious Court, according to the Petitioner, is not an official with the authority to make decisions.

The Justice of the Constitutional Court, Suhartoyo, advised the Petitioner to describe the Petitioner's legal position in filing this case as stated in the concrete case she encountered. Meanwhile, the Justice of the Constitutional Court, Daniel Yusmic P. Foekh, said that the postponement of this tender had been made by various legal efforts by the Petitioner, including going to the PTUN, KY, and now she hopes to get justice by filing a case for reviewing the Supreme Court Law to the Constitutional Court through judicial review. Furthermore, the Justice of the Constitutional Court, Arief Hidayat, in his advice highlighted the *posita* in the petition of the Petitioner which was considered to contest between Article 79 and Article 31 paragraph (1) along with the Elucidation of the Supreme Court Law which was considered to be contrary to the 1945 Constitutio. Therefore, the description of a concrete case related to the matter being reviewed is only an example that the *a quo* article is contrary to the 1945 Constitution. (Sri Pujianti/Nur R./Raisa Ayuditha)

From Election Dispute Preparations to Changes in the State Administration Structure

Under the constitution, the Constitutional Court (MK) has the authority to hear the resolution of disputes over the results of general and regional elections. At the end of 2022, the Constitutional Court Court is preparing to face dispute preparations by holding various public lecture classes, seminars, and discussions with various groups. The following are figures and narratives of the constitutional agenda of the Justices of the Constitutional Court in terms of knowledge sharing.

Preparation of the Constitutional Court in Facing Election Disputes and 2024 Local Election

The Justice of the Constitutional Court, Daniel Yusmic P. Foekh, became a guest speaker for the 2022 National Consultation (Konas) XV Forum for Male and Father Communications (FK-PKB) for the Communion of Churches in Indonesia (PGI) on Friday (21/10/2022) at Sinode GMIT Center, Kupang, East Nusa Tenggara.

Asymmetric Decentralization Concept

The Justices of the Constitutional Court, Wahiduddin Adams, and Enny Nurbaningsih, witnessed the signing of the Memorandum of Understanding which was held by the Legal Studies Study Program, Faculty of Social and Political Sciences, University of Teuku Umar (UTU) in Meulaboh, Aceh as well as serving as speakers at the Opening of the National Seminar "The Concept of Asymmetric Decentralization in the Law State of Pancasila" on Saturday (22/10/2022).

Procedural Law of the Constitutional Court

The Justice of the Constitutional Court, Suhartoyo, became a source person for Advocate Profession Special Education (PKPA) organized by DPC Peradi of West Jakarta in collaboration with Bina Nusantara University, on Saturday (22/10/2022).

Actualization of Constitutional Rights for Workers

Justice of the Constitutional Court, Manahan MP Sitompul, delivered a general lecture at the Faculty of Law at the Islamic University of Kalimantan Muhammad Arsyad Al Banjari (UNISKA MAB), Banjarmasin, South Kalimantan, Saturday (22/10/2022). The lecture entitled "Constitutional Court and the Development of Labor Law: Protection of the Constitutional Rights of Indonesian Workers/Laborers" was attended by the Chairman of the Governing Body of the MAB Foundation, Budiman Mustafa, Deputy Chancellor I Mohammad Zainul and Dean of the Faculty of Law UNISKA MAB Afif Khalid which was held in a hybrid manner and attended by around 100 offline participants and 800 online participants.

Prospective Advocates Must Master Procedures at the Constitutional Court

The Justice of the Constitutional Court, Suhartoyo, was present as one of the speakers accompanying the Advocate Candidates, organized by the Indonesian Advocates Association (Peradi) in collaboration with the DPP IKADIN and Pamulang University (Unpam) on Monday (31/10/2022)

The Essence Of Procedural Law In Court

The Justice of the Constitutional Court, Suhartoyo, presented in Advocate Profession Special Education (PKPA) which was organized by Iblam School of Law in collaboration with DPC Peradi of West Jakarta, on Friday (4/11/2022).

The Role of MK Decisions in Protecting Constitutional Rights

Chief Justice of the Constitutional Court, Anwar Usman, became a keynote speaker at a national seminar with the theme "Protection of Citizens' Constitutional Rights Through Constitutional Court Decisions" at Graha Pakuan Siliwangi of Pakuan University of Bogor, West Java, on Monday (7/11/2022)

Revealing Intellectual Traditions at "Constitutional University"

Secretary General of the Constitutional Court, M. Guntur Hamzah, delivered a speech on the launch and discussion of the books titled "Indonesian Constitutional Law" and "Pemilihan Umum Demokratis" at the 2022 Indonesia International Book Fair (IIBF) at the JCC, Senayan, Jakarta, on Wednesday (9/11 /2022).

Trunojoyo Madura University Students Learn the Concept of Justice and Prosperity in the Constitution.

Deputy Chief Justice of the Constitutional Court, Aswanto, delivered a lecture during the Constitutional Recitation activity organized by the Faculty of Law, University of Trunojoyo Madura on Friday (30/9/2022). Aswanto invited students to understand the state's responsibility in creating justice and prosperity in the activity "Constitution and State Responsibilities in Creating Justice and Prosperity," which was part of UTM's 41st Anniversary event.

Election Law Develops Along with the Progressivity of the Constitutional Court's Decisions.

Justice of the Constitutional Court, Suhartoyo, presented as the keynote speaker at a National Seminar with the theme "Efforts to Enforce Election Law in Handling Disputes over Indonesian Election-Electoral Results Disputes," on Friday (30/9/2022) at the Ki H. Muhammad Saleh Auditorium, Dr. Soetomo (Unitomo), Surabaya.

Wahiduddin Adams Discusses the Position of the Constitutional Court in the Indonesian State Administration System.

Justice of the Constitutional Court Wahiduddin Adams became the speaker at the inaugural lecture for new students of the Law Study Program at the University of Kader Bangsa Palembang for the Academic Year 2022/2023, on Saturday (1/10/2022).

Anwar Usman Discusses the Authority of the Court

Chief Justice of the Constitutional Court, Anwar Usman, discussed the economy from a constitutional standpoint in a discussion organized by the Bima College of Economics, West Nusa Tenggara (NTB), on Saturday (11/10/2022).

Creating a Balance Among State Institutions

The Justices of the Constitutional Court, Saldi Isra, and Suhartoyo, became speakers in a public lecture entitled "Constitutional Court and the Rules of Procedure of the Constitutional Court", on Friday (11/11/2022) at the Pontianak State Islamic Institute (IAIN), West Kalimantan. This activity is a collaboration between the Constitutional Court and the Pontianak State Islamic Institute (IAIN).

Together Realizing National and State Goals

The Justice of the Constitutional Court, Arief Hidayat, was the speaker in the Guided Group Discussion with the theme "Strengthening the Spirit of the Constitution and the Spirit of Heroism in the Life of the Nation and State", on Friday (11/11/2022) at the Auditorium of the University of Tanjungpura, Pontianak, West Kalimantan.

Protection of Workers' Constitutional Rights

The Justices of the Constitutional Court, Manahan MP P Sitompul and Wahiduddin Adams, were the keynote speakers for the Public Lecture held on Friday (11/11/2022). This public lecture took the theme "Protection of Citizens' Constitutional Rights through Constitutional Court Decisions".

Changes in the State Administration Structure

The Justices of the Constitutional Court, Daniel Yusmic P. Foekh and Enny Nurbaningsih, delivered a public lecture with the theme "Protection of Citizens' Constitutional Rights through Decisions of the Constitutional Court", on Friday (11/11/2022) at Panca Bhakti University, Pontianak.

Various News of the Constitutional Court

The Justices of the Constitutional Court not only deal with hearing texts but have also stepped up to several countries in the institutional, humanitarian, social, and national development cooperation agenda. The following is a documentation of the Justices of the Constitutional Court in various international and national agendas aimed at broadening the role of the judiciary in society more broadly.

The Constitutional Court of the Republic of Indonesia (MKRI) Provides a Capacity Development Program for the Constitutional Court of Albania

The delegation of the Constitutional Court of the Republic of Indonesia (MKRI) conducted an international excursion in response to the invitation of the Constitutional Court of Albania which celebrated its 30th anniversary on 20 – 23 October 2022 in Tirana, Albania. The anniversary of the Constitutional Court of Albania was commemorated by holding a conference attended by delegates from 20 countries. The delegation of the Constitutional Court of the Republic of Indonesia (MKRI) was present as a participant and speaker at the conference on Thursday (20/10/2022) in the Antigonea Room 3, Rogner meeting building, Albania, led by the Chief Justice of the Constitutional Court Anwar Usman.

The MKRI's Role in the Albania Conference

Chief Justice of the Constitutional Court of the Republic of Indonesia (MKRI), Anwar Usman, was the main speaker at the international conference organized by the Constitutional Court of Albania on Saturday (22/10/2022) in Tirana, Albania. In the conference with the theme "Role of Constitutional Courts in New Democracies", Anwar presented "Constitutional Court of Indonesia: Guardian of the Constitution and Guardian of State Ideology).

Chief Justice of the Constitutional Court Won the Title of Most Popular Institution Leader in Social Media in 2022

Chief Justice of the Constitutional Court, Anwar Usman, won the PR Indonesia Most Popular Leader in Social Media 2022 in the category of institutional leaders from the Indonesian PR agency. The award was presented directly by the CEO of PR INDONESIA, Asmono Wikan, to the Chief Justice of the Constitutional Court, Anwar Usman, in the 2022 PR Indonesia Jamboree (JAMPIRO 2022) in Surabaya, on Thursday (10/11/2022).

2022 Constitution and Anti-Corruption Festival

The 2022 Constitution and Anti-Corruption Festival was held by the Constitutional Court, People's Consultative Assembly (MPR), Corruption Eradication Commission (KPK), and Tanjungpura University (Untan), at the Tanjungpura University Auditorium, Pontianak, West Kalimantan, on Saturday (12/11) /2022). The 2022 Constitution and Anti-Corruption Festival culminates with a talk show with the theme "Recover and Strengthen Together Based on Pancasila, the Constitution, and the Spirit of Anti-Corruption" featuring speakers including Chief Justice of the Constitutional Court, Anwar Usman, Deputy Chairperson of the MPR, Jazilul Fawaid, Deputy Chairperson of the KPK, Johanis Tanak, and Chancellor of Tanjungpura University, Garuda Wiko.

Mekar Sari Village, West Kalimantan as a Constitutional Village

The Constitutional Court confirmed Mekar Sari Village as a Constitutional Village, on Sunday (11/13/2022), at Balai Mekar Sari Village, Sungai Raya, Kubu Raya, West Kalimantan. The inauguration of the Constitutional Village is part of the Constitutional Court's efforts to build a role model in upholding the Constitution.

The Justice of the Constitutional Court Manahan's Book Wins National Library Award

The Justice of the Constitutional Court, Manahan MP Sitompul, received the Best Library Book Award in 2022 for his work titled "Perkembangan Hukum Ketenagakerjaan dan Perlindungan Hak-Hak Konstitusional Pekerja/ Buruh Indonesia" / "Development of Labor Law and Protection of the Constitutional Rights of Indonesian Workers/Labourers", on Monday (14/11/2022). The award was handed over directly by the Principal Secretary of the National Library (Perpusnas) of the Republic of Indonesia, Ofy Sofiana, during the Handover Week of Print and Recorded Works which took place at the Auditorium of the National Library of Indonesia (Perpusnas).

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REPUBLIK INDONESIA

Library of Constitutional Court

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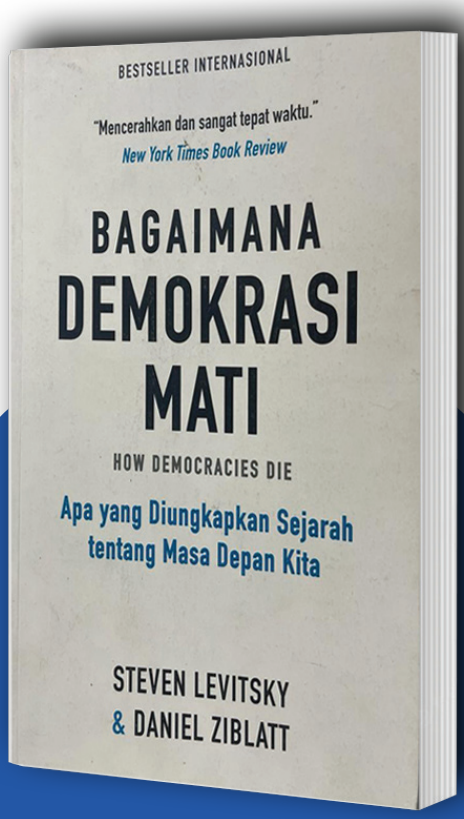
Building II of the Constitutional Court
3rd floor
Jl. Medan Merdeka Barat No. 6
Central Jakarta
Tel. (021) 2352 9000

BAGAIMANA DEMOKRASI MATI

DR. WILMA SILALAHI, S.H., M.H.
Substitute Registrar of the Constitutional Court of the Republic of Indonesia and Lecturer at the Faculty of Law, Tarumanegara University, Jakarta



BOOK TITLE: "BAGAIMANA DEMOKRASI MATI"

AUTHORS: STEVEN LEVITSKY & DANIEL ZIBLATT

PAGES: 272

PUBLISHER: PT. MAIN LITERATURE GRAMEDIA, SECOND EDITION, JANUARY 2020

The book titled "Bagaimana Demokrasi Mati" (How Democracy Died) tells the story of Aesop's fable "Bridle and Saddle". This also applies to gaining power from within, whether through elections or alliances with powerful political figures. However, it becomes backfire. A mixture of death, ambition, fear, and miscalculation all combined to cause them to commit the same fatal mistake: deliberately handing over the keys to power to a would-be autocrat. This book describes how Hitler with his loyal followers armed with pistols took control of several government buildings and a meeting room in Munich where several Bavarian officials were gathering. The immature attacks were repressed by the government and Hitler spent nine months in prison, during which he wrote his famous personal testimony, Mein Kampf. Hitler stated that he intended to gain power through elections.

On January 30, 1933, von Papen, one of the principal architects, dismissed concerns about the stakes of appointing Adolf Hitler as Chancellor of Germany in the midst of a crisis with the words: "We've got him... In two months, we'll have him cornered and screaming" The experience of Italy and Germany demonstrates the type of "fate-defining alliance" that often elevates authoritarian figures to power. When charismatic outsiders emerge, gaining popularity while challenging the old order, establishment politicians who are feeling out of control may be tempted to seize the opportunity. If one insider captures the outsider before his competitors, he can use the outsider's energy and support to defeat his competitors.

Then, the politicians hope that the new person can be directed to

support their program. Such "deal with the devil" often turned in the neophyte's favor, as alliances turned outsiders who had enough support into legitimate candidates for power.

This book reveals four key indicators of authoritarian behavior. Keeping authoritarian politicians out of power is easier said than done. If democracy is to succeed, mainstream parties must isolate and defeat extremist forces, a behavior political scientist Nancy Bermeo calls "distancing". According to Linz, the breakdown of many democracies can be traced to a party that is "closer to the extremists at the end of its political ideological range than to the opposing (mainstream) party."

The author stated how to maintain the carriage of democracy in America. Lindbergh defeated incumbent Franklin Delano Roosevelt, and became president of the United States. Lindbergh, whose campaign was later revealed to have ties to Hitler, signed a peace treaty with America's enemies. A wave of anti-Semitism and violence swept across America. Many Americans have found similarities between the 2016 United States presidential election and Roth's fictional work. The premise – outsiders with a democratic background are dubious about coming to power with the help of foreign countries. High-minded party; in fact, the party "bosses" were more interested in choosing a safe candidate who might win. The fear of risk makes them avoid extremists.

Institutional gatekeepers have existed since the founding of the United States of America. The 1787 constitution created the world's first presidential system. Presidentialism provides a unique challenge to guarding the gates of democracy. In a parliamentary democracy, the prime minister is a member of parliament and is elected by the largest parties in parliament, which is almost guaranteed to be acceptable to the people in politics. The process of forming a government becomes a filter. The president is not a member of the legislature, not elected by the legislature. In theory, the President is elected by the people and anyone can run for president and then win if they obtain enough support.

The founding fathers of the United States were very concerned about guarding the gates of democracy. They were not looking for a king, but an elected president – one that fits their idea of a popular republican government, reflecting the will of the people. On the other hand, the founders of the US did not fully believe in the ability of the people to judge the suitability of candidates for office. Alexander Hamilton was worried that the people's elected president could easily be usurped by those who took advantage of fear and ignorance to win elections and then rule as tyrants.

The tool that the founding fathers of the US created is the Electoral College. Article II of Constitution II creates an indirect electoral system that reflects Hamilton's thinking in Federalist 68:

Direct selection should be made of those who are best able to analyze the qualities suitable for office and act in a good state of mind, and the wise combination of all the right reasons and incentives to direct them.

The Electoral College, consisting of local dignitaries in each state, is responsible for selecting the president. Thus, Hamilton argued, "the office of president would seldom go to someone who lacked the requisite skills". People with a "talent for intrigue and mere popularity" will be eliminated. The Electoral College is the gatekeeper of democracy in the United States. Parties are the guardians of American democracy. It is the party that determines the presidential candidates. Hence, the party has the ability and responsibility to prevent dangerous figures from entering the Office Building. Therefore, parties have the role of maintaining a balance between two roles: the democratic role, choosing the candidate who best represents the party's voters; and the role of the "screen", eliminating those who threaten democracy or are not fit to hold office as political scientist James Caesar puts it.

On June 15, 2015, real estate developer and reality TV star Donald Trump descended on an escalator into the lobby of his building, Trump Tower, to make the announcement: he would be seeking the presidency. However, the primary system has made the presidential nomination process more open than at any time in American history. Openness is always a double-edged sword. The post-1972 primary system was particularly susceptible to a certain kind of outsider: the person with enough fame and money to bypass the "invisible primaries."

This book outlines how to subvert democracy. For generations, Americans have held

the United States constitution central to the belief that the United States is a chosen, divinely guided nation and nation, a beacon of hope and possibility in the world. Germany's 1919 Weimar constitution was drafted by some of the country's greatest legal minds. The longstanding and respected Rechtsstaat was considered by many to be sufficient to prevent government abuse. However, the constitution and the Rechtsstaat collapsed quickly after Adolf Hitler came to power in 1933.

Furthermore, this book describes the unwritten rules of American politics. The norms of American democracy were born in a context of exclusion. As long as the political community is limited to mostly white people, Democrats, and Republicans still have a lot in common. The two parties are not inclined to view each other as a threat to each other's existence. The process of racial inclusion that began after World War II and culminated in the Civil Rights Act of 1964 and the Voting Rights Act of 1965 finally democratized the United States completely. However, the move caused polarization, presenting the greatest challenge to established forms of mutual tolerance and restraint since reconstruction.

The author also points out that Republican politicians from Newt Gingrich to Donald Trump are learning that in a polarized society, it can be useful to treat competitors as enemies and that viewing politics as war can appeal to those who fear much to lose. Yet, war always has a price. The onslaught against norms of mutual tolerance and restraint—largely; if not all, Republicans have chipped away at the soft fences that have long protected us from the kind of partisan fight to the death that has ravaged democracy in other parts of the world. When Donald Trump took office in January 2017, the fence was still there, but weaker than it was in the last century and things were about to get worse.

Under President Trump, America has loosened up on fairness. The president's habit of using personal insults, bullying, and lies has no doubt helped to normalize these practices. Trump's tweets sparked an outcry in the media, among Democrats and some Republicans, but the effectiveness of their response was overshadowed by the sheer number of violations. Trump's deviations are tolerated by Republicans.

In the closing chapter, the author describes how to save democracy. American democracy is not as extraordinary as it is commonly believed. There is nothing in the US constitution or culture that makes the United States immune to the breakdown of democracy. The United States has already experienced political disasters, when inter-regional and partisan animosities divided the country, triggering civil war. The US constitutional system recovered; Republican and Democratic leaders developed new norms and practices that underpinned more than a century of political stability. However, stability is paid for by racial discrimination and single-party authoritarian rule in the US South. It was only after 1965 that the United States experienced full democracy. Oddly enough, the process initiated a fundamental shift among the American electorate that made parties highly polarized. The polarization, deeper than at any time since the end of reconstruction, has fueled an outbreak of norm-breaking that now threatens US democracy.

There is a perception that democracy is retreating around the world. Venezuela, Thailand, Turkey, Hungary, Poland, Larry Diamond, believe that they have entered a period of democratic recession. Western democracies have been plagued by internal crises of confidence in recent years. With a weak economy, growing doubts about the European Union, and the rise of anti-immigrant political parties, there is much to worry about in Western Europe. The radical right's recent electoral success in France, the Netherlands, Germany, and Austria has added to concerns about the stability of European democracies. Trump's rise poses a major challenge to global democracy. From the fall of the Berlin Wall to the Obama presidency, the US administration has continued to pursue a broad pro-democracy foreign policy.

This book is highly recommended for teachers of all disciplines, especially those who want to enrich their knowledge of democracy, for students, law practitioners, and the general public as a reference, don't miss it.

Happy reading!

"Science will develop along with the development of human life. There is no reason whatever hinders self-development. No one determines our style, but it is ourselves who determine which way our life journey will go.

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Prof. Teuku Jacob and Requirements to become a Citizen/President/Vice President

LUTHFI WIDAGDO EDDYONO
Constitutional Court's Researcher

Prof. Dr. Teuku Jacob, a professor emeritus in the field of physical anthropology at Gajah Mada University is one of the figures who also contributed to the Amendment to the 1945 Constitution. He was born in Peureulak, East Aceh, on December 6, 1929 - died in Yogyakarta, on October 17, 2007, at the age of 77). As stated on the kemdikbud.go.id page, he was known for his various studies of various fossils found on the island of Java. Towards the end of his life, he shocked anthropologists with his criticism of the origin of Homo floresiensis. He was one of von Koenigswald's students and also his successor in research on fossils in Indonesia.

It can be seen that the expertise of Prof. Teuku Jacob from his various publications, are The Sixth Skull Cap of Pithecanthropus Erectus, American Journal of Physical Anthropology (1966), Some Problems About the Racial History of the Indonesian Region, Neertandia, Utrecht (1967), The Phitecanthropus of Indonesia, Bulletins et Memoires de Societe d'Antliropologie de Paris (1975), Towards Humane Technology (1996), The Troubled Years (2001), The Tragedy of the Unitary Kleptocratic State (2004), Pygmoid Australomelanesian Homo sapiens skeletal remains from Liang Bua, Flores: Population affinities and pathological abnormalities (2005).

What was discussed by Prof. Teuku Jacob in the People's Consultative Assembly? In the 27th PAH I People's Consultative Assembly Meeting, March 7, 2000, which was chaired by Jakob Tobing, with the agenda of hearings with experts, the word "authentic" was discussed again regarding the requirements of being a citizen and becoming President and Vice President. On this occasion, as outlined in the Comprehensive Text on Amendments to the 1945 Constitution of the Republic of Indonesia, Background, Process, and Results of the 1999-2002 Discussion, Book VIII Citizens and Residents, Human Rights, and Religion (Jakarta: Sekretariat Jenderal and Registrar Office of the Constitutional Court; Revised Edition, July 2010) Prof. Teuku Jacob in an expert capacity from Gadjah Mada University in Yogyakarta expressed his opinion that the definition of "authentic" is different to apply to the requirements of being a citizen and the requirements to become President and Vice President.

"Then, what I want to mention, in fact, in that connection, I will save them for later. Namely, the President must be a native Indonesian. So, determining authenticity is very difficult if we want to be precise, and it is very easy if we want to be a bit rough and a bit vague as well. First of all, we here, or even the inhabitants of that world are not pure. The original no longer exists. Especially in our country which experienced such natural historical events in the past. Once some joined Asia, some with Australia. Then, there is local human evolution, there is migration from outside, and there is backflow. Thus, some of the reflections have gone to Eastern Indonesia, some have returned and then there have been several waves of Asia, and residents have come here. So. it's hard to hope that there is a true original. Yet, it can be used as a benchmark that two

descendants have been born in Indonesia. This is to ensure loyalty which is very important for the country. If someone is an emigrant in a country like America, they also have to be a permanent resident for a long time before they can be active, trusted, and elected to become a leader in the state or the federal government. It is because our country is not a theocratic country. So, sex or gender doesn't matter either. If the state is theocratic, there are problems for some religions if women are the head of state or head of government. This is a smaller problem than being head of state. Then about the original. This first emerged the so-called fourth-generation human rights or rights of the indigenous population. If this is said to be genuine this is what we call native natives. So, inlanders mean natives. So as far as history is known. they are already there. So, this is an original understanding, but the other, more secondary, is someone who has lived in that place for a long time, even though it is known he migrated from the outside into it."

Furthermore, Prof. Teuku Jacob outlined his views regarding the concrete distinction between the requirements to become a citizen and president/vice president.

> "In this case, it has to be distinguished between those who become citizens and those who can be elected as President. Becoming a citizen is simple if the conditions are sufficient, they can become a citizen. But I think to be President, they have to be here for at least two generations. It is not necessary that the person concerned himself was born here, but his parents until his grandmother was born here. They may have been born abroad but as an Indonesian citizens."

In the end, there is indeed a distinction between the conditions for becoming a citizen and the requirements for becoming President/Vice President in the constitution. Article 26 paragraph (1) of the 1945 Constitution did not undergo any changes, while Article 6 paragraph (1) of the 1945 Constitution underwent changes that occurred in the Third Amendment.

Article 26 paragraph (1) of the 1945 Constitution states, "Those who become citizens are native Indonesian people and people of other nations who are legalized by law as citizens." Article 6 paragraph (1) of the 1945 Constitution after the amendment states, "Candidates for President and candidate for Vice President must be an Indonesian citizen from birth and have never accepted another nationality because of their own will, have never betrayed the country, and be able spiritually and physically to carry out their duties. and obligations as President and Vice President."

The Beginning of the Work of the Constitutional Court

LUTHFI WIDAGDO EDDYONO
Constitutional Court's Researcher

The constitutional reforms that occurred in 1999-2002 resulted in many significant changes. One of them is the existence of the Constitutional Court. As stated in Article 24C of the 1945 Constitution, the Constitutional Court is one of the perpetrators of judicial power which also functions as the guardian of the constitution and democracy. In the framework of carrying out its duties, it has also been determined in Article III of the Transitional Regulations of the 1945 Constitution which states that the Constitutional Court was formed no later than August 17, 2003, and before its establishment, all its powers were exercised by the Supreme Court.

The Constitutional Court has four powers and an obligation as stipulated in Article 24C of the 1945 Constitution. The Constitutional Court has the authority to try at the first and final levels whose decisions are final to review laws against the Constitution, to decide disputes over the authority of state institutions whose powers are granted by law Basis, decide on the dissolution of political parties, and decide disputes about the results of general elections. The Constitutional Court is obliged to examine, try and decide on the opinion of the House of Representatives that the President and/or Vice President has violated the law in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts; and/or the opinion that the President and/or Vice President no longer fulfill the requirements as President and/or Vice President.

In a relatively short time to make a law, the government with the House of Representatives discussed the Bill on the Constitutional Court. After simultaneous discussions, the Bill was finally agreed upon by the government and the House of Representatives and ratified at the Plenary Session of the House of Representatives on August 13, 2003. As stated on the mkri.id website, on the same day, the Constitutional Court Law was signed by President Megawati Soekarnoputri and published in the State Gazette, then given a number to become Law Number 24 of 2003 concerning the Constitutional Court (State Gazette of 2003 Number 98, Supplement to State Gazette Number 4316).

Indonesia is the 78th country to form a Constitutional Court and the first country in the world to form this institution in the 21st century. August 13, 2003, as the date of ratification of the Constitutional Court Law, was later agreed by the constitutional judges to later become the anniversary of the Constitutional Court of the Republic of Indonesia.

Based on the provisions of Article 24C paragraph (3) of the 1945 Constitution, three state institutions can contribute to nominating judges, such as House of Representatives, the President, and the Supreme Court nominating three constitutional judges. Article 24C paragraph (5) of the 1945 Constitution stipulates that constitutional judges must have integrity and personality that is beyond reproach, be fair, be a statesman who masters the constitution and state administration, and not concurrently serve as a state official.

The constitutional judges proposed by the House of Representatives were Prof. Dr. Jimly Asshiddiqie, S.H., I Dewa

Gede Palguna., and Lt. Gen. TNI (Purn) Achmad Roestandi, S.H. While the President proposed Prof. Abdul Mukthie Fadjar, S.H., M.S., Prof. H.A.S. Natabaya, S.H., LLM., and Dr. H. Harjono, S.H., MCL., S.H., M.H. The rest, MA proposed Prof. Dr. H. M. Laica Marzuki, S.H., Maruarar Siahaan, S.H., and Sudarsono, S.H. On August 15, 2003, the President through Presidential Decree No. 147/M of 2003 established these constitutional judges for the first time, followed by the oath of office for constitutional judges at the State Palace on August 16, 2003.

The nine constitutional judges for the first term with terms of 2003-2008 then held a meeting to elect a chairman and vice chairman. As a result, Prof. Dr. Jimly Asshiddiqie, S.H. was elected chairman, and Prof. Dr. H. M. Laica Marzuki, S.H. as vice chairman. Based on the provisions of Article 24C paragraph (4) of the 1945 Constitution, the Chair and Deputy Chief Justices of the Constitutional Court are indeed elected from and by constitutional judges.

After the secretarial support and judicial administration were deemed sufficient, cases were transferred from the Supreme Court to the Constitutional Court on October 15, 2003. The Constitutional Court accepted the delegation of 14 (fourteen) cases that had not yet been decided by the Supreme Court which carried out the functions of the Constitutional Court during the transitional period according to the mandate of Article III Transitional Rules of the 1945 Constitution. This case has not been examined and has only been registered by the Supreme Court.

In hearing the case, for the first time, the Constitutional Court met in the Nusantara IV building, the People's Consultative Assembly/ House of Representatives Complex, Senayan, Jakarta. The Constitutional Court conducted its first hearing to examine three cases registered by the Supreme Court, namely the review of the Electricity Law, the Oil and Gas Law, and the State Debt Instruments Law.

The first decision pronounced in a plenary session open to the public was the decision to judicial review Number 14 of 1985 concerning the Supreme Court against the 1945 Constitution, Number 004/PUU-I/2003. As described on the mkri.id page, the Constitutional Court's decision, although the petition is unacceptable, has made important history because it overrides Article 50 of Law Number 24 of 2003 concerning the Constitutional Court. The provisions of Article 50 limit the authority of the Constitutional Court to examine only laws that were enacted after the amendment to the 1945 Constitution. Besides, this decision is the first decision in the history of constitutional justice in Indonesia which includes a dissenting opinion from judges.

At the beginning of the working period of the Constitutional Court, it was also noted in history, the first Constitutional Court Decree Number 008/PUU-I/2003, and the first Decision granted by the Constitutional Court was Number 011-017/PUU-I/2003. The three important decisions are currently placed at the Center for Constitutional History as the ANRI Corner.

PROVISIONAL AGENCY OF SPECIAL JURISDICTION IN THE CONSTITUTIONAL COURT IN SETTLEMENT OF REGIONAL HEAD ELECTION DISPUTES

DR. WILMA SILALAHI, S.H., M.H.
Substitute Registrar of the Constitutional Court of the Republic of Indonesia and Lecturer at the Faculty of Law, Tarumanegara University, Jakarta

The Specific Court has the authority to examine, adjudicate and decide certain cases which can only be formed within one of the judicial bodies under the Supreme Court. It is regulated by law as stipulated in the provisions of the norms of Article 1 number 8 of the Law Number 48 of 2009 concerning Judicial Power. The existence of a special judicial body in handling disputes over regional head election results is the result of Constitutional Court Decision Number 97/PUU-XI/2013, on May 19, 2014, which presented a new concept for the settlement of disputes over the results of Regional Head and Deputy Regional Head Elections (Pilkada). Amendments to the Regional Head Elections Law put the authority to resolve disputes over the results of regional head elections in the hands of a special judiciary. However, before the formation of a special judicial body, the authority to resolve disputes over the results of regional head elections (Pilkada) was settled by the Constitutional Court (MK).

The Constitutional Court Decision Number 97/PUU-XI/2013, provides a time limit for the establishment of special judicial bodies for regional head elections. By limiting the time for establishing a special judicial body for the election of the regional head, namely before the implementation of simultaneous national elections. This indicates that the Constitutional Court does not only conduct settlement of election result disputes in the context of the election regime but also in the context of the election regime. The constitutional court conducts the settlement of election disputes on the grounds to avoid doubt, legal uncertainty, and the vacuum of institutions that resolve election disputes until the formation of a special election court body.

Furthermore, in Article 157 paragraph (1) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Laws Law (UU 10/2016), that disputes over election results will be examined and tried by a special judicial body. Furthermore, Article 157 paragraph (2) of Law 10/2016 stipulates that a special court shall be formed before the implementation of the national simultaneous elections. This indicates that before the implementation of the national simultaneous general elections which will be held in 2024 related to the regional elections as stipulated in the Constitutional Court Decision Number 55/PUU-XVII/2019, on 26 February 2020 in its legal considerations considering that, through tracing back the original intent regarding simultaneous general elections, the link between simultaneous general elections in the context of strengthening the presidential government system and tracing the meaning of simultaneous general elections in the Constitutional Court Decision Number 14/PUU-XI/2013, dated January 23, 2014, there are some choices of simultaneous general elections models that can still be assessed constitutional based on the 1945 Constitution.

The placement of regional elections through the Constitutional Court's decision is not an election regime. Constitutional Court believes is in line with what is determined

by the Constitution. This was further strengthened through Constitutional Court Decision Number 55/PUU-XVII/2019, on 26 February 2020 which allows regional elections to become part of the re-election regime based on an alternative model that the Constitutional Court considers constitutional. Furthermore, based on the Constitutional Court's ratio decidendi, the basic idea of placing the authority to resolve disputes over election results is part of the authority of the Supreme Court. Thus, through the concept of Constitutional Court Decision Number 55/PUUXVII/2019, it no longer distinguishes between electoral and election regimes. This is different from the Constitutional Court Decision Number 97/PUU-XI/2013.

Concerning this special judicial body, in its development, whether it is the authority of the Constitutional Court or the authority of the Supreme Court, a judicial review has been submitted to the Constitutional Court. It has been decided by the Constitutional Court through Constitutional Court Decision Number 85/PUU-XX/2022, on 29 September 2022.

Constitutional Court Decision Number 85/PUU-XX/2022

In the Decision of the Constitutional Court Number 85/PUU-XX/2022, on 29 September 2022, filed by the Petitioner: Association for Elections and Democracy (Perludem), domiciled as a private legal entity in the form of non-governmental organizations or non-governmental organizations active in promoting the holding of elections general democracy and encourage democratization in Indonesia. The constitutional rights of the Petitioners have the potential to be harmed by the enactment of Article 157 paragraph (1), paragraph (2), and paragraph (3) of the Pilkada Law because a quo provision orders the establishment of a special judicial body to handle cases of disputes over election results, which to date, they have not been followed up. According to the Petitioners, the special judiciary has not been established. It has the potential to derail one of the stages in the process of holding elections for governors, regents, and mayors, namely the stage of settling regional election results disputes. Such a matter has the potential to result in the efforts and activities of the Petitioners in pushing for the establishment of the Constitutional Court as a judicial body for disputes over the results of regional head elections to be in vain.

In its legal considerations, the Court opines concerning the legal position of the Petitioner, the Petitioner has been able to explain the existence of a causal relationship (*causal verband*) between the alleged potential loss of the Petitioner's constitutional rights and the enactment of the norms of the law being petitioned for review. Concerning the alleged loss, if the Petitioner's request is granted then the alleged potential loss will not occur. Hence, regardless of whether or not the argument of the Petitioner's petition is proven regarding the unconstitutionality of the norms of Article 157 paragraph (1), paragraph (2), and paragraph (3) of Law 10/2016, the Court believes that the Petitioner has the legal standing to act as the Petitioner in a case quo.

Furthermore, the Petitioners argued the unconstitutionality of norms 157 paragraph (1), paragraph (2), and paragraph (3) of Law 10/2016. The Petitioner put forward the arguments for the petition which, if formulated by the Court, are basically as follows:

1. The mechanism for settlement of disputes over election results is the last guard to ensure that the results of the elections for governors, regents, and mayors result from an election that is direct, public, free, confidential, honest and fair, and following a democratic mechanism;
2. It is very risky if the implementation of regional head election dispute resolution is carried out by an institution or apparatus referred to in the Act a quo as a special judicial body, but until now there has been no form at all;
3. The existence of the provisions of a quo law will result in chaotic settlement of disputes over the results of regional head elections because it is impossible to set up a special judiciary in a short time before the start of the stages of implementing simultaneous regional elections;
4. Article 157 paragraph (1) of Law 10/2016 which stipulates that the settlement of disputes over the election results for governors, regents, and mayors is carried out by a special judicial body, is an act of forming a law as a follow-up to the Constitutional Court Decision Number 97/PUU-XI/2013;
5. After the Constitutional Court Decision Number 97/PUUXI/2013, there have been significant changes

to the legal framework for regional head elections. The Constitutional Court Decision Number 97/PUU-XI/2013 tried the constitutionality of the provisions in Law 12/2008, while Law 12/2008 since 2014 is no longer valid;

6. To answer the need for a credible institution to ensure the implementation of the stages of resolving disputes over the results of the elections for governors, regents, and mayors, the Petitioners hope that the Court will return the authority to settle disputes over the results of regional head elections to the Constitutional Court.

According to the Court, although the provisions of the norms of Article 157 paragraph (1) and paragraph (2) Law 8/2015 have been ratified and promulgated since March 18 2015 and the order has also been reaffirmed in Article 157 paragraph (1) and paragraph (2) Law 10/2016 which was ratified and promulgated since 1 July 2016, the "orders" contained in the quo norm have not been implemented by the legislators. When Law 8/2015 was changed to Law 10/2016 where provisions regarding the implementation of simultaneous voting nationally for the election of Governor and Deputy Governor, Regent, and Deputy Regent, and Mayor and Deputy Mayor were originally planned for the same date and month of the year 2027 was brought forward to be implemented in November and the order has not yet been implemented. Substantially, the norms of Article 157 paragraph (1) and paragraph (2) of Law 8/2015 jo. Law 10/2016 orders the establishment of a special judicial body to adjudicate/ settle disputes over regional head election results.

However, until the series of hearing for a quo petition were held, the Court had yet to see any efforts from the legislators to form a special judicial body tasked with adjudicating or resolving disputes over regional head election results. In fact, by advancing the schedule or agenda for simultaneous regional head elections nationally to November 2024, efforts to form a special judiciary must become an urgent agenda. This can be traced, for example, by not following up on the Constitutional Court Decision Number 97/ PUU-XI/2013 and Law 10/2016 by forming a law that regulates special election courts, namely by not including it in the National Legislation Program. In this case, its formation must have started at least with concrete steps such as the stages of preparing a plan or concept regarding a special judicial body, the legal basis for its formation, and the legal framework for resolving disputes over the results of regional head elections by a specially designed special judicial body.

From the historical development of disputes over the results of direct regional head elections settlement in Indonesia since 2005, it has become a legal fact that the Constitutional Court Law as a judicial body adjudicating disputes over the results of regional head and deputy regional head elections since this authority was transferred from the Supreme Court to the Constitutional Court in 2008 to date. This authority was exercised amid the legal facts of the Constitutional Court Decision Number 97/PUU-XI/2013 which argued that disputes over the results of regional head and deputy regional head elections "should" not be handled by the Constitutional Court.

An ideal temporary legal authority must be accompanied by a temporary time limit. In a legal norm that regulates temporary legal authority, ideally, it must have been equipped with a norm that regulates the temporary time limit. Therefore, when Article 201 paragraph (8) of Law 10/2016 stipulates that simultaneous national elections will be held in November 2024, legal reasoning directs that the temporary authority mandated to the Constitutional Court must end before the month and year in question.

Regarding the division of the electoral regime in the 1945 Constitution, the Court observed that there was a change in interpretation caused by legal practices in Indonesia. In the early period after the amendment to the 1945 Constitution, where regional head elections were based on the 1945 Constitution as a result of changes that had recently been put into practice, the Court interpreted that there was a distinction between the regime of the National General Election and the Election of Regional Heads. However, several periods after the direct regional head elections were carried out consistently and relatively found their best form, the Court found

legal practices which according to the Court had implicitly changed the interpretation of the Regional Head Elections.

Interpretations are carried out directly through such legal practices. They showed good results during several general election periods, and have prompted the Court to review its opinion or interpretation regarding the differences in electoral regimes (governance) in the 1945 Constitution. Shifts or changes to such interpretations can be carried out by the Court by must still be based on very strong and fundamental reasons. However, in terms of the interpretation of constitutional norms that are carried out too loosely and relatively often, it will potentially create legal uncertainty, which is exactly what the 1945 Constitution tries to avoid and eliminate.

Concerning the differences between the two election regimes referred to, through the Constitutional Court Decision Number 55/PUU-XVII/2019 which was pronounced in a hearing open to the public on 26 February 2020, in particular, Sub-paragraph [3.15.1] The Court considers things as follows:

"...that traces the debate during the amendment to the 1945 Constitution, there are many views and debates regarding the simultaneity of general elections. In this case, organizing five-box simultaneous elections indeed was one of the ideas that arose from the amendments to the 1945 Constitution. However, this idea was not the only one that developed when the 1945 Constitution was amended. Based on a search of records of discussions or minutes of amendments to the 1945 Constitution, proves that there are many variants of thought regarding the simultaneous holding of general elections. The amendments to the 1945 Constitution did not differentiate between the electoral regime at all. Among these variants; (1) General elections, both the election for members of the legislature and the election for the president and vice president, are held simultaneously or simultaneously throughout Indonesia; (2) Simultaneous general elections only to elect members of the House of Representatives, Regional People's Representative Assembly and Regional Representative Council are held throughout the territory of the Republic of Indonesia; (3) Simultaneous national and regional elections; (4) Simultaneous general elections following the end of the term of office for those to be elected, so that simultaneous elections can be carried out several times within the five years, including directly electing governors, regents/mayors; (5) Simultaneous general elections, but their simultaneous implementation is regulated by law; (6) The implementation of the presidential election and the general election is separated. Furthermore, the presidential election was also followed by the election of governors, regents, and mayors; and (7) The election for president and vice president is different from the general election for the House of Representatives, Regional People's Representative Assembly, and Regional Representative Council. Meanwhile, the election for the executive is President and Vice President, Governors, Regents, Mayors, and so on are elected directly by the people..."

Based on these legal considerations, using the original intent of amending the 1945 Constitution, the Court has emphasized that there are no longer differences in electoral regimes.

The interpretation of the 1945 Constitution which no longer distinguishes between national general elections and regional head elections, has also systematically resulted in a change in interpretation of the authority of the Constitutional Court as stipulated in Article 24C paragraph (1) of the 1945 Constitution. Article 24C paragraph (1) of the 1945 Constitution states that The Constitutional Court has the authority to try at the first and final levels whose decisions are final for, among other things, deciding disputes over the results of general elections. Furthermore, such a constitutional meaning is revealed in various laws related to the authority of the Constitutional Court, especially the Law on Judicial Powers.

In the end, such a norm must be understood that cases of disputes over the results of general elections being heard by the Constitutional Court consist of general elections to elect the President and Vice President; members of the People's Legislative Assembly; members of the Regional Representative Council; members of the Regional People's Legislative Council, whether provincial, regency or city; as

well as elect regional heads of provinces, regencies, and cities.

In its consideration, the Court believes that the special agency whose establishment is mandated by Article 157 paragraph (1) and paragraph (2) of Law 10/2016 is a judicial body. As a judicial body, the Court believes that its existence must be under the auspices of judicial power regulated in Chapter IX of Judicial Power of the 1945 Constitution.

According to the Court, all norms regarding judicial bodies/ institutions are regulated in the same chapter. It is Chapter IX on Judicial Power which consists of Article 24 and Article 24C of the 1945 Constitution. The series of legal norms in these articles stipulate that judicial power, as independent power to administer justice, is carried out by a Supreme Court and judicial bodies under it as well as by a Constitutional Court.

Such a limitation in the 1945 Constitution ultimately forbids the possibility of forming a special judicial body for elections which is neither under the Supreme Court nor under the Constitutional Court. The choice from such constitutional restrictions is that the special judiciary should be placed as part of the Supreme Court or as part of the Constitutional Court. However, considering the background of the emergence of the transition of authority to adjudicate regional head election results in disputes in the previous several periods, according to the Court the legal settlement to place the special judicial agency under the Supreme Court or the Constitutional Court is not the right and constitutional choice. Especially, if the special judiciary was planned to be formed separately and then placed under the Constitutional Court, this would require a change in the legal basis that is more serious considering that the institution of the Constitutional Court is strictly limited by the 1945 Constitution and its implementing laws. The choice or alternative that is more likely to be implemented normatively, and is more efficient, is not to form a special judiciary to then place it under the Constitutional Court, but to directly make the special judicial agency's powers of election become the authority of the Constitutional Court. This is in line with the mandate of Article 24C paragraph (1) of the 1945 Constitution because regional head elections are general elections as referred to in Article 22E of the 1945 Constitution.

With no regime differences in elections as the legal considerations above have declared and the authority of the special judicial body has been declared to be the authority of the Constitutional Court, this has implications for the invalidity of the provisions of Article 157 paragraph (1) and paragraph (2) of Law 10/2016 so that it must be declared contrary to the Constitution. 1945.

Whereas the provisions of Article 157 paragraph (1) and paragraph (2) of Law 10/2016 governing the existence and plans for the establishment of a special judicial body for elections is a *conditio sine qua* non for the existence of Article 157 paragraph (3) of Law 10/2016. Article 157 paragraph (3) of Law 10/2016 regulates institutions that are temporarily given authority as/ become election court bodies during a transitional period or during a period when the special election court body has not been established.

The unconstitutionality of Article 157 paragraph (1) and paragraph (2) of Law 10/2016 implies the loss of the provisionality stipulated in Article 157 paragraph (3) of Law 10/2016, due to temporary causes having disappeared. Thus, the authority of the Constitutional Court to examine and adjudicate electoral dispute cases is no longer limited to "until a special judicial body is formed", but will be permanent, because such a special judicial body will no longer be formed.

To clarify the meaning of Article 157 paragraph (3) of Law 10/2016 which no longer contains a temporary, according to the Court the phrase "until the formation of a special judicial body" must be crossed out or declared contrary to the 1945 Constitution. By removing this phrase, Article 157 paragraph (3) Law 10/2016 reads in full "The case of disputes over the determination of the final stage of the election results is examined and tried by the Constitutional Court".

By declaring unconstitutional the provisions of Article 157 paragraph (1), paragraph (2), and paragraph (3) along the phrase "until a special judicial body is formed" in Law 10/2016, other provisions related to the resolution of disputes over the election results area remains in effect and adjusts to a quo decision.

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