

E-MAGAZINE **KONSTITUSI**



**NEW STATE CAPITAL CITY (IKN)  
CHALLENGED**

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THE HISTORY...!!!



# CONSTITUTIONAL HISTORY CENTER

5th and 6th Floor, Constitutional Court Building  
Jl. Medan Merdeka Barat No. 6 Jakarta Pusat

# Editor's Foreword

**E**id 1443 H is coming up soon. The echoes of Eid are becoming more audible. There are Eid cakes, bazaars, beautiful holy verse chanting, markets, and increasingly crowded streets. That is how Muslims everywhere feel, including all Constitutional Court (MK) employees and the crew of the "Konstitusi" Magazine.

Various activities continue to take place in the midst of a blessed Ramadan. Meetings of officials and employees, coverage of the Constitutional Court's Media Team, Constitutional Cooperative competitions, and other events.

Another important point to note is that the Court's trial activities, both offline and online, continue throughout the fasting month. Similarly, the "Konstitusi" Magazine Team raised the April 2002 Headline News "The New Capital City (IKN) Sued," which was a collection of judicial review requests for the New Capital City (IKN) Law.

In addition, as is customary, we present additional special rubrics. There are Editorials, Vox Pop, Windows, Opinions, Courtrooms, Actions, Case Briefs, Constitutional Research, Constitutional Traces, Reviews, Khazanah, Amendment Minutes, and Ruko.

As a result, the editor provides a brief introduction. Finally, we wish you a pleasant reading experience! Not to mention that the entire editorial staff of the "Konstitusi" Magazine wishes you a Happy Eid 1443 H. Minal Aidin Wal Faidzin, Forgive me body and soul.

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### IKN LAW IS SUED

*The discussion of relocating the nation's capital to Penajam North Paser Utara, Kalimantan, is no longer just a discourse. On January 18, 2022, the DPR ratified the legal basis for relocating the New Capital City, which will later be known as the Capital City of Nusantara. However, since its passage, Law Number 3 of 2022 concerning the New Capital City Law (UU IKN) has sparked debate in the community. No wonder people from all walks of life flocked to the Constitutional Court to file formal and material reviews.*



### 36 ACTION



**Deputy Chief Justice of the Constitutional Court, Aswanto, at the online Inauguration of the Central Leadership for the Indonesian Youth Da'wah Circle for the 2022-2024 period with the theme "Progressive and Collaborative Movement Transformation" on Sunday (20/3/2022).**

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## SUES TO THE IKN LAW

Since it was approved in the DPR Plenary Session, criticisms of the IKN Law have continued to emerge, and many things have been called into question. The IKN Law appears to be riddled with a slew of issues. From the speed with which the bill is ratified to its substance and policy choices, to its consequences.

On January 18, 2022, the DPR Plenary Meeting 'wrapped up' the IKN bill. President Jokowi ratified and promulgated it almost a month later. On February 15, 2022, to be exact. That is, the IKN Law's 11 chapters and 44 articles have been valid and binding since then. This bill's debate will be relatively brief, lasting only 43 days beginning December 7, 2021. In fact, if the details are correct, ratifying the IKN Bill will take no less than two weeks to be effective, as the DPR IKN Special Committee Team was formed on December 7, 2021.

Following that, the DPR employs the effective time for a week. Following that, on December 16, 2022, it will go into a month-long recess until early January 2022. The DPR then continued its trial period beginning January 11, 2022, until the IKN Bill was passed on January 18, 2022. If reduced to Saturday-Sunday, the IKN Bill would not be hammered for another two weeks. If this is correct, the term "fast track legislation" is validated. Is it strange that there are super fast laws when other laws are usually long?

The general issue is that the IKN Law is thought to lack long-term planning, beginning with development planning documents, regulatory planning, state financial planning, and development implementation. So, before being ratified on February 15, 2022, the IKN Bill already brought to the Constitutional Court for review, formally and substantively. Then comes another application. The IKN Law is being challenged by a large number of people. No fewer than nine applications have been filed with the Constitutional Court through April 2022. Perhaps there will be more.

Concerning the problematic formation process, disclosed in the application. There are academic manuscripts, but they lack philosophical and sociological explanations. From a philosophical standpoint, there is no reason to name the new capital city "Nusantara." The word

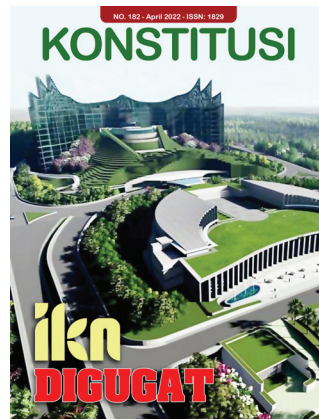
Nusantara is widely regarded as the dominant Javanese bias. The term is frequently used as the name of the territory where the nation and state will be established. However, the name Nusantara was quickly dropped because it was thought to be Java-centric and full of feudalism.

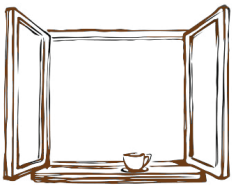
There is also no sociological study of the selection of IKN locations and their conditions. In fact, the academic text should include the public's perspective on the transfer of IKN. Meanwhile, academic manuscripts are said to be rushed from a technical standpoint. The proof is that there are mistakes in the writing of words, such as 'Introduction' (*Pendahuluan*) to '*Pengahuluan*'.

Similarly, there is no public participation or openness during the IKN Law debate. Even if there is, the representation of the people involved is limited and incomplete. Furthermore, the IKN Law delegated more of the regulation to implementing regulations in terms of content. In the implementing regulations, there are 13 orders for delegation of regulatory authority among the 44 articles. This is quite unexpected. Why should you rely on derivative products?

There are numerous issues. But the good news is that, of all the alleged problems, a constitutional solution was chosen, namely openly challenging the IKN Law on the stage of the MK trial. Allow everything to be stretched open there. If there is a problem with the constitutionality of norms, the Constitutional Court has the authority to rule on it. Meanwhile, if the issue is one of personal preference in legal policy choices, that is the authority to make laws. Please understand this as well. It is not necessary for the Constitutional Court to rule on everything. Anything, the Court, step by step, the Court. Do not. The Court will later be accused of playing juristocracy. This is critical to comprehend.

Let us monitor and supervise the trial process. Hopefully, the Constitutional Court will quickly resolve the IKN Law issue. The hope is that what is constitutional will be stated unequivocally. Which, in any case, would not be said firmly. Another thing to consider is the process is 'GPL' (ASAP) aka "As Soon As Possible". Particularly for formal tests with a strict time limit for completion. If it was designed to be lightning-fast, it should be completed quickly when tested. Isn't that the case? Greetings! Constitution! ■





Window

# LAUGHTER

I.D.G. Palguna

*“Laughter has a powerful evolutionary purpose and help early humans develop camaraderie and more complex social network”*

**Shannon Odell** – comedian, writer, actress, and scientist



**O**n November 12, 2019, the Jakarta Post daily published a story about a NASA scientist named Kasha Patel who joined a stand-up comedy show as a comedian. When asked about his motivation for attending the event, Patel stated that laughter is a very powerful way of communicating complex meanings. Laughter is the end result of a joke, which Oxford Languages defines as “something said to cause amusement or laughter, especially a story with a funny punchline.” (Funny jokes are thought to play an important role in brightening our lives and acting as a “panacea” to dispel all kinds of depressed feelings—which can

arise from a variety of sources, including piled-up workloads, financial problems, disappointment due to a bad love relationship, hard life struggles, and so on. As a result, it’s no surprise that some say the most wasted day is the one when we don’t laugh at all.

Rajasthan Patrika, a news website, discusses some of the advantages of exchanging jokes that improve our lives. First and foremost, jokes make us laugh and have a positive effect on our bodies. When we laugh, we not only relieve our bodies but also stimulate various physical changes in our bodies. A clever joke strengthens our immune system. Laughter improves blood circulation and relieves the heart and other cardiovascular problems. Laughter causes the brain to release endorphins, which reduce pain. Second, jokes help to relieve our anger, depression, tension, and stress while also making us feel light and free of pain. Jokes also boost mood by reducing anxiety and fear. Laughter raises our heart rate and blood pressure, both of which decrease our stress response. Third, jokes are important in social situations. If we share jokes at work, it will leave an impression on our customers, colleagues, or business partners, which will help us close deals.

If a friend is angry with you, a joke is the simplest and quickest way

to deal with it while also fostering a closer relationship. We can see how people who enjoy sharing jokes find it easy to make friends and have a large circle of friends. Fourth, jokes help us to develop our sense of humor. It sharpens our feelings and improves our abilities, enhancing our personality by bringing out the best in ourselves.

Jokes and humor are closely related in that they both elicit laughter. The distinction is that not all humor is a joke. According to Matt Davis, there are three major theories about the origins of humor. First, there is the Relief theory, which contends that laughter and humor are ways to expel psychological steam and release psychic energy. That is why, rather than sinking into silence as a reflection of the gloomy atmosphere, the jokes told at the funeral are met with bursts of frenetic laughter. Second, there is the Excellence Theory (Superiority theory). Plato and Aristotle are said to have proposed this theory to explain a particular type of humor: why do we laugh at the misfortune of others? Humor, according to these two philosophers, is a way of expressing one’s superiority over another. However, in this “case,” Matt Davis’ message should be taken seriously: “If you’re trying to cultivate a sense of humor to improve

your leadership skills, this is not the kind of humor you deserve." Third, there is the theory of incongruity (Incongruity theory). According to this latter theory, humor is created when two opposing ideas collide. Here, humor is frequently predictable, and it frequently emerges from an unexpected reversal of circumstances. "I decided to stop reading when I read about the dangers of smoking."

A nosy question was raised. Can humor be studied, given its importance in human life? If in terms of the benefits of humor, experts generally agree that it has the potential to improve human life and the world, they disagree on this point. Although these experts all agree that it is impossible for anyone to be completely humorless, some believe that humor is an innate trait, which means that it cannot be learned; others disagree. Whichever viewpoint is correct, I believe Matt Davis' statement deserves to be heard clearly. "Every human being is born with an innate sense of humor." Certainly. It has been demonstrated, however, that not everyone has a good sense of humor. Thus, while studying humor theories is interesting and insightful, it does not guarantee that one's ability to convey funny jokes will improve over time.

However, almost seven years ago, Lizette Borrelli revealed the findings of a study in *Medical Daily*, stating that there was an "interference" of certain genetic variants that affect the speed with which a person reacts to jokes. "Are you the first person to laugh or smile after hearing a joke?" If this is the case, you may have been born with a sense of humor. Scientists have cracked the secret code and revealed that those with a genetic variant of the 5-HTTLPR (serotonin-transporter-linked polymorphic region) gene are more likely to exhibit positive expressions, such as laughter and smile," said Borelli.

Although not all humor is a joke, it has been discovered that jokes are frequently an essential component of humor. Is this why Americans take

jokes so seriously, to the point of having National Presidential Joke Day every August 11? Nobody knows. One thing is certain: the "National Presidential Joke Day" began with an "accident" committed by President Ronald Reagan, according to Andy Simmons, a journalist. On August 11, 1984, the President, a former cowboy movie star, did a sound check for a radio show.

The president intended to make jokes while counting the votes. So he exclaimed loudly, "Brothers and sisters, Americans, it is with great pleasure that I inform you that today I signed a law that will permanently ban Russia." In five minutes, we'll start bombing." Because the microphone used to check the president's voice was turned on, aka live, the entire world heard the words of the 40th President of the United States. Critics flocked to the president's speech. Some believe Reagan's joke was inappropriate. However, some argue that, given the circumstances at the time, such jokes were completely harmless.

Surprisingly, no one has suggested that the incident was the result of sabotage, let alone a conspiracy theory, but rather of an "accident." Indeed, it is claimed that since 1982, broadcasting networks have agreed not to broadcast comments or statements made during sound checks (off the record). Someone (who knows who) appears to have leaked President Reagan's sound checking in this case. However, no further information on the person who inadvertently turned on the broadcast device has been released. It's possible that the perpetrators also intended to make a joke, but were taken aback when they heard the president's "joking material." Perhaps there is a fear that if an investigation is conducted, the investigation will become the subject of new jokes. Because it is said, Americans are well aware that their president enjoys cracking jokes—according to various polls, Reagan ranks as the second funniest American

president after Abraham Lincoln.

Or, perhaps the statement on the following page is sufficient to demonstrate why National Presidential Joke Day should be observed—and, at the same time, it may explain why President Reagan's joke above is not considered dangerous. "We love a good joke, and the fact that it was made by a president of the United States makes it even funnier; that's why National Presidential Joke Day is one of our favorite special events to celebrate on August 11." This day is intended to highlight the wit emanating from the highest office in our country. We examine the jokes, both intentional and unintentional, made by current and former presidents, and commemorate a holiday that recognizes the fact that presidents, like everyone else, have a sense of humor." (We love a good joke, and the fact that it was cracked by the president of the United States makes it even funnier; this is why National Presidential Joke Day, observed on August 11, is one of the most popular special occasions to commemorate. The purpose of the day is to catch a glimpse of humor coming from our country's highest office. We take a quick look at the jokes—intentional or unintentional—made by current and former presidents and commemorate a day that recognizes the fact that presidents, too, have a sense of humor.

Perhaps it's because jokes have become so commonplace in that country that even the most "painful" jokes, especially those directed at politicians, are accepted as mundane—even the name is a joke. Acceptance could be due to the fact that every joke contains a truth. "When Congress makes a joke, it's a law; and when they make a law, it's a joke," Will Rogers quipped." What would happen if such jokes were directed at our legislators? Nobody knows.

# THE URGENCY OF DOUBLE PROTECTION FOR THE CONSTITUTION IN THE DISCOURSE OF THE PRESIDENT FOR 3 PERIODS

**Kurnia Saleh, S.H.M.H.**  
(Lecturer & Head of the Undergraduate Law Study Program at Kader Bangsa University)

## The President's Authority in Indonesia

The Indonesian state administration concept promotes not only democratic values but also legal values (constitution) in a balanced manner. The authority of the President in Indonesia is a portrait of Indonesia's Presidential system and the manifestation of the concept of democratic rule of law. Although the President has only executive authority in theory, in practice the President has legislative authority as well, with the authority to form Government Regulation in Lieu of Law (Perppu) and statutory regulations under the law. And it is linked to judicial authority, with the authority to grant pardons, rehabilitation, amnesty, and the abolition of the judicial process. To summarize, the President's position and role in the state administration system are critical.

The political dynamics of Indonesian state administration began with the presence of a President who was indirectly elected without provisions for limiting the term of office in the Old Order era, before finally experiencing a very long dynamic with the change of the government system to a parliamentary one in 1949 and 1950 with the Constitution of the United States of Indonesia (RIS) and Provisional

Constitution 1950 when returning to the constitution of the 1945 Constitution. The presidential term of office for two terms in Indonesia is currently an assessment of the absence of a presidential term limitation, which contributes to the nation's problems. Corruption, collusion, and nepotism are a dark chapter in the nation's history, both in the old order with its guided democracy system and in the new order with the Pancasila system as the sole principle. The presidential term limit is an original product of the Reformation that should be preserved as a portrait of the nation's renewal and the transition to the president's non-optimal authority if left unchecked.

## Constitutional Amendments have the potential for three (three) periods.

The administration of President Joko Widodo has gotten a lot of attention, especially if you look at the Democracy State Index. According to the Economist Intelligence Unit (EIU), Indonesia's democracy index has decreased and the country is in an imperfect or flawed democracy. In 2014, the democracy index was 6.79, but by 2020-2021, it had dropped to 6.3, and the country's ranking had dropped from 48 to 64. This data demonstrates the government's inability to

manage the nation's problems. The aspired-to concept of a democratic state is rarely realized in the current era of government.

This democratic country index is a measure of how the state's attention to people's sovereignty and adherence to democratic values is very low. The portrait of authority above the law is also frequently felt; the ideals of checks and balances between each state institution are difficult to create when considering the harmonious composition of parliament and government. The majority of parliamentarians are members of coalitions rather than governments. As a result, both institutions' independence and public trust in control are difficult to achieve. The number of legal products reviewed by the Constitutional Court and the Supreme Court paints a picture of legal products that are contrary to popular will. The three-period discourse that erupted resulted in an outpouring of disagreement and public dissatisfaction, as evidenced by a large-scale demonstration by students and the community on April 11, 2022. In public psychology, this demonstration was a form of anxiety about the possibility of the discourse becoming a reality with a portrait of harmonious relations. government and parliament. Furthermore, the constitution does not preclude changes/amendments to Article 7 regarding the term of office from being made.

### **Double Protect Term Limitation through Constitutional Amendment**

There is the possibility of corruption in positions of authority (abuse of authority). When authority is absolute,

however, corruption is unavoidable. Even at the level of world countries, limiting the current term of the President is regarded as best for the nation and the constitution. In comparison, the Honduran and El Salvador constitutions of 1983 and 1982 state that no changes can be made to the provisions prohibiting the president from being re-elected under any circumstances. In these two countries, the President's term is limited to one (one) term, and no changes can be made even if constitutional amendments are made.

In addition to the above-mentioned constitutional amendment model, Colombia has special provisions regarding the term of office that, if amended, must use a referendum mechanism or people's approval, which differs from other articles that can be amended through parliament. Clauses and provisions in the Indonesian constitution cannot be changed under any circumstances. This provision, however, only applies to the provisions on the form of the state and the system of government regulated in Article 37 paragraph 5 of the 1945 Constitution of the Republic of Indonesia, and not to the provisions on the term of office of the president in Article 7 of the 1945 Constitution of the Republic of Indonesia. During the President's term of office prior to the reformation, it was deemed necessary to provide double protection to Article 7 of the 1945 Constitution of the Republic of Indonesia, either with a clause stating that "no changes can be made" or with "special provisions on Article 7 if changes are to be made that are not the same as other articles in the Constitution."

## THE NATION'S CAPITAL FROM TIME TO TIME

**T**he Draft Law on the New Capital City (RUU IKN) was approved by the House of Representatives of the Republic of Indonesia (DPR RI) to become law (UU). On Tuesday, January 18, 2022, the DPR RI Plenary Meeting decided on this. All factions in the DPR RI have expressed support for the IKN Bill becoming law.

The country's New Capital City was named "Nusantara." This is in accordance with Article 1 paragraph (2) of the IKN Law, which states, "The New Capital City named Nusantara and hereinafter referred to as the New Capital City of Nusantara is a special regional government unit at the provincial level whose territory becomes the seat of the New Capital City as stipulated and regulated by law.

The IKN Bill was officially discussed by the IKN Special Committee on December 7, 2021, at a working meeting with the Ministers of National Development Planning (PPN/Bappenas), Finance, ATR BPN, Home Affairs, and Law and Human Rights. The discussion period leading up to the ratification of the IKN Law is quite brief. DPR takes only 42 days. The IKN Law was then ratified by the President of the Republic of Indonesia on February 15, 2022, and was

published in the State Gazette of the Republic of Indonesia Year 2022 Number 41.

The adoption of the IKN Law became the foundation for IKN development in East Kalimantan. The Nusantara Capital City has a vision of becoming a world city for all that is built and managed with the goal of becoming the world's most sustainable city. IKN also intends to drive the future Indonesian economy. Furthermore, it is a symbol of national identity that represents the diversity of the Indonesian nation, based on Pancasila and the Republic of Indonesia's 1945 Constitution.

The Capital City of Nusantara serves as the Capital of the Unitary State of the Republic of Indonesia, where central government activities are carried out, as well as the seat of representatives from foreign countries and international organizations/institutions. The Regional Government for The New Capital City of Nusantara regulates and manages its own government affairs as a special regional government unit.

### **Kingdom and Colonization Period**

The concept of relocating IKN is not a new one. In 1294-1296, the Majapahit Kingdom relocated its capital from the Brantas River delta to Trowulan. The capital of the Sultanate of Demak has also

been relocated. In 1568, Sultan Hadiwijaya relocated the sultanate's capital from Demak to Pajang.

The debate over moving the capital city dates back to colonial times, specifically during the reigns of Herman Willem Daendels and J.P. Graaf van Limburg Stirum. During the reign of Herman Willem Daendels, there was a proposal to relocate Batavia (formerly Jakarta) to Surabaya. Because Surabaya is a new economic center, this is the case. Surabaya is an ideal capital city because it is both a port and a defense city.

Meanwhile, during the reign of JP Graaf van Limburg (1916-1921), the idea of relocating the capital from Batavia to Bandung arose. The reason for this is that Bandung's cold climate is ideal for resting. Furthermore, Bandung has grown as a VOC plantation. However, due to the outbreak of World War I, this idea foundered.

### **Following Indonesia's Independence**

Jakarta fell to the Dutch on September 29, 1945, despite the Republic of Indonesia's Proclamation of Independence on August 17, 1945. On January 2, 1946, Sultan Hamengkubuwono IX and Sri Pakualam VIII proposed temporarily relocating the capital from Jakarta to Yogyakarta. This proposal was

accepted by President Soekarno. The capital city was officially relocated from Jakarta to Yogyakarta on January 4, 1946.

Yogyakarta's period as Indonesia's capital did not last long. When the Dutch learned that the seat of government had been relocated to Yogyakarta, they launched an attack. The Dutch troops also captured Soekarno-Hatta. The situation in the country is extremely precarious.

Before being arrested by the Dutch, Soekarno-Hatta convened a meeting and tasked Syafrudin Prawiranegara, who was then in West Sumatra, with forming a temporary government. Bukittinggi was chosen as the capital of the Emergency Government of the Republic of Indonesia (PDRI) in place of Yogyakarta, which had fallen into Dutch hands. The PDRI, which had originally settled in Bukittinggi, was then forced to relocate to Bireuen as a result of the Second Dutch Military Aggression (1947-1948). On June 18, 1948, Bireuen was designated as the country's second capital.

Bukittinggi's status as the capital city was restored to Yogyakarta on July 6, 1949, because Soekarno-Hatta had returned to the area at the time. Furthermore, on August 17, 1950, the status of the State Capital was restored to Jakarta.

The idea of relocating IKN to Palangkaraya emerged during the

presidency of President Soekarno. Palangkaraya is also undergoing extensive development, such as road widening. However, the economic crisis of the 1960s halted construction. Efforts to transfer IKN were merely rhetoric that did not materialize until Soekarno stepped down as president in 1965.

During President Suharto's tenure, the idea of relocating IKN emerged. Jonggol, West Java, is considered suitable for capital status. In addition, President Soeharto issued Presidential Decree No. 1 of 1997 on the Coordination of Development of the Jonggol Area as an Independent City. However, the talk of relocating IKN to Jonggol did not come to fruition.

During the presidency of President Susilo Bambang Yudhoyono (SBY), there was a plan to relocate IKN to West Java. SBY compared the idea of relocating IKN to Malaysia's decision to build Putra Jaya as a new government center outside of Kuala Lumpur. However, due to a large budget, this plan was canceled.

### **From Jakarta to East Kalimantan**

Under President Joko Widodo, the issue of relocating the capital city became even more contentious in 2017. However, President Jokowi officially announced the plan to transfer the IKN during a state speech at the MPR RI Annual Session on August 16, 2019.

“On this historic occasion, by asking Allah SWT's blessing, by asking permission and support from the honorable Ladies and Gentlemen, Members of the Council, the elders and figures of the Nation, especially to all the people of Indonesia,” said the President, as quoted from the [ikn.go.id](http://ikn.go.id) page.

There are several reasons why East Kalimantan was chosen as the location for IKN. First, it is conveniently located near two major cities, Balikpapan and Samarinda. Second, the main infrastructure, namely the Balikpapan-Samarinda and Trans Kalimantan toll roads, is in place. Finally, there are airports in both Balikpapan and Samarinda, as well as the Kariangau Container Terminal Port in Balikpapan and the Semayang Port in Samarinda. Fourth, the population structure is open and heterogeneous. Fifth, land area with Production Forest and Plantation status. Sixth, the Tri Dimensions of Land, Sea, and Air can help with defense. The seventh component is raw water from three existing reservoirs, two planned reservoirs, four rivers, and four watersheds. The eighth feature is the medium land capability for building construction. It is located in the Indonesian Archipelago Sea Lane II (Makassar Strait). ■

NUR ROSIHIN ANA.

*Diolah dari berbagai sumber*

## IKN LAW IS SUED

*The discussion of relocating the nation's capital to Penajam Paser Utara, Kalimantan, is no longer just that. On January 18, 2022, the DPR ratified the legal basis for relocating the nation's capital, which will later be known as the New Capital City of Nusantara. However, since its passage, Law Number 3 of 2022 concerning the State Capital (UU IKN) has sparked debate in the community. No wonder people from all walks of life flocked to the Constitutional Court to file formal and material reviews (MK).*



Procession for the Unification of Nusantara's Land and Water, at the Zero Kilometer Point of the New Capital City (IKN) of Nusantara, Penajam North Paser Regency, East Kalimantan Province, on Monday (14/3/2022). Photo: Ministry of State Secretariat

**T**he debate over moving the national capital has been raging for quite some time. However, it was only recently that President Joko Widodo - also known as President Jokowi - revealed the discourse of moving the nation's capital in a state speech delivered in front of the Joint Session of the Regional Representatives Council of the Republic of Indonesia and the House of Representatives of the Republic of Indonesia on the occasion of the 74th Anniversary of the Proclamation of Independence of the Republic of Indonesia. Indonesia which took place on August 16, 2019, at the MPR/DPR/DPD RI Building in Senayan, Jakarta. At the time, President Jokowi requested permission and support to relocate the capital to Kalimantan.

“By asking Allah SWT's blessing, permission, and support from the honorable members of the Council, elders and national leaders, and especially from the people of Indonesia, I hereby request permission to relocate our country's capital to the island of Borneo.” The capital city is not only a symbol of the nation's identity but also of the country's progress. This is for the sake of achieving equity and economic justice. This is for Advanced Indonesia's vision. “Indonesia that endures,” President Jokowi declared in front of the council members.

### **The Heavy Load in Jakarta**

President Jokowi recently revealed a number of reasons for the country's capital city's relocation in a press statement issued on August 26, 2019. He stated that relocating the nation's capital was necessary due to the heavy burden



Presiden saat menyampaikan pidato kenegaraan dalam rangka HUT ke-74 RI dengan mengenakan baju adat di Gedung DPR/MPR/DPD, Jakarta, pada Jumat (16/8/2019). (foto: Humas Setneg/Oji)

that Procession for the Unification of Nusantara's Land and Water, on Monday (14/3/2022), at the Zero Kilometer Point of the Nusantara, Penajam North Paser Regency, East Kalimantan Province. Photo: The Ministry of State Secretariat 'carried' Jakarta as the center of government, business, finance, trade, service, airport, and Indonesia's largest seaport. The second reason, he continued, is the increasing burden on the island of Java, which has a population of 150 million people, or 54 percent of Indonesia's total population.

“The island of Java accounts for up to 58 percent of Indonesia's economic GDP, and the island of Java serves as a source of food security.” This burden will be exacerbated if the government's capital is relocated to Java,” President Jokowi stated.

Concerning funding for the transfer of the nation's capital, President Jokowi stated that the total cost of the new capital would be around Rp. 466 trillion, and that funding would be taken from APBN as much as 19 percent at the time.

“This is primarily due to the asset management cooperation scheme in the new capital city and in DKI Jakarta. The rest will come from PPPs (Government and Business Entity Cooperation) as well as direct investment from the private sector and SOEs,” said President Jokowi.

President Jokowi did not send an official letter filing the State Capital Bill to the DPR until September 29, 2021. The President stated in the letter that the Bill could be discussed in the DPR Session in order to obtain top priority approval. Furthermore, the President delegated

*"Kenapa di Kaltim? Ada pertanyaan kenapa di Kaltim? Satu, risiko bencana minimal, baik bencana banjir, gempa bumi, tsunami, kebakaran hutan, gunung berapi, dan tanah longsor. Kedua, lokasinya yang strategis, berada di tengah-tengah Indonesia. Ketiga, berdekatan dengan wilayah perkotaan yang sudah berkembang, yaitu Balikpapan dan Samarinda. Keempat, telah memiliki infrastruktur yang relatif lengkap. Dan kelima, telah tersedia lahan yang dikuasai pemerintah seluas 180.000 hektare."*

*(Presiden Joko Widodo mengenai perpindahan ibu kota negara dalam keterangan pers tanggal 26 Agustus 2019)*

FOTO: KEMENTERIAN SEKRETARIAT NEGARA



the Minister of National Development Planning/Head of the National Development Planning Agency, the Minister of Home Affairs, the Minister of Finance, the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency, and the Minister of Law and Human Rights to represent the Government in Bill's deliberations.

### Establishment of the Special Committee

The DPR, like a tit for tat, responded to the letter by convening a Special Committee (Pansus) on December 7, 2021. According to Article 104 paragraph 2 of DPR RI Regulation Number 1 of 2020 concerning Orders, the Special Committee, which originally consisted of 56 people, was eventually reduced to 30 people. In terms of membership, the Special Committee for the IKN Bill, includes 12 people from the PDI-Struggle Faction, 8 people from the Golkar Faction, 8 people from the Gerindra Faction, 6 people from the NasDem Faction, the PKB Faction as many as 6 people, 5 people from the

Democratic faction, 5 people from the PKS faction, 4 people from the PAN faction, and 6 people from the PPP faction.

### The DPR wasted no time.

The Special Committee for the IKN Bill convened quickly to begin a discussion meeting in order to pursue a recess period beginning December 9, 2021. On January 18, 2022, the DPR ratified the IKN Bill into law in 42 days. On February 15, 2022, President Jokowi signed the IKN Bill, which became Law No. 3 of 2022 concerning the New Capital City (UU IKN).

### Being Reviewed

The Constitutional Court received Petitioners to review the IKN Law less than a month after it was promulgated. As of April 26, 2022, the Court's Registrar's Office had received nine Petitioners to formally and materially examine the constitutionality of the IKN Act. This makes the IKN Law review, along with the Election Law (regarding the

presidential nomination threshold), the most reviewed law to the Constitutional Court during the first semester of 2022. Interestingly, the Petitioners who reviewed the IKN Law came from a variety of backgrounds, including public transportation drivers, advocates, teachers, non-governmental organizations, and community leaders.

### Formal Review

Almost all cases formally examine IKN law. This means that the Petitioners are questioning the process of forming laws that they believe are not in accordance with the regulations for forming laws. One of them is that the IKN Law legislation process is considered quick—it has only taken 42 days since the Special Committee for the IKN Bill was formed.

According to Case Number 25/PUU-XX/2022 proposed by M. Busyro Muqqodas et al., the formation of the IKN Law from 3 November 2021 to 18 January 2022 only takes 42 days, the discussion which is secretly argued with fast-track legislation method. Furthermore, the Petitioners alleged a lack of public participation in obtaining information at each stage of the DPR's discussion of the IKN Law.

"Only 7 (seven) of the 28 stages/agenda for the IKN Bill discussion in the DPR have documents and information accessible. While the public cannot access the other 21 agendas, information, and documents, "Viktor Santoso Tandiasa, the hearing's first attorney, stated on Wednesday (16/3/2022).

Meanwhile, Azyumardi Azra et al. filed Case Number 34/PUU-XX/2022, which questioned the

## APPLICATION FOR A REVIEW OF THE IKN LAW

No.	Case Number	Case Subject	Petitioners	Registration Date	Application Link
1	25/PUU-XX/2022	Formal Review of Law Number 3 of 2022 concerning the New Capital City	Dr. Abdullah Hehamahua, M.H., Dr. Marwan Batubara, M.Sc., Dr. H. Muhyiddin Junaidi, M.A., Letjen. TNI Mar (Purn) Suharto, Mayjen TNI (Purn) Soenarko MD, Dr. Taufik Bahaudin, S.E., Dr. Syamsul Balda, S.E., M.M., MBA., Habib Muhsin Al Attas, Agus Muhammad Maksum, Drs. H. M. Mursalim R, Ir. Irwansyah, and Agung Mozin	February 23, 2022	Click Application
2	34/PUU-XX/2022	Formal and Material Reviews of Law Number 3 of 2022 concerning the New Capital City	Prof. Dr. Azyumardi Azra, M. Sirajuddin Syamsuddin, Prof. Dr. Nurhayati Djamas, Prof. dr. Didin S. Damanhuri, Jilal Mardhani, et al.	March 10, 2022	Click Application
3	39/PUU-XX/2022	Formal and Material Reviews of Law Number 3 of 2022 concerning the New Capital City	Sugeng, S.H.	March 11, 2022	Click Application
4	40/PUU-XX/2022	Formal and Material Reviews of Law Number 3 of 2022 concerning the New Capital City	Herifuddin Daulay	March 22, 2022	Click Application
5	47/PUU-XX/2022	Formal Review of Law Number 3 of 2022 concerning the New Capital City	Mulak Sihotang	April 1, 2022	Click Application
6	48/PUU-XX/2022	Formal Review of Law Number 3 of 2022 concerning the New Capital City	Damai Hari Lubis	April 1, 2022	Click Application
7	49/PUU-XX/2022	Formal Review of Law Number 3 of 2022 concerning the New Capital City	Ir. SM. Phiodias Marthias	April 1, 2022	Click Application
8	53/PUU-XX/2022	Formal Review of Law Number 3 of 2022 concerning the New Capital City	Anah Mardianah	April 7, 2022	Click Application
9	54/PUU-XX/2022	Formal Review of Law Number 3 of 2022 concerning the New Capital City	Muhammad Busyro Muqoddas, DR. Trisno Raharjo, S.H., M.Hum., Yati Dahlia, Dwi Putri Cahyawati, Alliance of Indigenous Peoples of the Nusantara (AMAN) represented by Rukka Sombolinggi, as Secretary-General, and the Indonesian Forum for the Environment, represented by Zenzi Suhadi, as Chairman of the WALHI Management and M. Islah, as the Secretary of the WALHI Foundation	April 7, 2022	Click Application

formal flaws in the formation of the IKN Law. The Petitioner believes that the right to be considered, as well as the right to be considered for an explanation or answer to the opinion given (right to be explained), were violated during the creation of the IKN Law.

The Petitioners argued in their petition that while listening to expert sources' opinions, several expert opinions questioned the material of the draft law on IKN and the process of its formation, but did not receive consideration of opinions (right to be considered) and the right to obtain explanations or answers to opinions (right to be explained).

"Previously, there is no evidence of the right to be considered in the track record of the process of discussing the IKN Bill in the DPR through the official website <https://www.dpr.go.id/uu/detail/id/368>, and the right to obtain an explanation or answer to the opinion given (right to be explained) published by the legislators," explained Ibnu Sina Chandranegara in the inaugural session of Perkaa Number 34/PUU-XX

Errors in Academic Manuscripts are also the backdrop for the IKN Law's formal examination. This is according to Herifuddin Daulay, the Petitioner in Case No. 40/PUU-XX/2022. According to him, the Academic Paper of the IKN Bill cannot be considered a scientific work because the manuscript lacks necessary elements such as error testing, as is common in scientific method writing in general. Furthermore, no error correction method is described in the Academic Manuscript.

## Material Review

Meanwhile, Ibnu Sina, the legal counsel for Case Number 34/PUU-XX/2022, explained in the judicial review that the format of the New Capital City of Nusantara—in the IKN Law—held by the New Capital City Authority as a special regional government unit violated Article 18 paragraph (1) and (2), Article 18A paragraph (1), and Article 18B paragraph (1) of the 1945 Constitution. In addition, Ibnu Sina explained in Article 18 paragraph (1) of the 1945 Constitution that regional government is only divided into "regional regions." Provinces and provincial regions are divided into regencies and cities, each of which is a province, district, and city," while the New Capital City is defined as "a special regional government unit at the provincial level" in Article 1 paragraph (2) of Law 3/2022. "The phrase "provincial-level" demonstrates that the format of the New Capital City under the IKN Law is not a province," Ibnu Sina explained.

Ibnu Sina also revealed that the indication that the New Capital City of Nusantara is not in the form of a province can be found in Article 4 of the IKN Law, which states that the administrator of the New Capital City of Nusantara Authority is a Ministry level institution. This also contradicts Article 18 paragraph (4) of the 1945 Constitution, which uses the nomenclature for the positions of "Governor, Regent, and Mayor respectively as heads of democratically elected provincial, district, and city-regional governments." "Therefore, whether the New Capital City of

Nusantara is a regional government unit or a central government unit," he explained.

## Statement from the government and the DPR

Except for Case Numbers 25/PUU-XX/2022 and 34/PUU-XX/2022, all of these cases have entered the preliminary hearing and examination of the revision of the application. On April 21, 2022, they both entered the hearing to hear testimony from the DPR and the Government.

Suharso Monoarfa, Minister of National Development Planning and Head of the National Development Planning Agency, who represented the Government, dismissed the Petitioners' argument about a lack of public participation in the drafting of the IKN Bill. The government stated that various public inputs and aspirations had been received, both directly from the central government and through local, provincial, and district governments at IKN locations.

"In addition, a workshop was held in which constitutional law experts were invited to provide input on the constitution and the legislative process." "The relocation of the New Capital City is mandated by law," Suharso explained.

Furthermore, Suharso stated that it was stated in Presidential Regulation No. 18 of 2020 concerning the 2020-2024 National Medium-Term Development Plan, as well as Presidential Regulation No. 122 of 2020 concerning Updates to the 2021 Government Work Plan, and Presidential Decree No. 155 of 2021 concerning Updates to the 2002 RKP,

which includes IKN as one of the national strategic projects.

“Historically, the transfer of IKN is a legal requirement for the government to achieve the goal of a golden Indonesia in accordance with the development of the life of the Indonesian nation and state, which is necessary to have a highly competitive and sustainable urban system.” “Equitable development between the Western and Eastern regions of Indonesia is one of the goals in Indonesia’s 2045 vision,” said Suharso.

#### **Rebuttal by DPR**

Meanwhile, the DPR, represented by Arteria Dahlan,

denied the argument that the legislative process for the IKN Law lacks public participation. Arteria stated that the DPR has held a number of activities to solicit public input, both orally and in writing, including the RDPU and working relationships in the context of discussing the IKN Law, which is one of the formation processes involving various parties.

“RDPU with the special committee, RDPU with experts, academics, indigenous peoples, community leaders, we’ve attached everything.” This includes a number of public consultations. Furthermore, the entire series of activities has been

live-streamed via Parliament TV, Facebook, and/or YouTube based on the series of activities. Therefore, the public participation space in the formation of the IKN Law has been carried out comprehensively, and the public can access all progress at any time, including information and data on the [dpr.go.id](http://dpr.go.id) website on a mobile basis,” Arteria explained.

The hearings on the IKN law review will continue. Please visit [www.mkri.id](http://www.mkri.id) page for the most up-to-date information on the IKN Law reviews. ■

LULU ANJARSARI P.



SUMBER: PUGO.ID

## JUDICIAL REVIEW DECISIONS IN APRIL 2022

No.	Case Number	Case Subject	Petitioners	Decision	Date	Decision Link
1	15/PUU-XX/2022	Material Review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to Become Laws	Dewi Nadya Maharani; Suzie Alancy Firman; Moch. Sidik; Rahmatulloh; and Mohammad Syaiful Jihad	Denied in its Entirety	April 20, 2022	<a href="#">Click Decision</a>
2	18/PUU-XX/2022	Material Review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to Become Laws	Frans Manery and Muchlis Tapi Tapi	Denied in its Entirety	April 20, 2022	<a href="#">Click Decision</a>
3	3/PUU-XX/2022	Material Review of Law Number 6 of 2014 concerning Villages	Endang Kusnandar, et al.	Unacceptable	April 20, 2022	<a href="#">Click Decision</a>
4	4/PUU-XX/2022	Material Review of Law Number 8 of 1981 concerning Criminal Procedure Code	Anita Natalia Manafe	Denied in its Entirety	April 20, 2022	<a href="#">Click Decision</a>

5	13/PUU-XX/2022	Material Review of Law Number 7 of 2017 concerning General Elections	Syafril Sjofyan, et al.	Unacceptable	April 20, 2022	Click Decision
6	20/PUU-XX/2022	Material Review of Law Number 7 of 2017 concerning General Elections	Ali Ridhok, et al.	Unacceptable	April 20, 2022	Click Decision
7	21/PUU-XX/2022	Material Review of Law Number 7 of 2017 concerning General Elections	Ajbar, et al.	Unacceptable	April 20, 2022	Click Decision
8	14/PUU-XX/2022	Formal Review of Law Number 7 of 2021 concerning Harmonization of Tax Regulations against the 1945 Constitution	Priyanto	Unacceptable	April 20, 2022	Click Decision
9	22/PUU-XX/2022	Material Review of Law Number 20 of 1947 concerning the Rules of Re-hearing Court in Java and Madura	Zico Leonard Djagardo Simanjuntak	Denied in its Entirety	April 20, 2022	Click Decision
10	23/PUU-XX/2022	Material Review of Law Number 8 of 1999 concerning Consumer Protection	Zico Leonard Djagardo Simanjuntak	Denied in its Entirety	April 20, 2022	Click Decision
11	27/PUU-XX/2022	Material Review of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia	Fentje Eyfert Loway, et al.	Unacceptable	April 20, 2022	Click Decision
12	67/PUU-XIX/2021	Review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors to Become Laws	Bartolomeus Mirip	Denied in its Entirety	April 20, 2022	Click Decision



## QUESTIONING THE UNCLEAR ARRANGEMENT OF THE APPEAL MECHANISM

**ZICO** Leonard Djagardo Simanjuntak filed a request for judicial review of Law Number 20 of 1947 concerning

the Rules of Re-hearing Court in Java and Madura (UU 20/1947) on Tuesday (15/3/2022). In the petition for case Number 22/PUU-XX/2022, he examined Article 7 paragraph (1) and Article 11 paragraph (3) of Law 20/1947. At the hearing held by a panel of judges led by the Justice of the Constitutional Court, Suhartoyo, accompanied by the Justices of the Constitutional Court, Wahiduddin Adams and Saldi Isra, the attorney of

Petitioner Asima Romian Angelina presented a number of reasons for the petition. Namely, there is no certainty about the deadline for filing the memorandum of appeal and the counter regarding the memorandum of appeal at the appeal level in civil cases. Based on Article 7 paragraph (1) and Article 11 paragraph (3) of Law Number 20 of 1947, such matters have been ruled out and contradicted the conception of a constitutional state based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Next, the appeal mechanism is poorly regulated, which violates Article 24 paragraph (1) of the Republic of Indonesia's 1945 Constitution. The regulation on the *a quo* norm does not provide a coherent mechanism in explaining the procedure for hearing an appeal or re-hearing in a court. (Nano Tresna Arfana)

## NATIONAL AXIS OF STATE SOVEREIGNTY REVIEWS THE IKN LAW

**ON** Wednesday (16/3/2022), a month after its promulgation, Law Number 3 of 2022 concerning the New Capital City (UU IKN) was formally reviewed by the Constitutional Court (MK). Abdullah Hehamahua (Petitioner I), Marwan Batubara (Petitioner II), Muhyidin Junaidi (Petitioner III), and others filed the application, which was registered as Case Number 25/PUU-XX/2022. The Petitioners, represented by attorney Viktor Santoso Tandiasa, stated that they were unable to provide opinions, input, suggestions, and criticisms in the formation of the IKN Law, which took only 42 (forty-two) days. As a result, it appears rushed, does not allow for full public participation, and has the potential to cause horizontal conflicts in the field.

Furthermore, the Petitioners, who are also taxpayers (taxpayers), had the right and exercised their voting rights as the holders of the highest sovereignty in the general election of the DPR, DPD, President, and Vice President, and have fulfilled the requirements in carrying out a formal review of a Law against the 1945 Constitution as referred to in paragraph (1), as confirmed in the Constitutional Court Decision Number 27/PUU-VII/2009. Regarding the requirements to become a Petitioner

as a taxpayer, the Constitutional Court Decision Number 022/PUU-XII/2014 reaffirmed the taxpayer in accordance with the adage 'no taxation without participation' and vice versa.

Furthermore, the Petitioners contend that the IKN Law violates the principles of the formation of laws and regulations, as well as the principle of clarity of purpose because it was not drafted and shaped through continuous planning. (Arfana Tresna Nano)



## FAILED TO MARRY BECAUSE OF DIFFERENT RELIGIONS, THE MARRIAGE LAW IS REVIEWED

**THE CONSTITUTIONAL** Court (MK) held an initial hearing review of Law Number 1 of 1974 concerning Marriage (Marriage

Law) as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, on Wednesday (16 /3/2022). This petition for case Number 24/PUU-XIX/2022 was filed by E. Ramos Petege (the Petitioner). The Petitioner considers Article 2 paragraph (1) and paragraph (2) as well as Article 8 letter f of the Marriage Law to be contradictory with Article 28D paragraph (1) and Article 29

paragraph (1) and paragraph (2) of the 1945 Constitution.

Ni Komang Tari Padmawati, one of the Petitioners' attorneys stated that the Petitioner is an individual citizen who embraces Catholicism and wants to marry a Muslim woman. However, the marriage must be annulled because interfaith marriages are not accommodated by the Marriage Law. The Petitioner's constitutional rights were impaired because he was unable to carry out the marriage. According to the Petitioner, he lost his freedom in embracing religion and belief because if he wanted to marry, there would be coercion, one of which was to subdue his belief. In addition, the Petitioner also lost the independence to be able to continue his descendants by forming a family based on free will. (Sri Pujianti)



## QUESTION THE RULES OF THE INDICTMENT, KUHP IS SUED

**HEARING** of review of Law Number 8 of 1981 concerning the Criminal Procedure Code in the Court's Panel Hearing Room on Thursday (17/3/2022). The case registered Number 28/PUU-XX/2022 was filed by an individual citizen on behalf of Umar Husni as Director of PT Karya Jaya Satria. Wahyu Budi Wibowo as one of the attorneys of the Petitioner stated that Article 143 paragraph (3) of the Criminal Procedure Code contradicts Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution.

In the specific case, the Petitioner received an indictment for a tax crime that was declared null and void. As a result, the Petitioners were issued three indictments, one from the Purwokerto District Court and two from the Semarang High Court. In this regard, the Petitioner believes that he will be able to obtain fourth, fifth, and

so on indictments in the future without any definite limitations on the process of repairing the indictment that the court has declared null and void. The issue in this case, however, is that the process of the indictment being null and void can be corrected by the Public Prosecutor or returned to the investigation process.

Furthermore, according to the Petitioners' interpretation of Criminal Procedure Code Article 143 paragraph (3), the Public Prosecutor has no limitations in correcting and filing an indictment that has been declared null and void. As specified in Article 156 paragraph (3) of

the Criminal Procedure Code, lawsuits can also be filed. As a result, the fast, simple, and low-cost judicial process did not take place, and the Petitioners received no legal certainty. As a result, the Petitioners requested that the Constitutional Court state the phrase "null and void" in Article 143 paragraph (3) of the Criminal Procedure Code, which is conditionally unconstitutional and lacks binding legal force as long as it does not imply that "the case files must be returned to the investigators with limitations." only one (one) repair ". (Sri Pujianti)





## QUESTION THE PROVISIONS FOR FILLING IN THE INTERIM REGIONAL HEAD IN THE ELECTION LAW

**HEARING** of the review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (UU Pilkada) on Thursday (7/4/2022) with a Preliminary Examination agenda. The application registered under Number 37/PUU-XX/2022 was filed by A. Komarudin, Eny Rochayati, Hana Lena Mabel, Festus Menasye Asso, Yohanes G

Raubaba, and Prillia Yustiati Uruwaya. The Petitioners review of norms of Article 201 paragraph (3), paragraph (9), Elucidation of Article 201 paragraph (9), Article 201 paragraph (10) and paragraph (11) of the Pilkada Law.

The attorney for the Petitioners, Nurkholis Hidayat, said in the hearing that this review was an attempt by the Petitioners to oversee the progress of democracy and the rule of law in the Republic of Indonesia. This request is specifically based on great concern regarding concerns about the abuse of power by the executive. Furthermore, M. Fandi Denisatria another attorney explained that the petitioner is an Indonesian citizen as evidenced by an ID card, namely residents of DKI Jakarta Province as Petitioners 1 and 2, as Petitioners 3, 4, 5, and 6 are citizens of the Papua Province. As a result,

they believe the petitioners have legal standing as taxpayers.

Meanwhile, in their petition, the Petitioners mention the Pilkada Law causes the Petitioners to be led by a Regional Head who is not elected based on a democratic election, this clearly violates the rights of the Petitioners. Because, in 2022, the term of office of the leader of DKI Jakarta will expire. For approximately 2 (two) years, Petitioners 1 and 2 will be led by a regional head who is not elected by the people. This also applies to Petitioners 3 to 6.

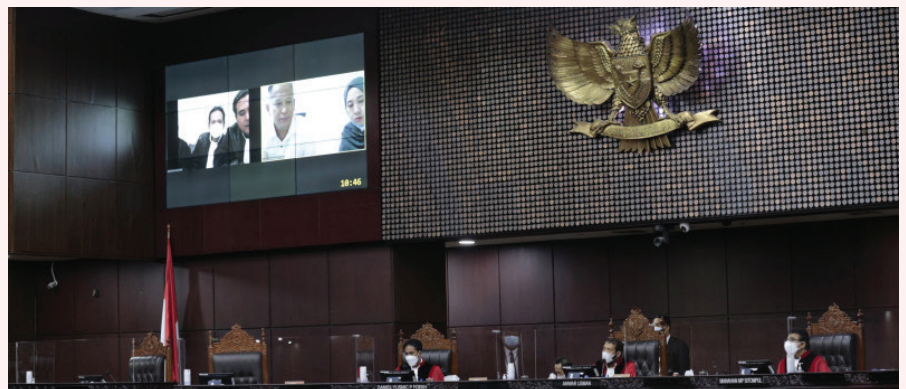
Based on these considerations, the Petitioners request that the Court ruled that the article reviewed is conditionally unconstitutional as long as it is interpreted as: (a) there are provisions for a democratic mechanism for filling in the Acting Regional Head, (b) Candidates for Acting Regional Heads have the highest legitimacy and acceptance from the public, (c) Being a native Papuan, this applies to Acting Regional Heads in the Provinces of Papua and West Papua, (d) through an assessment process from various elements of society, (e) there are clear provisions, (f) can extend the term of office or expire his service in 2022 or 2023, (g) not from the Police and TNI and (h) Independent and not a representation of certain political interests from the President or the Central Government. (Utami Argawati)

## CONSTITUTIONALITY REVIEW OF THE SELECTION PROCESS FOR THE CHAIRMAN AND MEMBERS OF THE NATIONAL HUMAN RIGHTS COMMISSION

**HEARING** of the review of Law Number 39 of 1999 concerning Human Rights (UU HAM) on Wednesday (23/3/2022) with the agenda of Preliminary

Examination. Case Number 30/PUU-XX/2022 was filed by Achmad Kholidin who is a Lecturer at the Faculty of Law,

Muhammadiyah University of Jakarta, and Tasya Nabila who is an activist with the Indonesian Human Rights Lentera.



The Petitioners have proposed to review Articles 83 paragraph (1), 85 paragraph (1), 86, and 87 paragraph (2) letter d of the Human Rights Law. Andy Winanto, the Petitioners' attorney, stated in the hearing presided over by Chief Justice of the Constitutional Court Anwar Usman that the provisions of Article 83 paragraph (1) have created legal uncertainty due to the emergence of various interpretations of its formulation, particularly along with the phrase "Komnas HAM members are 35 (thirty-five) people."

This provision, he claims, is contradictory and has no legal force

as long as it is not interpreted as "nine members of the National Human Rights Commission elected by the House of Representatives and determined by a Presidential Decree."

Furthermore, the Petitioners emphasized that the phrase "based on the recommendation of the National Human Rights Commission" is clearly in violation of the 1945 Constitution. However, the Petitioners were disturbed by the existence of the *a quo* article, which should have given Indonesian citizens equal opportunities in government and equal recognition before the law in participating in the

election process for the chairman and/or members of Komnas HAM, according to the 1945 Constitution.

Andy then added that the provisions of Article 83 paragraph (1) are related to the provisions of the articles under consideration by the Petitioners. In such a situation, the Petitioners have made numerous efforts to encourage the development of a transparent, honest, and fair election process, which has been hampered by the existence of the *a quo* article. On this basis, the Petitioners believe they have suffered constitutional losses as a result of the Human Rights Law's formulation. (Umami Argawati)

## LAYOFFS DON'T GET JHT, UU SJSN IS SUED

**FIRST** hearing review of Law Number 40 of 2004 concerning the National Social Security System (UU SJSN) which has been changed to Law Number 11 of 2020 concerning Job Creation Law (UU Ciptaker) in the Court's Panel Hearing Room on Wednesday (23/3/2022). Samiani as an individual citizen who filed this application stated that Article 35 paragraph (2) and Article 37 paragraph (1) of the SJSN Law as amended by the Job Creation Law contradicted Article 28D paragraph (1), Article 28H paragraph (3), and Article 28H paragraph (2) the 1945 Constitution.

M. Sholeh, the Petitioner's attorney, explained that old age refers to a worker's inability to work. This means that workers are getting older, changing careers to become

entrepreneurs, or have been laid off. However, the provisions in the *a quo* article of the government do not provide guarantees for participants who are laid off or resign. As a result, the Petitioners believe that the norm's provisions are discriminatory. This is due to the fact that workers with total disability receive JHT benefits, whereas workers who are laid off must wait until they are 56 years old to receive it. According to the Petitioners, the meaning of discrimination, in this case,

is that legislators treat workers who are totally disabled, die, or retire differently than workers who resign and got layoff.

As a result, in his petition, the Petitioner asked the Court to declare Article 35 paragraph (2) and Article 37 paragraph (1) of Law 40/2004, as amended by Law 11/2020, conditionally constitutional as long as the phrase "resigned and was terminated" was added. working relationship" between the two norms at issue (Sri Pujianti)



## MEMBERS OF THE KALTIM DPRD WERE DISAPPOINTED, THE REGIONAL LAW IS REVIEWED

**THE INAUGURAL** hearing review of Law Number 23 of 2014 concerning Regional Government (UU Pemda) was held by the Constitutional Court (MK) on Wednesday (23/3/2022). The application, which is registered as Case Number 31/PUU-XX/2022, was filed by Hasanuddin as a Member of the East Kalimantan DPRD from the Golkar Faction, represented by Ilhamsyah's attorney who reviewed Article 112 paragraph (4) of the Regional Government Law. In his petition, the Petitioner argues that factual and potential losses according to reasonable reasoning can certainly occur, with the Petitioner not being inaugurated as Chairman of the East Kalimantan DPRD by the Minister of Home Affairs until now to replace the Chairman of the East Kalimantan DPRD on behalf of H. Makmur.

The Petitioner feels there is legal uncertainty that the Chair of the East Kalimantan DPRD on behalf of H. Makmur for the 2019-2024 period has been dismissed by the Decree of the General Chair and the Secretary-General of the Golkar DPP No. B-600/Golkar/VI/2021 on the Interim Change of Leadership of the DPRD of East Kalimantan Province dated June 16, 2021, Decree of the DPRD of East Kalimantan Province No. 36 of 2021 dated November 2, 2021, Letter of the DPRD of East Kalimantan Province No. 160/II.I-1407/Set-DPRD addressed to the Minister of Home Affairs through the Governor of East Kalimantan dated November 16, 2021, regarding the Proposal to Replace the Chair and Stipulate a Candidate for Substitute

Chairperson of the DPRD for the East Kalimantan Province for the remainder of the 2019-2024 term.

Therefore, in their *petitum*, the Petitioners ask the Court to state that Article 112 paragraph (4) of Law 23/2014 is contrary to the 1945 Constitution and has no binding legal force as long as the phrase "inaugurated by a Ministerial Decree" does not mean "a formal decision based on the authority bound by the minister and is declarative by requiring to follow up the administrative process on the decision on the privilege of political parties based on the order of obtaining the most seats in the Provincial DPRD as a result of the electoral votes in determining the leadership of the Provincial DPRD. (Nano Tresna Arfana)

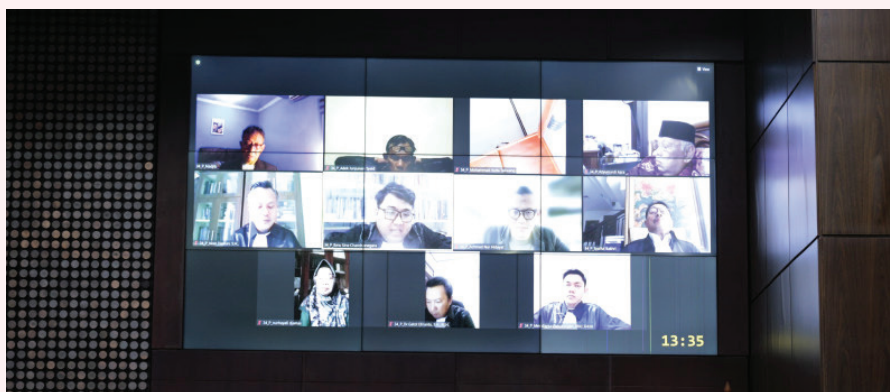


## JUDGED TO BE FORMALLY FLAWED, THE CONSTITUTIONALITY OF THE IKN LAW IS REVIEWED

**LAW** No. 3 of 2000 concerning the New Capital City (UU IKN) was again reviewed by the Constitutional Court (MK). This time, Case Number 34/PUU-XX/2022 was reviewed by 21

Petitioners, including Azyumardi Azra, Din Syamsudin, Didin S. Damanhuri, and others. The Petitioners reviewed formally as well as materially the entire IKN Law which was considered formally flawed.

The Petitioners believe that the process of developing the IKN Law was carried out solely through hearing input from various sources, but there were no considerations and explanations for various considerations that strongly represented the Petitioners' views, resulting in harm to the Petitioners' rights to obtain information for personal development and their social environment, as well as non-fulfillment of the guarantee of recognition,



protection, and legal protection.

Concerning the material review of Law No. 3/2022, the Petitioners are dissatisfied with the issuance of Article 1 paragraph (2) and paragraph (8), Article 4, and Article 5 paragraph (4). These articles' provisions are in violation of Articles 18 paragraphs (1) and (2), 18A paragraph (1), and 18B paragraph (1) of the 1945 Constitution. Because the law guarantees recognition, protection, legal certainty, and equal treatment.

Concerning the reasons for the formal review, the Petitioners contended that Articles 27 paragraph (1) and 28C

paragraph (2) of the 1945 Constitution allows citizens to participate in government. If the formation of laws and regulations actually distances community participation in debating and discussing its contents, it can be said that the formation of laws and regulations violates people's sovereignty.

Concerning the reasons for the material review, the Petitioners stated that the format of the Capital City of Nusantara is a special regional government unit at the provincial level that carries out government affairs in the Capital City of Nusantara, organized

as an institution by the authority of the Capital City of Nusantara. at the ministry level, which organizes regional government specifically for the Capital City of Nusantara.

According to the Petitioners, the format of the Capital City of Nusantara violates Article 18 paragraph (1) of the 1945 Constitution, which states that the Unitary State of the Republic of Indonesia is divided into provincial areas, and each provincial area is divided into regencies and cities, with local governments in each province, district, and city. (Nano Tresna A)

## REVIEW OF THE CONSTITUTIONALITY OF THE NOMINATION REQUIREMENTS OF BPK MEMBERS

**ON TUESDAY** (05/4/2022), a Preliminary Examination agenda will be used to hear the material review of Article 13 letters f, I and j of Law Number 15 of 2006 concerning the Supreme Audit Agency of the 1945 Constitution. Boyamin Bin Saiman (Petitioner I) and Marselinus Edwin Hardian filed Case No. 29/PUU-XX/2022 (Petitioner II).

The Petitioners, who were represented by Kurniawan Adi Nugroho

as the Petitioner's attorney, claimed that Article 13 letter f of Law 15/2006 has the potential to revoke the Petitioners' right to be elected as a Member of the BPK. He stated that at the time of registering this application, Petitioner I had not yet completed SI education. In fact, based on my experience, I am well aware of the complexities of financial irregularities that result in state losses. This means that the Petitioner possesses the ability, but due to educational constraints, he is unable to nominate himself as a member of the BPK.

Meanwhile, Petitioner II Marselinus Edwin Hardian explained that because the Petitioner was not yet 30 years old, he did not meet the requirements in the quo article and thus could not

be elected as a member of the BPK. According to the petitioners, this has the potential to deprive Indonesian citizens of their rights as long as they are not interpreted as adults in terms of understanding science and technology. Furthermore, the Petitioners stated in their petition that the implementation of Article 13 letter j of the BPK Law states that one of the requirements for being elected as a Member of the BPK is to have left their position as an official in the state financial management environment for at least 2 (two) years. This is undoubtedly against the law, so long as it is not interpreted as not committing irregularities and criminal acts of corruption while serving as the State Financial Management Officer.

The Petitioners asked the Court in their petition to declare Article 13 letter f of the BPK Law unconstitutional as long as it is not interpreted as smart and clever based on the results of the process of applying science and technology. Furthermore, the Petitioners request that the Court declare Article 13 letter I of the BPK Law to be in conflict with the 1945 Constitution as long as it is not interpreted as mature based on the results of scientific and technological application. (Utami Argawati)



## QUESTION THE PROVISIONS FOR FILLING IN THE INTERIM REGIONAL HEAD IN THE ELECTION LAW

**HEARING** of the review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (UU Pilkada) on Thursday (7/4/2022) with a Preliminary Examination agenda. The application registered under Number 37/PUU-XX/2022 was filed by A. Komarudin, Eny Rochayati, Hana Lena Mabel, Festus Menasye Asso, Yohanes G

Raubaba, and Prillia Yustiati Uruwaya. The Petitioners review of norms of Article 201 paragraph (3), paragraph (9), Elucidation of Article 201 paragraph (9), Article 201 paragraph (10) and paragraph (11) of the Pilkada Law.

The attorney for the Petitioners, Nurkholis Hidayat, said in the hearing that this review was an attempt by the Petitioners to oversee the progress of democracy and the rule of law in the Republic of Indonesia. This request is specifically based on great concern regarding concerns about the abuse of power by the executive. Furthermore, M. Fandi Denisatria another attorney explained that the petitioner is an Indonesian citizen as evidenced by an ID card, namely residents of DKI Jakarta Province as Petitioners 1 and 2, as Petitioners 3, 4, 5, and 6 are citizens of the Papua Province. As a result, they believe the petitioners have legal standing as taxpayers.

Meanwhile, in their petition, the Petitioners mention the Pilkada Law causes the Petitioners to be led by a Regional Head who is not elected based on a democratic election, this clearly violates the rights of the Petitioners. Because, in 2022, the term of office of the leader of DKI Jakarta will expire. For approximately 2 (two) years, Petitioners 1 and 2 will be led by a regional head who is not elected by the people. This also applies to Petitioners 3 to 6.

Based on these considerations, the Petitioners request that the Court ruled that the article reviewed is conditionally unconstitutional as long as it is interpreted as: (a) there are provisions for a democratic mechanism for filling in the Acting Regional Head, (b) Candidates for Acting Regional Heads have the highest legitimacy and acceptance from the public, (c) Being a native Papuan, this applies to Acting Regional Heads in the Provinces of Papua and West Papua, (d) through an assessment process from various elements of society, (e) there are clear provisions, (f) can extend the term of office or expire his service in 2022 or 2023, (g) not from the Police and TNI and (h) Independent and not a representation of certain political interests from the President or the Central Government. (Utami Argawati)



## QUESTIONING THE ELEMENT OF DEFAMATION IN THE ITE LAW

**ON THURSDAY** (7/07), there was the first hearing review of Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11

of 2008 concerning Information and Electronic Transactions (UU ITE). 4/2022). The application was filed by 29 content creators, including Eriko Fahri Ginting, Leon Maulana Mirza Pasha, Aryadi Kristanto Simanjuntak, and Faransiska Naomi Sitanggang, and is registered under Number 36/PUU-XX/2022. The Petitioners claimed that Article 27 paragraph (3) of the ITE Law, as well as the elucidation of Article 27

paragraph (3) and Article 28 paragraph (2) of the ITE Law, violated the 1945 Constitution.

When conducted on social media, the Petitioners determined that the articles reviewed lacked standard and clear benchmarks for the phrases "defamation" and "incite hatred or hostility." As a creator of content who actively expresses opinions in webinars and publications in the field of law,



the Petitioners feel threatened to express their thoughts and attitudes in accordance with their conscience.

Regarding this element of defamation, the Petitioners are of the

opinion that this has been regulated in Article 310 paragraph (1) of the Criminal Code which essentially states that the element of insult or defamation is only spoken orally. However, if it is done by

broadcasting, showing, and/or pasting, then the reference is in Article 310 paragraph (2) of the Criminal Code. Thus, if defamation is carried out on social media, the Petitioners consider that both the ITE Law and the Criminal Code do not have clear definitions, characteristics, or parameters for this matter. For this reason, in its *petitum*, it states that Article 27 paragraph (3) and Elucidation of Article 27 paragraph (3) and Article 28 paragraph (2) of the ITE Law are contrary to the 1945 Constitution and have no binding legal force. (Sri Pujianti)

## QUESTIONING MANAGEMENT FEES AND COMPENSATION FOR MANAGEMENT SERVICES IN BANKRUPTCY AND PKPU

**THE CONSTITUTIONAL** Court (MK) held a preliminary hearing on the review of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law

and PKPU) on Monday (11/4/2022) afternoon. Mira Sylvania Setianingrum, Tommy Chandra Kurniawan, Daniel Maringantua Warren Haposan Gultom, and Lingga Nugraha filed this application for case number 38/PUU-XX/2022. The Petitioners are curators and administrators.

Rendy Anggara Putra, the Petitioners' attorney, explained the constitutional disadvantages of the Petitioners for the enactment of Articles 235 paragraph (1) and 293 paragraph (1) of the Bankruptcy Law and PKPU

after their meaning was expanded by the Constitutional Court's Decision Number 23/PUU/XIX/2021, which opens an appeal against the PKPU Decision originating from the PKPU application by creditors, during an online hearing. Previously, PT Sarana Yeoman Sembada had filed a request for a material review under Article 235 paragraph (1) and Article 293 paragraph (1) of the Bankruptcy Law and PKPU, whose decision was granted by the Constitutional Court.

Meanwhile, the Petitioners argue in this application that the expansion of the meaning of Article 235 paragraph (1) and Article 293 paragraph (1) of the Bankruptcy Law and PKPU means that the management's actions will remain valid and binding if the PKPU Decision is canceled due to an appeal filed by the debtor. as well as the panel of judges who reversed the PKPU decision requiring management fees and management fees. (Tresna Nano Arfana)



## IKN MOVING TO KALIMANTAN IS AT RISK OF DAMAGING THE ENVIRONMENT

**ON TUESDAY** (12/4/2022), the formal and material review of Law Number 3 of 2022 concerning the New Capital City (UU IKN) will be heard. Sugeng, a retired Supreme Audit Agency official, filed Application No. 39/PUU-XX/2022 (BPK). Sugeng (the Petitioner) claimed that the creation of the IKN Law violated the principles outlined in the relevant laws and regulations. The IKN Law was drafted and stipulated in a hurry, and it was only a formality.

On September 29, the President submitted the bill to the DPR, which then scheduled a special committee meeting. Legal experts were quickly called in. The law was passed by the DPR in less than 40 days. Meanwhile, for material reasons, Sugeng believes



that the country's current situation with the Covid-19 pandemic necessitates a significant cost in comparison to the benefits of moving the capital city. Not only that, but the existing state budget should be used to pay government debts, natural disasters, TNI defense equipment reform, education, and elections, according to Sugeng. Furthermore, Sugeng stated that shifting the nation's capital to Kalimantan would endanger the environment by destroying fauna and flora. This is due to urbanization, residential housing,

shops, and markets. Because of human activity, Kalimantan's forests, known as the world's lungs, may become a distant memory in the future. Flooding has occurred in Kalimantan, particularly when the capital city relocated to Kalimantan. As a result, Sugeng believes that the government should prioritize improving people's welfare and national development. Sugeng petitioned the Constitutional Court to overturn the IKN Law (Utami Argawati)

## AN HONORARY TEACHER REVIEW THE CONSTITUTIONALITY OF THE IKN LAW

**HERIFUDDIN** Daulay, an honorary teacher from Dumai, Riau, filed to the Constitutional Court a formal and material review of Law (UU) Number 3 of 2022 concerning the State Capital (UU IKN) (MK). The first hearing in Case Number 40/PUU-XX/2022 was held on Wednesday (13/4/2022) in the Constitutional Court's online Plenary Hearing Room.



In his petition, the Petitioner describes himself as an individual Indonesian citizen with the right and ability to defend his country. The Petitioner advised the Minister of Defense of the Republic of Indonesia

to arm regional armies in border and coastal areas in anticipation of the spread of the Russo-Ukrainian war, the spread of which, if it occurs, could endanger the nation and state's life. In this regard, the Petitioner must file a

formal and material review of the IKN Law in the state defense review because the law, in its implementation process, can endanger the life of the nation and state and is contrary to the constitution.

Furthermore, the Petitioners contended that in the long run, it is possible to determine that the factors underlying the movement of the country's capital city, which was the main subject of the contents, were unclear. The Petitioners are directly aggrieved by the upheaval caused by the economic collapse that occurred between 1965 and 1998. Furthermore, if the IKN Law is repealed, the Petitioner's

losses will be lost because there will be no public uproar as a result of the IKN Law in the coming days. According to the Petitioner, in order to achieve the goal of repealing the IKN Law and canceling the transfer of the state capital, the right to defend the state is a citizen's right as stated in the 1945 Constitution. This is the Petitioner's position in filing a formal review of the IKN Law.

Moving the country's capital city, according to the Petitioner, is an uncertain bet given the significant benefits to the community and state. As a result, the Petitioner claims that the IKN Law violates the 1945 Constitution,

particularly the Preamble to the 1945 Constitution. The large funding for the relocation of the State Capital, according to the Petitioner, should be used to produce reliable cadres of the nation in the fields of education and the economy. As a result, the Petitioners requested in his *petitum* that the Court declare that the formation of the IKN Law did not comply with the provisions of the formation of law based on the 1945 Constitution. "Declaring Law Number 3 of 2022 Concerning the State Capital has no binding legal force," Herifuddin, who was present without an attorney, said. (Nano Tresna Arfana)

## PRESIDENT DIRECTOR OF PT JAMES AND ARMANDO PUNDIMAS REVIEW THE P3H LAW

**ON WEDNESDAY** (13/4/2022), the first hearing of the material law of Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction (UU P3H) as amended by Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja) will take place. Robert Mandala Yasin, President Director of PT James and Armando Pundimas, filed Application Number 45/PUU-XX/2022. Robert compares the P3H Law's Article 17 paragraph (1) letter a to the 1945 Constitution.

Robert Mandala Yasin (the Petitioner) has legal authority over the mining area in Molawe District, North Konawe Regency, Southeast Sulawesi as a mining company. Ricky Margono, the Petitioner's legal counsel, stated that the Petitioner's mining area was



included in the Limited Production Forest Location area. What is meant by Limited Production, according to Article 1 point 10 of Government Regulation Number 104 of 2015 concerning Procedures for Changes in the Designation and Function of Forest Areas? Forests are forests dedicated to the extraction of low-intensity timber via selective logging methods.

To be able to conduct business on the land, the Petitioner must first apply for a lease-to-use forest area permit

(IPPKH) and then enter the forest area to install stakes or determine coordinate points in order to determine the area of the area that can be managed by his party. However, due to the ambiguity of the phrase "other tools" and the phrase "reasonably suspected" in the *a quo* article, the Petitioner may be suspected of carrying out illegal or illegal mining because of the presence of a light vehicle unit when conducting land surveys. (Sri Pujianti)

## QUESTIONING THE “SUPERIORS-SUBORDINATES” OF GOVERNMENT BODIES IN THE GOVERNMENT ADMINISTRATION LAW

**THE FIRST** hearing review of Law Number 30 of 2014 concerning Government Administration (UU AP) will be held online on Thursday (14/4/2022). Moch Ojat Sudrajat, a public information activist from Lebak, Banten, requested a hearing on case number 46/PUU-XX/2022.

Moch Ojat Sudrajat (the Petitioner) is displeased with the passage of Article 4 paragraph (1) letter d of the AP Law. Because, according to him, “when a government agency carrying out the government functions mentioned in the 1945 Constitution is suspected of committing an unlawful act, the lawsuit brought by citizens and/or private legal entities must be heard in the State Administrative Court (PTUN)



administrative,” namely objections and appeals.

The Petitioner stated that the AP Law was promulgated on October 17, 2014, and that it contained the material content of Article 4 paragraph (1) letter d of the AP Law, which states, “The scope of Government Administration arrangements in this Law includes all activities:... d. Other Government Agencies and/or Officials who carry out Government Functions as stated in the 1945 Constitution of the Republic of Indonesia and/or other laws.”

The Petitioners believe that the provisions of Article 4 paragraph (1) letter d of the AP Law violate their rights under the 1945 Constitution.

According to the Petitioners, fair recognition, guarantee, protection, and legal certainty in the implementation of the judiciary is based on a simple principle, which means having a clear, simple, and low-cost process for seeking justice.

The Petitioner confirms that other government agencies and/or officials that carry out government functions, particularly those formed by law, currently have a hierarchical organizational structure. The agency in the center becomes “superior” to the agency in the province and/or district/city. This is not the case with the Information Commission. (Nano Tresna Arfana)

## THE PETITIONERS ASK TO DETERMINE THE UPPER THRESHOLD FOR PRESIDENTIAL CANDIDACY IN THE ELECTION LAW

**A NUMBER** of retired civil servants and SOEs petitioned the Constitutional Court for a review of Articles 222 and 223 of Law (UU) No. 7 of 2017 on General Elections (Election Law) (MK). On Thursday (14/4/2022), Case 42/PUU-XX/2022 was heard in the Court’s Panel Meeting Room. The Preliminary Hearing was presided over by Deputy

Chief Justice Aswanto, who was joined by Constitutional Justices Suhartoyo and Enny Nurbaningsih.

The Petitioner claims that the article only includes a minimum limit with no upper limit. This has the

potential to jeopardize the Petitioner’s constitutional rights because it is guided by the contestation in the 2014 and 2019 elections, and in the absence of the maximum threshold, the political



parties in the coalition bought up the seats for council members or valid national votes.

In other words, the Petitioners' ability to obtain presidential and vice-presidential candidate pairs is limited by a minimum threshold requirement without a maximum threshold.

Article 223 of the Election Law and its Elucidation is thought to

lack the principles of inclusiveness, transparency, and openness. This is because all political parties understand that determining presidential and/or vice-presidential candidates is part of the general chairman's prerogative, with or without the approval/consideration of other political party administrators. As a result, this has the potential to eliminate the possibility of selecting Petitioners

who are also among Indonesia's best sons and daughters. As a result, in their *petitum*, the Petitioners ask the Court to declare that Articles 222 and 223 of the Election Law are in conflict with the 1945 Constitution and have no legal force. (Sri Pujianti)

## REVIEWING THE CONSTITUTIONALITY OF FORMS OF PSYCHOLOGICAL VIOLENCE IN THE DOMESTIC VIOLENCE LAW

**VALENCYA'S** conviction for domestic violence (KDRT) for scolding her husband while drunk prompted two female students to file a material review of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT). Petitioners for Case Number 41/PUU-XX/2022 are Sindi Enjelita Sitorus and Hesti Br Ginting, both Indonesian Christian University students. The case's first hearing was held on Thursday (14/4/2022) in the Constitutional Court's online Plenary Room.

The Petitioners reviewed Article 7 of the PDKRT Law, which they found to be in violation of their constitutional rights. "Psychic violence, as defined in Article 5 letter b, is an act that causes fear, loss of self-confidence, loss of ability to act, feeling helpless, and/or severe psychological suffering on a person," states Article 7 of the PDKRT Law.

In a hearing presided over by the Justice of Constitutional Court Enny Nurbaningsih, Petitioners' attorney Leonardo Siahaan stated that Article 7 of the PDKRT Law did not provide clear provisions as to what type of psychological violence was meant to be, so it could become an interpretation that would lead to debate. Furthermore, the Petitioners will suffer constitutional losses as a result of this.

Leonardo went on to say that Article 7 of the PKDRT Law lacks clear benchmarks for psychological violence. This includes forms of psychological violence, which can expose women to being sued and criminalized

as perpetrators in the context of psychological violence. According to him, the ambiguity raises concerns for the Petitioners if their case is similar to that of Valencya. Despite the fact that Valencya did it unintentionally and without intent to attack the victim's psyche.

Meanwhile, in the case of psychological violence, degrading and insulting words can have serious consequences if used repeatedly. Based on these arguments, the Petitioners requested that the Constitutional Court declare Article 7 of the PDKRT Law to be unconstitutional and constitutionally conditional. (Umami Argawati)



## Constitutional Justices Discuss the Future of Indonesia's Modern Judiciary

The Constitutional Court's role as a constitutional court is to help citizens understand the constitution. From March to April 2022, judges of the Constitutional Court shared their legal knowledge and hearing experiences with students and academics at a variety of universities, both online and in person. The following is a record of the activities of constitutional judges in various agendas for constitutional understanding in academic circles.



Deputy chairman of the Constitutional Court, Aswanto, during the online Inauguration of the Central Leadership for the Indonesian Youth Da'wah Circle for the 2022-2024 Period with the theme "Progressive and Collaborative Movement Transformation" on Sunday (20/3/2022).



The Justice of the Constitutional Court, Saldi Isra, as a speaker at the Advocates Special Education (PKPA) activity organized by the Indonesian Advocates Association (Peradi) in collaboration with the Faculty of Islamic Religion Islamic University 45 of Bekasi (UNISMA).



On Friday (25/3/2022), Chief Justice of the Constitutional Court (MK) Anwar Usman was a resource person at a Public Lecture organized by the Sharia Faculty of the State Islamic Institute (IAIN) Pekalongan. Anwar presented material on the Constitutional Court's authority in the activity "e-Court and the Future of the Judicial System in Indonesia: Opportunities and Challenges for Alumni of the Faculty of Sharia."



Justices of the Constitutional Court, Enny Nurbaningsih and Suhartoyo gave a Public Lecture on the theme "The Importance of the Constitution for Citizens". This activity was held in collaboration with the Constitutional Court (MK) with the Pancasila and Citizenship Education Study Program, Faculty of Teacher Training and Education, PGRI University of Yogyakarta (PPKn FKIP UPY) on Friday (25/3/2022).



Deputy Chief Justice of the Constitutional Court Aswanto was the keynote speaker at a national seminar held by the Forum for Research and Legal Writing (FKPH) of the Student Executive Body (BEM) of the Faculty of Law of the Islamic University of Indonesia (FH UII) on Saturday, March 26, 2022, in Yogyakarta. The event was held as part of the UII Law Fair to compete for the Mohammad Natsir Cup 2022 under the theme “Quo Vadis - Digital Transformation and National Law Development.”



Constitutional Justice Suhartoyo was a speaker at the Basic Education and Training I, II, and Briefing of PPAT Candidates by the Central Executive Body of the Association of Land Deed Officials (PP-IPPAT) on Monday, March 28, 2022.



Constitutional Justice Suhartoyo is speaking at a Special Education for Professional Advocates (PKPA) activity which was held virtually and organized in collaboration between the National Leadership Council of the Indonesian Advocates Association (DPN Peradi) and the University of Pamulang on Tuesday, March 29, 2022.



Constitutional Justice Arief Hidayat was a speaker in a public lecture, "Building Law Based on Nomocracy and Democracy," at the Graha Bakti Building, Panca Bhakti University, Pontianak, West Kalimantan, on Wednesday, March 30, 2022.



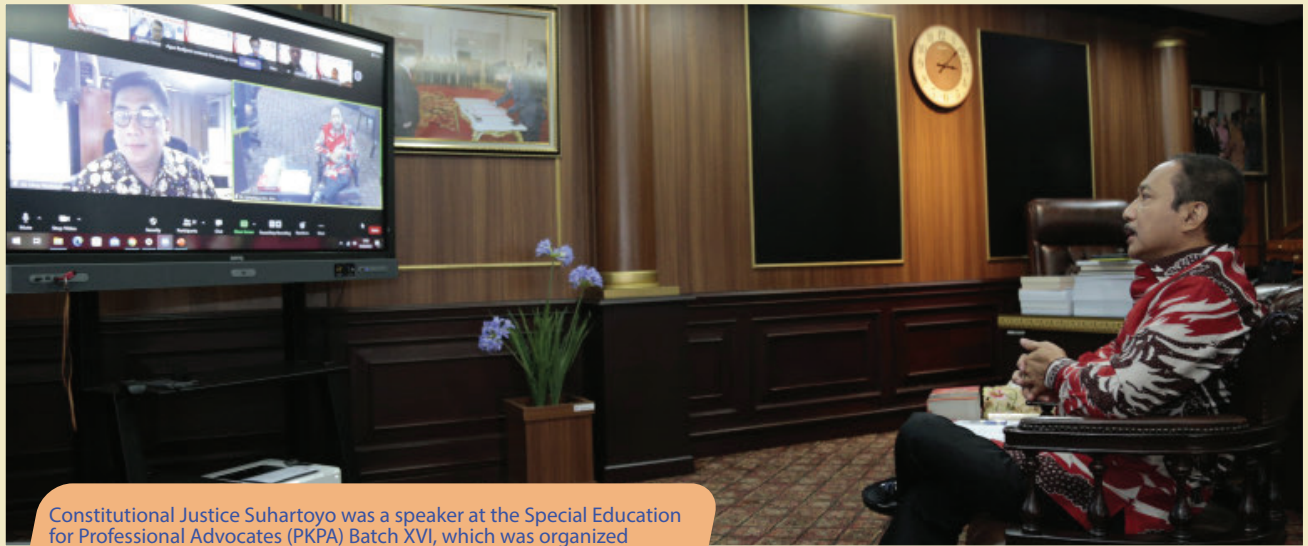
Deputy Chief Justice of the Constitutional Court (MK) Aswanto congratulated the Election Supervisory Body of the Republic of Indonesia (Bawaslu RI), which is currently the President of the Global Network for Electoral Justice (GNEJ), when attending the GNEJ Awards and Scientific Committee Meeting virtually on Thursday morning, March 31, 2022.



Constitutional Justice Enny Nurbaningsih was a speaker in a public lecture on "The Constitutional Court's Judicial Review Authority," which was organized in collaboration between the Constitutional Court (MK) and the University of Balikpapan (Uniba) on Thursday, March 31, 2022. She explained the history of Indonesia's administrations.



Constitutional Justice Arief Hidayat and Secretary-General of the Constitutional Court (MK) M. Guntur Hamzah were speakers at the National Seminar and Public Lecture on "The Constitutional Court and the Protection of Citizens' Constitutional Rights," which was held virtually and organized by the University of Tanjungpura (Untan) in Pontianak, West Kalimantan on Thursday, March 31, 2022.



Constitutional Justice Suhartoyo was a speaker at the Special Education for Professional Advocates (PKPA) Batch XVI, which was organized in collaboration between the Faculty of Law of Indonesian Christian University (FH UKI) and the East Jakarta branch executive board (DPC) of the Association of Indonesian Advocates (Peradi) on Friday, April 1, 2022. This event was held virtually.

## Seminar and Education on Citizens' Constitutional Rights Awareness Program

The Center for Pancasila and Constitutional Education is always active in providing education, seminars, and technical guidance to increase awareness of citizens' constitutions. From the end of last March until the beginning of April 2022, the Constitutional Court collaborated with teachers and the Ministry of Education, Culture, Research, and Technology to understand the basic concepts of citizens' constitutional rights guaranteed by the 1945 Constitution. The following is a portrait of the teachers' excitement in interacting with the speakers during the Seminar and Education on Citizens' Constitutional Rights Awareness Program.



Chief Justice Anwar Usman opened the Citizens' Constitutional Rights Awareness Program for Transformational Teachers Batch II on Monday, March 28, 2022, virtually from Jakarta. The event was organized in collaboration between the Constitutional Court (MK) and the Ministry of Education, Culture, Research, and Technology, in which 400 teachers from kindergarten up to senior high school levels attended and participated virtually.



Constitutional Justice Arief Hidayat was a speaker at the Citizens' Constitutional Rights Awareness Program for Transformational Teachers Batch II virtually from the Constitutional Court Building in Jakarta on Tuesday, March 29, 2022.



Senior Researcher of the Constitutional Court, Pan Mohamad Faiz, introduced the Constitutional Court more closely at the Constitution Awareness Program for Transformational Teachers Batch II virtually from the Constitutional Court building in Jakarta on Wednesday, March 30, 2022.



Deputy Chief Justice of the Constitutional Court (MK) Aswanto is virtually speaking at the Constitution Awareness Program for Transformational Teachers Batch II closing on Wednesday, March 30, 2022.

# PERPU IN THEORY AND PRACTICE

**Dr. Wilma Silalahi, S.H., M.H.**

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

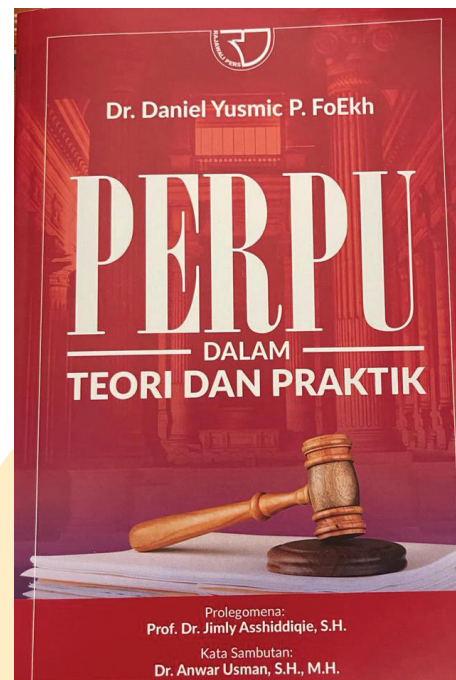
The book entitled “*Perpu Dalam Teori dan Praktik*” (Government Regulation in Lieu of Law in theory and practice) was based on the problem formulation concerning the basic concepts of the Republic of Indonesia founders’ thoughts on the Government Regulation in Lieu of Law (perpu) as regulated in Article 22 of the 1945 Constitution; (2) How is the development of the thinking and practice of implementing the Government Regulation in Lieu of Law (perpu) to date; (3) Is the state of emergency is an absolute requirement before the enactment of the Government Regulation in Lieu of Law (perpu); and (4) Is there a similar regulation in the constitution in countries that have a presidential system of government?

The author explains that the object of study from the emergency constitutional law is a state is in a state of emergency. The term state in a state of emergency is different in each country. In practice, subjective emergency constitutional law was abused, so objective emergency constitutional law was developed. The development of objective emergency constitutional law is in line with the limitation of government authority in criminal law from “*ius puniendi*” to “*ius punale*.” At first, the government was given the authority of “*ius puniendi*” to punish citizens who commit crimes. However, this authority is often unlimited and absolute and is highly dependent on the subjectivity

of the ruler. Realizing how powerful the government’s authority is in its development, it is deemed necessary to protect human rights from abuse of power, so that the “*ius punale*” was developed.”

The author describes the principles or rules of international law that are applied in a state of

emergency, including (a) the principle of proclamation; (b) the principle of legality; (c) the principle of communication; (d) the principle of temporality; (e) the principle of the privilege of threats; (f) the principle of proportionality; (g) the principle of intangibility; and (h) the principle of supervision. In general, countries



**TITLE:**

**PERPU DALAM TEORI DAN PRAKTIK (GOVERNMENT REGULATION IN LIEU OF LAW IN THEORY AND PRACTICE)**

**AUTHOR:** Dr. Daniel Yusmic P. Foekh

**PAGE:** 475

**PUBLISHER:** PT. RajaGrafindo Persada, 1st Edition, 1st Print, Depok.

that adopt the Common Law system place more emphasis on objective emergencies.

Every statement of a state of emergency must be declared (*de jure*) first by the President. This statement is intended so that representative institutions immediately supervise the implementation of the emergency. Thus, there is no arbitrariness by the authorities in an emergency. The state of emergency proclaimed can be assessed by the supreme judge. Indonesia adopts subjective emergency constitutional law. Article 12 and 22 of the 1945 Constitution adopt the subjective emergency constitutional law. Article 12 shows the subjectivity of the President, which reads, “The President declares the state of emergency.” Meanwhile, Article 22 of the 1945 Constitution gives subjective authority to the President to determine what is meant by “In compelling crisis situations.”

Restrictions on the powers of emergency authorities are intended so that the emergency authorities do not conduct abuse of power or abuse of authority in carrying out their duties and remain within the legal framework—for example, a measure or limit to determine the state of emergency that happened. In an emergency, the government is still obliged to guarantee non-derogable rights. Thus, Government Regulation in Lieu of Law (*perpu*) can be categorized as an emergency regulation and equated with an emergency law in the Indonesian emergency constitutional law. Further, Article 22 paragraph (1) of the 1945 Constitution reads, “In compelling crisis situations, the President shall have the right to issue government regulations in lieu of law.”

This book also describes that the function of Government Regulation in Lieu of Law (*perpu*) is similar to emergency regulations, namely, as soon as possible return the compelling crisis situations into normal situations. Therefore, the House of Representatives (DPR) must approve such government regulations in its

next session. Even though Article 22 paragraph (3) of the 1945 Constitution contains elements of similarities with emergency regulations, in practice, the effectiveness of Government Regulation in Lieu of Law (*perpu*) is different from emergency regulations. This difference is because the Government Regulation in Lieu of Law (*perpu*) can be used even if it is not in an emergency.

The author explains that the 1945 Constitution does not stipulate that Government Regulation in Lieu of Law (*perpu*), approved by the House of Representatives (DPR), will become a law. According to the rules of the House of Representatives of the Republic of Indonesia (DPR-RI) and Law Number 10 of 2004 on the Establishment of Laws and Regulations (UU 10/2004), Government Regulation in Lieu of Law (*perpu*) stipulated by the President will be submitted to the House of Representatives (DPR) in the form of a bill, while the Government Regulation in Lieu of Law (*perpu*) itself is only as an appendix. The submission of a Government Regulation in Lieu of Law (*perpu*) in the form of a bill is not in accordance with the emergency constitutional law’s primary purpose, which is to return the crisis situation to normal as soon as possible. Article 36 paragraph (2) of Law 10/2004, the House of Representatives (DPR) is prohibited from making changes to the material content of the Government Regulation in Lieu of Law (*perpu*). The House of Representatives (DPR) may only approve or reject the Government Regulation in Lieu of Law (*perpu*). This provision not only restricts the DPR’s rights but can also be misused if the contents of the Government Regulation in Lieu of Law (*perpu*) are excessive, repressive, and hegemonic.

The submission of a Government Regulation in Lieu of Law (*perpu*) in the form of a bill was first carried out during the guided democracy period; the People’s Representative Council of Mutual Assistance (DPR-GR) formed by Soekarno was “forced” to approve

the bill on the stipulation of all emergency laws and all Government Regulation in Lieu of Law (*perpu*) that existed before January 11, 1961, became law, were carried out collectively. The political legitimacy of the People’s Representative Council of Mutual Assistance (DPR-GR) at that time was very weak. Thus, it was impossible to reject the bill proposed by the President. The bill was later approved as a law, namely Law no. 1 of 1961, on the enactment of all emergency laws and all government regulations in lieu of law which existed before January 1, 1961, became law.

Furthermore, the author also discusses the development of the concept of Government Regulation in Lieu of Law (*perpu*) with a historical approach. The historical approach is carried out to know the historical background and to find the meaning of the text and the context of the establishment of Government Regulation in Lieu of Law (*perpu*) and its development. Therefore, the author conducted a search of various official state documents and personal documents, and various related literature.

This book explains that the existence of the Constitutional Court (MK) is very strategic in the Indonesian state administration. One of them is because of the authority to examine the law against the constitution. In addition, in its practice, the Constitutional Court has added its own authority to examine the Government Regulation in Lieu of Law (*perpu*), which is actually still become the House of Representatives (DPR) domain. The expansion of the Constitutional Court’s authority to examine the Government Regulation in Lieu of Law (*perpu*) can be understood because the content (material content) of the Government Regulation in Lieu of Law (*perpu*) is the same as the content of the law as stated in Article 9 of Law 10/2004. As a presidential product that the House of Representatives (DPR) has not yet been approved, Government Regulation in Lieu of Law (*perpu*)

can be categorized as a law in a material sense (*wet in materiele in zin*). Regarding the material content of the Government Regulation in Lieu of Law (perpu), there is a possibility that the contents of the Government Regulation in Lieu of Law (perpu) may violate the 1945 Constitution.

According to the Constitutional Court's Decision Number 138/PUU-VII/2009, it is stated that the 1945 Constitution does not give the Constitutional Court the authority to examine government regulations in lieu of laws. However, the Constitutional Court considers several things.

First, the Government Regulation in Lieu of Law (perpu) is equal to law (related to the position of the Government Regulation in Lieu of Law in the order of laws and regulations). Thus, it can be examined by the Constitutional Court, especially with reference to Article 7 paragraph (1) Law 10/2004, which states the type and hierarchy of legislation in point "b," the position of Government Regulation in Lieu of Law (perpu) is equal to law. Second, the Constitutional Court formulates three conditions in compelling crisis situations of perpu: (1) the circumstances, namely an urgent need to resolve legal problems quickly based on the law; (2) the mandatory law does not yet exist, so that there is a legal vacuum, or there is a law, but it is not sufficient; (3) the legal vacuum cannot be overcome by making laws in standard procedure because it will take quite a long time while the urgent situation needs to be resolved as soon as possible.

According to the Constitutional Court, the government regulation, as referred to in Article 22 paragraph (1) of the 1945 Constitution, is a government regulation in lieu of law, which means that the material should be regulated by law. However, due to compelling crisis situations, the 1945 Constitution gives the President the right to enact a government regulation in lieu of law and does not give the House of Representatives (DPR) the right to make regulations in lieu of

law... the government regulation in lieu of law (perpu) creates legal norms and as a new legal norm will be able to create: (a) new legal status; (b) new legal relationships; and (c) new consequences of law...because it can create legal norms whose binding force is equal to law. Thus, in the norms contained in the government regulation in lieu of law (perpu), the Court can examine whether it is materially contradictory to the 1945 Constitution before the House of Representatives (DPR) approve or reject it.

This book also elaborates the comparison of regulations similar to the government regulation in lieu of law (perpu) in ten countries that adopt a presidential system, especially on the content of the constitution, including South Africa, Malawi, Brazil, Peru, Venezuela, Kyrgyzstan, South Korea, Georgia, Belarus, Lithuania, which have substantive regulations similar to the government regulation in lieu of law (perpu). Although there are some differences between them, including (a) in terms of the name of the regulation, there is no general nomenclature; (b) of the terms of formation; (c) the revocation mechanism is not the same, and (d) whether it can be examined by the judge or not differs from one country to another.

Furthermore, it also explains that in the development of the provisions of the government regulation in lieu of law (perpu), it is not only regulated in Article 22 of the 1945 Constitution but also in various regulations, including technical making procedure. Some regulations for government regulation in lieu of law (perpu) are regulated in the 1945 Constitution, and some are regulated outside the 1945 constitution. In fact, government regulation in lieu of law (perpu) does not only function to make new regulations and laws but make amendments to the law, revocation of the law, suspension of enactment of laws, and retroactive enforcement of laws. The many functions of government regulation

in lieu of law (perpu) indirectly give the President great authority. In contrast to the authority possessed by the President of South Korea, in a state of emergency, the President only has the authority to issue regulations (orders) that have the power of law, to change or eliminate laws, not for other purposes. However, if the regulation does not approve by the National Assembly, then the law that is amended or removed will automatically come into effect again. Thus, no need to wait for revocation.

In this book, the author also provides several suggestions, including the government regulation in lieu of law (perpu) that has been approved by the House of Representatives (DPR) does not need to be re-enacted because, in essence, the government regulation in lieu of law (perpu) comes into effect since it was stipulated. In its practice, this perpu comes into force on the date of its promulgation. Re-enacting the current government regulation in lieu of law (perpu) is a wasteful legal action. In addition, for legal certainty, it is better if the government regulation in lieu of law (perpu) which does not approve by the House of Representatives (DPR) is adjusted to the provisions governing the rejection of the emergency law. Hopefully, a sequel to this book will be released soon. This book is highly recommended for teachers of constitutional law, state administrative law, the science of legislation, government science, students, legal practitioners, and the general public as a reference. Don't miss it.

**Happy reading!**

***"There is absolutely no reason to hinder self-development. It is not others who determine our style, but ourselves who determine the direction of our journey in life."***

# CONSTITUTIONAL COURT

## TRIAL PROTOCOLS



IT IS OBLIGATORY TO WEAR MASKS, GLOVES, CHECK BODY TEMPERATURE, AND KEEP A DISTANCE



THE PARTIES CAN ATTEND THE HEARING THROUGH REMOTE OR VIRTUAL HEARING



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



SPRAYING DISINFECTANT ON ALL COURT FACILITIES AND INFRASTRUCTURE, INCLUDING THE COURTROOM, COURT WAITING ROOM, COURT RECORDING ROOM, TOILET, AND ALL EQUIPMENT.



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# Liquidation of the TNI/Polri Faction and No Commitment to Practical Politics

LUTHFI WIDAGDO EDDYONO

Constitutional Court Researcher

**A**rticle 2 paragraph (1) of the 1945 Constitution before the amendment to the 1945 Constitution reads, “*The People’s Consultative Assembly shall consist of members of the House of Representatives (DPR) augmented by delegates from regional territories and functional groups, in accordance with statutory regulations.*” Based on the article, the delegates from the groups received a relatively large portion, including the TNI/Polri faction, as part of the group delegations that in the era of the New Order regime was considered a political phenomenon. What is interesting to study is the faction’s view on the effort to revise the article on the MPR members?

If we look at the sequence of events in the *Comprehensive Manuscript on Amendments to the 1945 Constitution of the Republic of Indonesia, Background, Process, and Discussion Results from 1999-2002, Book V General Elections* (Jakarta: Secretariat General and the Registrar of the Constitutional Court); Revised Edition, July 2010), it was revealed that the next decision was made through the lobbying of the faction leader, the results of which were

reported at the 4th Commission A Meeting, August 8, 2002.

At the meeting, the Chairman of the Meeting, Jakob Tobing, reported the results of the previous lobbying related to Articles 2 paragraph (1), which is still an alternative, while Article 3 paragraph (2) is decided not necessary. The excerpt is as follows:

“*Article 2, Paragraph (1) Alternative 1, “The People’s Consultative Assembly shall consist of members of the House of Representatives (DPR) and members of the Regional Representative Council (DPD) who are chosen through general elections augmented by delegates from groups which are chosen by the House of Representatives (DPR) and further regulated by law.” Alternative 2, “The People’s Consultative Assembly consists of members of the House of Representatives (DPR) and members of the Regional Representative Council (DPD) who are chosen through general elections and further regulated by law.” Article 3, Paragraph (2), No need for this Paragraph.*”

Jakob Tobing further reported the formulation as Chairman of Commission A to the 5th Plenary

Session of the 2002 Annual Assembly of The People’s Consultative Assembly on August 9, 2002, which was chaired by the Chairman of The People’s Consultative Assembly (MPR), M. Amien Rais. Furthermore, at the 6th Plenary Session of the 2002 Annual Assembly of The People’s Consultative Assembly on August 9, 2002, the factions were given the opportunity to present their final decision.

On this occasion, the TNI/Polri faction’s important views on this crucial issue were emphasized. A spokesman for the TNI/Polri faction, H.E. Tatang Kurniadi, presented the opinion of his faction that there is a need for representation of a representative system through embedded elections.

“... in responding to Article 2 paragraph (1) on the composition of The People’s Consultative Assembly of the Republic of Indonesia (MPR RI), the TNI/Polri faction thinks that the spirit of the times requires the representation of a representative system through elections, which is the ideal norm in building democracy. Therefore, The People’s Consultative Assembly membership must be chosen through general elections. Concerning the TNI/Polri’s membership at the People’s Consultative Assembly, the

TNI/Polri agreed with the people's will to return to their natural state as a means of state defense and a means of state security.

The TNI/Polri faction is determined not to engage in practical politics and does not want to be placed as group delegates in the MPR Assembly. The TNI/Polri faction asks for the support of all Indonesian people so that they can carry out their duties as a means of state defense and security while still being able to guard the Indonesian nation to achieve its glory, keeping the unity and integrity of the nation for the sake of the establishment of the Unitary State of the Republic of Indonesia. The TNI/Polri faction believes that every citizen will have equal opportunities to exercise the right to vote and be elected through the General Election. It includes functional groups whose aspirations can be channeled through political and regional representation. In the absence of an appointed MPR membership, the spirit that must be built here is that the House of Representatives (DPR) and members of the Regional Representative Council (DPD), as well as the parties participating in the election, are obliged to increase their ability to absorb and fight optimally and be

more responsible for the aspirations of all levels of society, including functional groups, isolated ethnic groups, and a powerless people.”

The faction's final decisions were continued at the 6th Plenary Session of the 1<sup>st</sup> Continuation of the 2002 Annual Assembly of The People's Consultative Assembly on August 10, 2002. According to the Comprehensive Manuscript, this meeting was crucial to making decisions on the articles that had not been agreed upon, including Article 2 paragraph (1) and Article 29 paragraphs (1) and (2). Draft of the Fourth Amendment to the 1945 Constitution at the 6th Plenary Session of the 2nd Continuation of the 2002 Annual Assembly of The People's Consultative Assembly on August 10, 2002, was conducted in the lobby of the faction leaders. Article 29 was successfully agreed upon, but Article 2 paragraph (1) could not be agreed upon, despite various efforts. Finally, the decision on the alternative formulation of Article 2 Paragraph (1) of the Draft of the Fourth Amendment to the 1945 Constitution was made through voting at the 6th Plenary Meeting of the 3rd Continuation of the 2002 Annual Assembly of The People's Consultative Assembly on August 10, 2002.

Under the chairmanship of the meeting, M. Amien Rais, it was later discovered how the final results of the vote, especially in the TNI/Polri faction.

Here is a direct excerpt from the minute.

“Okay, now for the TNI/Polri faction that agrees with alternative 1, please stand up! None. And for the TNI/Polri faction that agrees with alternative 2, please stand up! Thirty-seven (37), thank you. The TNI/Polri faction that abstained? Only 37, None.”

All members of the TNI/Polri faction are united for one goal. History shows that the liquidation of the TNI/Polri in the MPR was apparently supported by their own faction based on a commitment not to engage in practical politics. Article 2 paragraph (1) of the 1945 Constitution then reads, *“The People's Consultative Assembly consists of members of the House of Representatives (DPR) and members of the Regional Representative Council (DPD) who are chosen through general elections and further regulated by law.”*

# The Existence of the Central Indonesian National Committee

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Based on article IV of the Transitional Provisions of the 1945 Constitution before the amendment, it is stated, *“Pending the establishment of the People’s Consultative Assembly, the House of Representatives and the Supreme Advisory Council in accordance with the Constitution, all their power shall be exercised by the President with the assistance of a National Committee.”* Therefore, The Central Indonesian National Committee (KNIP) was formed.

To elect representatives of the people who will become members of the Central Indonesian National Committee (KNIP), based on the Government Declaration of November 3, 1945, the government planned to hold elections in January 1946. Vice President Mohammad Hatta signed the Declaration, which reads as follows.

“In line with the proposal of the Central National Committee Working Committee to the Government, to give the widest possible opportunity to the people to establish political parties, with the restriction that these parties should strengthen our struggle to maintain independence and ensure the security of the people, the Government affirmed its position which was taken some time ago that: 1. The

government appreciates the emergence of political parties because these parties can make it possible for all ideologies that exist in society can be regulated.

2. The government hopes these parties will be formed before the elections for members of the People’s Legislative Assembly, which is held in January 1946.”

However, due to difficult circumstances, the plan for the general elections cannot be done. But, based on the “Decision of the Plenary Meeting of the Central National Committee on March 3, 1946; in Surakarta; Government Regulation Number 2 of 1946; Article 5 paragraph 1, Article 20 paragraph 1, Transitional Provisions Article IV of the 1945 Constitution and the Declaration of the Vice-President of the Republic of Indonesia No. X October 16, 1945”, the President approved by the Central National Committee Working Body issued LAW OF THE REPUBLIC OF INDONESIA NUMBER 12 of 1946 ON REORGANIZATION OF THE CENTRAL NATIONAL COMMITTEE. The law was enacted in Yogyakarta on July 8, 1946.

It consists of 21 articles; Law 12/1946 stipulates, *“The members of the Central National Committee consisting of 200 people, which are divided into: a. 110 people determined by regional elections; b. 60 representatives of political organizations, and c. 30 people*

*appointed by the President. 2. The division into groups applies only to the establishment.”* (Article 1). Article 14 explained that *“Those who are not allowed to become members of the Central National Committee are: the President, the Vice President of the Republic of Indonesia; Ministers, Deputy Ministers, Director-General and Secretary of a Department; Secretary of State; Chairman, Deputy Chairperson, and Members of the Supreme Advisory Council; Chief Justice and Judge of the Supreme Court; Chief Justice of the High Court; Attorney General; President and Vice President of Bank Negara Indonesia, Governor; High Commissioner, Resident; Soldiers in the Army with the rank of Colonel and above.”*

The interesting thing in Article 17, Paragraph (1) is stated that *“to organize the establishment of a new Central National Committee by the President, a committee called the Central Indonesian National Committee was established.”* Article 17 paragraph (2) stipulates that the *“Central Indonesian National Committee is based in Yogyakarta and has branches in each residency in Java and Sumatra and at the governor level for Borneo and Maluku, and the areas of Sulawesi and Lesser Sunda is placed based on the opinion of the members of the Central Indonesian National Committee.”* Paragraph (3) stipulates

that “The members of the Central Indonesian National Committee are appointed by the President, and the branch members of the Central Indonesian National Committee are appointed by the Resident or Governor concerned.”

The Transitional Provisions of this Act stipulate, “The former Central National Committee was dismissed upon the inauguration of the New Central National Committee, which is regulated by law.”

As precisely described by the *Comprehensive Manuscript on Amendments to the 1945 Constitution of the Republic of Indonesia, Background, Process, and Discussion Results from 1999-2002, Book V General Elections* (Jakarta: Secretariat General and the Registrar of the Constitutional Court); Revised Edition, July 2010), in this law, it is stated that the election committee from the central and regional level will be established. This committee will be in charge of holding elections to elect 110 KNIP members. At the national level, the name of this agency is the Central National Committee, which is often referred to as BPS, while at the regional level, it is called the Branch of the Central National Committee. BPS was established and appointed by the President and based in Yogyakarta, with the main task of reorganizing KNIP membership.

BPS members consist of 10 people, including one concurrently

Chairman and one concurrently Vice-Chairman. The ten BPS members are Soepeno from PSI (Chairman of concurrently a member), Mr. Soejono Hadinoto Brotokoesoemo from the Indonesian People’s Sovereignty Party (Vice-Chairman and concurrent member), Boerhanoeddin Harahap from Masjumi, Sjamsoedin Soetan Makmoer from the PNI, R.A.J. Djoepri Nitimihardjo from the Catholic Party, Soetomo from the Indonesian Youth Congress Agency, Moechasim Hadiprabowo from the Lesser Sunda Region, A. Tahya from Maluku, Manai Sophiaan from Sulawesi, and Goesti Abdoel Moeis from Kalimantan. According to the *Comprehensive Manuscript*, BPS members are representatives from political parties and regional territories. Vice President Mohammad Hatta appointed BPS members on September 16, 1946.

Further, according to the *Comprehensive Manuscript*, to support the performance of BPS, the government established an Election Office with Government Regulation No. 10 of 1946. This Election Office is responsible for election administration, holding BPS meetings, compiling reports on the implementation of elections, printing BPS necessary items, making announcements, and managing archives. The Election Office is headed by a secretary appointed and dismissed by the Chief of BPS. The duties of the BPS Branch are to lead and supervise

the election (registration) of voters in their area and hold elections for KNIP members. The number of members may vary from region to region, but the structure is the same as the national BPS, including a chairman, a vice-chairman, and several members. The Chairman and vice-chairman are also members. They are appointed and dismissed by the President or Governor. In order to support the tasks of the BPS Branch Office, a Branch of Elections Office was established, whose duties are similar to those of the Central Election Office, including managing the implementation of elections in their respective regions.

In 1948, the BPS institution and all organizations under it, both at the central and regional levels, were dissolved through Presidential Decree Number 28 of 1948. Further developments, as described in the *Comprehensive Manuscript*, Law Number 27 of 1948 on the Preparation of the House of Representatives and the election of its members, were enacted. This law states that the House of Representatives (DPR) members are chosen through elections from the central to the regional levels. In order to carry out these elections, Election Office from the central to the sub-districts levels was established. However, the election of DPRD members is regulated separately, the implementation of which does not coincide with the election of DPR members.



# THE IMPACT OF DKPP'S DECISION AS THE ELECTION ORGANIZERS

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As a country that adopts a democratic system, the highest sovereignty rests with the people. The embodiment of popular sovereignty is conducted through direct, general, free, confidential, honest, and fair general elections. As mandated by the 1945 Constitution, general elections are carried out by election organizers who have high integrity and understand and respect citizens' civil and political rights. The organizers of this general election are national, permanent, and independent in accordance with Article 22E Paragraph (5) of the 1945 Constitution, which constantly carries out its duties. One indicator of the success of the general elections lies in the readiness and professionalism of the election organizers themselves, including the General Elections Commission (KPU), the General Election Supervisory Body (Bawaslu), and the Honorary Council for General Election Organizers (DKPP) are an integral part of the electoral functions, which have their respective functions, duties, and authorities.

As an election organizer, the General Elections Commission (KPU) is free from any party's influence in implementing its duties and authorities. The implementation of honest and fair elections is one of the

important factors for the election of people's representatives who are more qualified and able to voice people's aspirations. Therefore, as the election organizer, the General Elections Commission (KPU) must have integrity and be national, permanent, and independent. The national character, in this case, is reflected in the KPU's working area and its responsibilities as election organizers covering the entire territory of the Unitary State of the Republic of Indonesia (NKRI). Furthermore, the permanent nature shows the KPU as an institution that carries out its duties continuously even though a certain term of office limits it. Meanwhile, the independent nature confirms that the KPU is free from any party's influence in elections.

The next election organizer is the General Election Supervisory Body (Bawaslu), which is responsible for overseeing the implementation of elections throughout the territory of the Republic of Indonesia. The General Election Supervisory Body (Bawaslu) supervises the implementation of elections in the context of prevention and prosecution for the realization of democratic elections. The General Election Supervisory Body has the authority to oversee the implementation of the election stages, receive complaints, and handle cases of administrative

violations, election crimes and violations, and codes of ethics. The General Election Supervisory Body membership consists of individuals who can supervise the implementation of elections.

In carrying out their duties, the General Elections Commission (KPU) and the General Election Supervisory Body (Bawaslu) are supervised by the Honorary Council for General Election Organizers (DKPP). Thus, the Honorary Council for General Election Organizers (DKPP) is an institution in charge of dealing with violations of the election organizers' code of ethics. DKPP is devoted to checking and balancing (check and balance) the performance of the KPU, Bawaslu, and their staff. Furthermore, DKPP is responsible for handling complaints and/or reports of alleged violations of the code of ethics committed by election organizers. Philosophically, DKPP was previously named the Honorary Council of the General Elections Commission (DK KPU) in 2008. The DK KPU is an ethical institution that functions through Law Number 22 of 2007 on General Election Organizers to resolve the issue of violations of the code of ethics for organizers. However, the DK KPU did not have strong authority at that time. The DK KPU served to summon, examine, adjudicate, and

try to provide recommendations to the KPU and was ad hoc in nature.

The authority of DK KPU was not strong enough because, from the competency perspective, the DK KPU membership is relatively good; however, from the structural aspect, it is not balanced because election organizers dominate it. On its journey, the DK KPU provides changes and new hopes for the public related to violations of the election organizers' code of ethics. From this good achievement, the political elite (Government, DPR, the judiciary, and election monitoring institutions) agreed to improve the capacity of authority and ensure that this institution is established, but with the expansion of its authority not only to handle the KPU and Bawaslu's code of ethics at each level, which resulted in the Honorary Council for General Election Organizers (June 12, 2012) based on Law Number 15 of 2011 on the General Election Organizer (UU 15/2011). Therefore, DKPP is present in the context of realizing the General Elections Commission (KPU) and the General Election Supervisory Body (Bawaslu) with integrity and credibility as election organizers.

In its development, the presence of the DKPP is considered to have caused various problems, among others, as proposed by a *judicial review* to the Constitutional Court against the constitutionality review of Article 28 paragraph (3) insofar as the phrase "In the plenary meeting, DKPP decides on the dismissal of members as referred to in paragraph (1)", Article 28 paragraph (4) insofar as the phrase "the decision making as referred to in paragraph (3) by the DKPP shall be further regulated by the DKPP Regulation", Article 100 paragraph (4) along with the phrase "In the event of the plenary meeting,

DKPP decides on the dismissal of members as referred to in paragraph (1) and paragraph (2)," Article 101 paragraph (1) insofar as the phrase "the decision making by the DKPP as referred to in Article 100 is further regulated by the DKPP Regulation", Article 112 paragraph (9) along with the phrase "DKPP determines the decision", Article 112 paragraph (10) insofar as the phrase "The decision of DKPP", Article 112 paragraph (12), Article 112 paragraph (13) along with the phrase "must implement DKPP's decision", and Article 113 paragraph (2), which reads "Decision making" Law 15/2011. The Constitutional Court has decided on the constitutional review of the a quo articles through Decision of the Constitutional Court Number 31/PUU XI/2013, dated April 3, 2014.

### **Constitutional Court Decision Number 31/PUU-XI/2013**

In the Decision of the Constitutional Court Number 31/PUU-XI/2013, dated April 3, 2014, the Petitioner was Ramdansyah, S.S., S.Sos., S.H., MKM., as an individual Indonesian citizen who previously worked as Chairman and Member of the General Election Supervisory Committee (Panwaslu) in the DKI Jakarta Regional General Elections who handled the Legal Sector and Handling Violations felt that his constitutional rights had been harmed due to the enactment of the norms of Law 15/2011 and created legal uncertainty because it negates the authority of the guidance and supervision of the KPU and Bawaslu on

- Article 28 paragraph (3), along with the phrase "In the case of a plenary meeting DKPP decides to dismiss members as referred to in paragraph (1)"

- Article 28 paragraph (4) insofar as the phrase "the decision-making as referred to in paragraph (3) by DKPP is further regulated by DKPP Regulation";
- Article 100 paragraph (4) along with the phrase "In the case of a plenary meeting," DKPP decides on the dismissal of members as referred to in Paragraph (1) and Paragraph (2)";
- Article 101 paragraph (1) as long as the phrase "decision making by DKPP as referred to in Article 100 is further regulated by DKPP Regulation";
- Article 112 paragraph (9) along with the phrase "DKPP makes a decision";
- Article 112 paragraph (10) along with the phrase "DKPP's Decision";
- Article 112 paragraph (12), Article 112 paragraph (13) insofar as the phrase "must implement DKPP's decision";
- and Article 113 paragraph (2) along with the phrase "Decision making" contrary to Article 1 paragraph (3), Article 22E paragraph (1) and Paragraph (5), and Article 28D paragraph (1) of the 1945 Constitution.

According to the Petitioner, the enactment of the articles concerning the issue of constitutionality in question by the Petitioners, the constitutional problems experienced by the Petitioners are as follows:

1. The Petitioner loses the constitutional right to become a general election organizer because the decision of DKPP permanently dismisses the Petitioner from the membership of the General Election Supervisory Committee (Panwaslu) in the DKI Jakarta

Regional General Elections and has been followed up with the dismissal as a member and Chairman of the General Election Supervisory Committee (Panwaslu) in the DKI Jakarta by Bawaslu. In fact, previously, the Petitioner's performance received positive feedback and recognition from various groups;

2. The Petitioner has difficulty in becoming an instructor because always associated with the Decision of DKPP;
3. The decision of the DKPP disrupts the performance of General Election organizers, including the General Election Supervisory Body (Bawaslu), the General Election Commission (KPU), and their staff, who ultimately may harm or at least delay the implementation of the General Election and create legal uncertainty on the duties and authorities of the General Election Supervisory Body (Bawaslu), the General Election Commission (KPU), and their staff.

In its legal considerations, the Court first considers matters as follows:

- a. Article 22E paragraph (5) of the 1945 Constitution reads, "The general elections shall be organized by a general election commission that shall be national, permanent and independent in nature";
- b. Concerning the interpretation of the phrase "a general election commission" as contained in Article 22E Paragraph (5) of the 1945 Constitution, the Court, in the legal considerations of Paragraph [3.18] Court Decision Number 11/PUU VIII/2010, dated March 18, 2010, among other things, stated that:
 

" . . . In order to ensure the

implementation of general elections that adopt the principles of direct, general, free, confidential, honest, and fair, Article 22E Paragraph (5) of the 1945 Constitution stipulates that "The general elections shall be organized by a general election commission that shall be national, permanent and independent in nature." The phrase "a general election commission" in the 1945 Constitution does not refer to an institution's name but refers to the function of organizing general elections that are national, permanent, and independent. Thus, according to the Court, the function of organizing general elections is not only carried out by the General Elections Commission (KPU), but also includes the general election supervisory agency, in this case, the General Elections Supervisory Body (Bawaslu) as a unitary function of organizing general elections that are national, permanent, and independent. This definition is more in line with the provisions of the 1945 Constitution, which mandates the existence of an independent general election organizer to be able to hold general elections that meet the principles of direct, general, free, confidential, honest, and fair. Organizing general elections without supervision by an independent institution will threaten the principles of direct, general, free, confidential, honest, and fair elections. Therefore, according to the Court, the General Elections Supervisory Body (Bawaslu), as regulated in Chapter IV Article 70 to Article 109 of Law 22/2007, must be defined as a general election organizer responsible for supervising the implementation of general elections, so that the function of organizing general elections is carried out by the element of an organizer, in this case, the General Election Commission (KPU), and the general election supervisory element, in this case, the General Elections

Supervisory Body (Bawaslu). In fact, the Honorary Council overseeing the performance of the general election organizers must also be interpreted as an institution that is an integral part of the function of organizing general elections. Thus, the independence of the general election organizers is real and clear...."

Based on these considerations, it is clear that the Honorary Council for General Election Organizers (DKPP) is an organization that is an integral part of the function of organizing the General Election as referred to in Article 22E Paragraph (5) of the 1945 Constitution, which supervises the performance of the general election organizers.

Furthermore, according to the Court, Article 24 Paragraph (2) of the 1945 Constitution reads, "*The judicial powers shall be carried out by a Supreme Court and by its subordinate judicatory bodies dealing with general, religious, military, state administrative judicial fields, and by a Constitutional Court.*" Meanwhile, Article 24A paragraph (5) of the 1945 Constitution reads, "*The organization, authority, membership, and judicial procedures of the Supreme Court as well as of its subordinate judicatory bodies shall be regulated by law.*" The meaning of the phrase "*regulated by law*" in Article 24A paragraph (5) of the 1945 Constitution means that the establishment of a judicial body under the Supreme Court has to do with the Act. Meanwhile, Article 27 of Law 48/2009 reads:

- (1) A special court may only be established in one of the judicial environments under the Supreme Court, as referred to in Article 25.
  - (2) Provisions concerning the establishment of a special court, as referred to in Paragraph (1), shall be regulated by law.
- Furthermore, in the Elucidation

of Article 27 paragraph (1) of Law number 48 of 2009 stated, *“That which is meant by ‘special courts’ are, juvenile courts, commercial courts, human rights courts, anti-corruption courts, industrial relations courts, and fishery courts within the public courts, and tax courts within the state administrative courts.”*

Based on the above provisions, the judiciary in Indonesia consists of the Supreme Court and its subordinate judicatory bodies dealing with public, religious, military, state administrative judicial fields, and a Constitutional Court. The Honorary Council for General Election Organizers (DKPP) is excluded from a special court that is included in one of the judicial fields under the Supreme Court as intended by Article 24 paragraph (2) of the 1945 Constitution and Article 27 paragraph (1) of Law 48/2009 and are not included as one of the actors of judicial authority as referred to in Article 24 paragraph (2) of the 1945 Constitution. This has also been confirmed in one of the considerations in the Court Decision concerning the dispute over general election results (PHPU), in paragraph **[3.18.1]** Decision Number 115/PHPU.D-XII/2013, dated October 1, 2013 (Tangerang City Regional Head Election) which stated, *“DKPP is a state administrative organ which is not a judicial institution as referred to in Article 24 of the 1945 Constitution which has independent authority to enforce law and justice.”*

Article 1, number 22 of Law 15/2011 states, *“The Honorary Council for General Election Organizers, hereinafter abbreviated as DKPP, is an institution responsible for handling violations of the General Election Organizer’s code of ethics and is an integral part of the function of organizing the General Election.”* Furthermore, Article 109 paragraph (2) of Law 15/2011 states,

*“The Honorary Council for General Election Organizers (DKPP) was established to checking, reviewing, follow up and decide on complaints and/or reports of alleged violations of the code of ethics committed by KPU members, Provincial KPU members, Regency/Municipal KPU members, PPK members, PPS members, PPLN members, KPPS members, KPPSLN members, Bawaslu members, Provincial Bawaslu members and Regency/Municipal Panwaslu members, sub-district Panwaslu members, On-field Election Supervisors, and Overseas Election Supervisors.”* Based on this provision, according to the Court, the object of the case handled by DKPP is limited to an official or general election organizer’s personal or individual behavior (ethics). The existence of DKPP as an ethical institution that handles violations of the code of ethics committed by election organizers is necessary for an effort to oversee the implementation of direct, general, free, confidential, honest, and fair general elections.

Concerning the authority to dismiss election organizers, it has been regulated in the provisions of Article 27 paragraph (4) of Law 15/2011 for members of KPU, Provincial KPU, and Regency/Municipal KPU, Article 41 paragraph (2) of Law 15/2011 for PPK members, Article 44 paragraph (2) of Law 15/2011 for PPS members, Article 48 paragraph (3) of Law 15/2011 for PPLN members, Article 46 paragraph (2) of Law 15/2011 for KPPS members, Article 50 paragraph (2) of Law 15/2011 for KPPSLN members, and Article 99 paragraph (3) of Law 15/2011 for Bawaslu members, Provincial Bawaslu, Regency/Municipal Panwaslu, Sub-district Panwaslu, On-field Election Supervisors, and Overseas Election Supervisors. Based on the articles

above, administratively, the official authorized to appoint and dismiss the general election organizers is the President if it is related to the General Elections Commission (KPU) and the General Election Supervisory Body (Bawaslu) members; the General Elections Commission (KPU) if it is related to Provincial KPU members, PPLN members, and KPPSLN members; Provincial KPU if it is related to Regency/Municipal KPU members; Regency/Municipal KPU if it is related to District Election Committee (PPK) members, Voting Committee (PPS) members, and KPPS members; General Election Supervisory Body if it is related to members of Provincial Bawaslu, Regency/Municipal Panwaslu, Sub-district Panwaslu, On-field Election Supervisors, and Overseas Election Supervisors. DKPP itself has the authority to decide on the dismissal of general election organizers only if DKPP has checked, reviewed, and/or verified the complaints, listened to the defense and statements of witnesses, and paid attention to the evidence submitted regarding alleged violations committed by general election organizers, as long as they are related to violations of the code of ethics committed by general election organizers [vide Article 111 of Law 15/2011]. According to the Court, DKPP has the authority to decide on whether or not there is a violation of the code of ethics committed by the general election organizers, along with the sanctions that can be imposed on the general election organizers without being influenced by any institution, including the President, KPU, and Bawaslu. This is a form of independence of the DKPP as one of the institutions that carry out the function of organizing general elections.

Law 15/2011 authorizes DKPP to

decide on imposing sanctions on the general election organizers if, during the examination process by DKPP as regulated in the law of general election organizers, it is proven that they have violated the election organizer code of ethics.

The sanctions can be in the form of a written warning, temporary dismissal, or permanent dismissal. According to the Court, DKPP decides the sanctions, which are sanctions for violating the code of ethics committed by officials or individuals of election organizers. Further, the decision of the DKPP is final and binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu. Thus, the follow-up to DKPP decisions made by the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu are decisions of state administrative officials (TUN), who carry out government affairs in accordance with a statutory regulation that is individual, tangible, and final. Therefore, only the decisions of the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu can be the object of a lawsuit in the State Administrative Courts.

Based on the considerations of the Court above, the decision of the DKPP, which is final and binding as referred to in Article 112 paragraph (12) of Law 15/2011, may create legal uncertainty whether the final and binding referred to in the Law are the same as the final and binding decision of the judiciary. In order to avoid legal uncertainty over the existence of this provision, the Court must emphasize that the final and binding decision of the DKPP cannot be equated with the final and binding decision of the judiciary in general

because the DKPP is an internal election organizer authorized by law. The final and binding nature of the DKPP's decision must be interpreted as final and binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu in implementing DKPP decisions. The decisions of the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu are individual, tangible, and final decisions of State Administrative officials, which can be the object of a lawsuit in the State Administrative Courts. Will the State Administrative Courts examine and reassess the decision of the DKPP, which is the basis for the decision of the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu? This is the authority of the State Administrative Courts. Therefore, the final and binding decision referred to in the a quo Law must be interpreted as final and binding for the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu implementing the DKPP Decision.

Because the point of the Petitioners' petition on the DKPP Decision, which is final and binding, has been given a certain meaning by the Court so that it does not eliminate the final phrase and binding entirely. Thus, with respect to the Petitioner's petition on Article 28 paragraph (3) which reads, *"In the event that the plenary meeting of DKPP decides on the dismissal of members as referred to in paragraph (1)"*, Article 28 paragraph (4) insofar as the phrase *"the decision making" as referred to in Paragraph (3) by DKPP is further regulated by DKPP Regulation,* Article 100 paragraph (4) which

reads, *"In the event that the plenary meeting of DKPP decides on the dismissal of members as referred to in paragraph (1) and paragraph (2),"* Article 101 paragraph (1) insofar as the phrase *"decision making by DKPP as referred to in Article 100 shall be further regulated by DKPP Regulation,"* Article 112 paragraph (9) insofar as the phrase *"DKPP determines the decision,"* Article 112 paragraph (10) along with the phrase *"DKPP's decision,"* Article 112 paragraph (13) insofar as the phrase *"must implement the DKPP's decision"*, and Article 113 paragraph (2) insofar as the phrase *"Decision-making"* Law 15/2011 is no longer relevant for consideration, so it is not legally grounded.

Thus, the phrase *"final and binding"* in Article 112 paragraph (12) of Law 15/2011 is contrary to the 1945 Constitution and has no legal binding as long as it is not interpreted, *"The decision as referred to in paragraph (10) is final and binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu."* Therefore, the Petitioners' argument is legally grounded in some parts.

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

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# HAGIA SOPHIA

and

## Friendship between the Constitutional Court of the Republic of Indonesia and the Constitutional Court of Turkey



**Immanuel B.B. Hutasoit**

*Head of Subdivision for Foreign Cooperation*

“Promoting a dignified life for all humanity and peaceful coexistence between religions and beliefs.”

(Bandung Declaration on Human Rights and Constitutionalism, September 17, 2021)

**H**agia Sophia is a magnificent building in a beautiful country. This description comes to mind when imagining the great grand mosque in the heart of Istanbul, Turkey. This place of worship is a magnet that brings millions of people to pray or simply enjoy a calm and peaceful atmosphere in a place that is filled with spiritual nuances.

Based on its history, after the fall of the Byzantine Empire in 1453, the Ottoman Empire converted Hagia Sophia into a mosque when it was originally a church. However, the name Hagia Sophia is preserved by Sultan Mehmed II, the Ottoman emperor. Hagia Sophia or in Turkish, is called Ayasofya, meaning “holy wisdom” or “divine wisdom.” Based on that deep meaning, the Ottoman emperor declared that the “God that Christians and Muslims worship are the same God” (Hagia Sophia from the Age of Justinian to the Present (1992: 201) by Robert Mark and Ahmet S. Cakmak). Therefore, the name of the building remains the same when it was a church or converted into a mosque.

When it was converted into a mosque in the era of Mehmed II, the Ottomans covered many of the original Orthodox-themed mosaics and images of Christ. This is interesting because the mosaics and paintings were not vandalized or destroyed by the Ottoman Empire. The structure of the Hagia Sophia experiences a touch of Islamic architecture. Mihrab and four minarets were added partly for religious purposes (for the muezzin call to prayer) during the Ottoman period and functioned as a mosque for 482 years.

After the fall of the Ottoman Empire and the Republic of Turkey was established in 1923, the function of Hagia

Sophia changed again. Mustafa Kemal Ataturk, the first president of Turkey, converted it into a museum. In the renovation process, the ancient mosaics in this building were restored, and the covers opened. Thus, the Christian ornaments, imagery, and paintings of the Virgin Mary are lined up with calligraphy of Allah and The Prophet Muhammad (SAW) on the main site of the Hagia Sophia.

In 1985 the Hagia Sophia was designated a UNESCO World Heritage site component. In July 2020, the Turkish Council of State annulled the 1934 decision to establish the museum, and the Hagia Sophia was reclassified as a mosque.

I can’t imagine the Hagia Sophia’s “journey of life.” It underwent three times change in status in the span of quite a long time. If personified as a living figure, Hagia Sophia must have experienced many things in life.

### Indonesia – Turkey

Turkey and Indonesia have a close relationship. Both countries have the largest number of Muslims, but they also do not choose the form of a religious state as their government system. The difference is that Turkey gives a firm line by properly separating religion from state, often known as a secular state. Meanwhile, even though Indonesia is not a religious state, the values of divinity and religion are an integral part of the nation’s philosophy, namely Pancasila.

Perhaps, this similar perspective makes the Constitutional Court of the Republic of Indonesia and the Constitutional Court of Turkey closely related. Personally, both of them understand very well the values of Islam,

justice, human rights, and democracy that need to be upheld.

The Constitutional Court of the Republic of Indonesia and the Constitutional Court of Turkey support each other in many areas, including the global Constitutional Court forum. At the Association of Asian Constitutional Courts (AACC), the Constitutional Court of the Republic of Indonesia (MKRI) was the President of the Association elected in 2014 – 2017. The Constitutional Court of the Republic of Indonesia (MKRI) was the successor of the Constitutional Court of Turkey that was elected in 2012 – 2014.

In the process of strengthening the organization that requires a permanent Secretariat of the AACC, the Constitutional Court of the Republic of Indonesia and the Constitutional Court of Turkey support each other as well by sharing roles as Secretariat of Planning and Coordination in Jakarta and Training Center in Ankara.

The two Constitutional Courts are also known to support each other in collective decision-making at the AACC. At the last meeting of the Secretary-General in March 2022, the two Constitutional Courts had the same vote to reject the amendments to the statutes relating to the presidential term at the AACC. The two Secretary Generals were eager to support the reasons and ideas proposed on behalf of the two Courts.

In other forums, the Constitutional Court of the Republic of Indonesia and the Constitutional Court of Turkey has also become the driver of the establishment of a forum for the Constitutional Court in the member states of the Organization of Islamic Cooperation (OIC),

which is known as the Conference of Constitutional Jurisdiction of OIC Member States (CCJ-OIC) which was established through the Bandung Declaration in September 2021. The Bandung Declaration resulted in many agreements, including the establishment of an independent forum for constitutional courts in the OIC Member States to exchange experiences and information on mutual concerns relating to dealing with constitutional cases and jurisprudence for the promotion of the rule of law, democracy, and human rights;

At the conference with the theme of “Human Rights and Constitutionalism: The Contribution of Judiciary of Muslim Countries,” Chief Justice of the Constitutional Court of the Republic of Indonesia, the Constitutional

Court of Turkey, and the Heads and Representatives from 38 Constitutional and Supreme Courts/Councils and Equivalent Institutions of the OIC Member/Observed States, guest courts, and international institutions participated in the conference. The conference presented an opportunity





to engage and share knowledge, experiences, and best practices relating to constitutional cases for the promotion of human rights, constitutionalism, and democracy, notably the Role of the Judiciary to Promote Humanity and Democracy; and the Protection of Social, Economic, and Cultural Rights; as well as Civil and Political Rights in a Pluralistic Society.

The close friendship between the Constitutional Court of the Republic of Indonesia and the Constitutional Court of Turkey is succeeded in building a partnership of CCJ-OIC. After the meeting held in Bandung in 2021, this year, the Constitutional Court of Turkey will host the inauguration planned for December 2022 in Istanbul.

The close relationship between the two Constitutional Courts does not stop in regional forums (Asia) and Organization of Islamic Cooperation (OIC) forums. The Constitutional Court of the Republic of Indonesia and the Constitutional Court of Turkey are also known to be close to each other at the World Conference on Constitutional Justice (WCCJ).

In 2017, during the selection of Asian representatives in the WCCJ's Bureau, the Constitutional Court of Turkey actually submitted itself together with the Constitutional Court of Korea. However, due to the sense of togetherness, mutual cooperation, and the spirit of deliberation, the Constitutional Court of Turkey convinced the Constitutional Court of Korea to stop the "competition" between them and jointly encourage the Constitutional Court of the Republic of Indonesia to become Asian representative in the WCCJ Bureau.

In the WCCJ forum, the Constitutional Court of Turkey is also one of the Constitutional Courts that

supports and encourages the Constitutional Court of the Republic of Indonesia to host the 5th WCCJ Congress, scheduled for October 2022.

Due to the close relationship between the two Courts, it is very well known that the Chief Justice of the Constitutional Court of Turkey is a partner who often visits Indonesia and vice versa, the Chief Justice of the Republic of Indonesia and other delegates also often visit Ankara or Istanbul.

### **Hagia Sophia**

The close friendship between the two Courts is interesting and important to observe. Perhaps the spirit of divine wisdom (Hagia Sophia) has indeed enveloped the relationship between the Constitutional Court of the Republic of Indonesia and the Constitutional Court of Turkey.

One thing is certain in the Bandung Declaration signed on September 17, 2021, the heads of the Constitutional Court of the Republic of Indonesia and the Constitutional Court of Turkey agreed to jointly declare commitment to ensure the rule of law and work against the widespread xenophobic and Islamophobic discourse and practice, as well as terrorism, which undermines the principles of the rule of law.

The Constitutional Court of the Republic of Indonesia and the Constitutional Court of Turkey agreed to promote dignified life for all humanity and peaceful coexistence between religions and beliefs.

May this Divine Wisdom (Hagia Sophia) always inspire and surround the lives of the people of the constitutional court of the Republic of Indonesia from today to the future.



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# THE COURT IS NOT SACRED

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**I**t is very interesting to review an article written by a Kompas journalist on April 10, 2022, titled “The Court That Is Not ‘Sacred’ Anymore.” The first question that pops out in our minds is why the Constitutional Court (MK) is associated with the sacred character. Is this sacred impression arise due to the unique architectural style of the Constitutional Court building with its nine large

pillars and its various courtrooms that feel “alive”?

Etymologically, “the Great Indonesian Dictionary” or “*Kamus Besar Bahasa Indonesia*” (*KBBI*) defines the word “sacred” in two. First, “sacred” is defined as holy and can do something beyond the ability of ordinary humans because of their piety to God (about pious people). Second, “sacred” can also be interpreted as holy and bring good luck and magical and psychological effects to other parties (about sacred objects or places).

Of course, the use of the term “sacred” in the article is only a connotation or a figure of speech. The journalist intended to describe that now the Constitutional Court is no longer a “sacred” place that can only be visited by elites or well-known advocates who often go back and forth to examine cases and argue during the trial process at the Constitutional Court.

The sacredness is considered weakened because certain professional groups no longer dominate the trial in the Constitutional Court. However, recently ordinary citizens, such as honorary teachers, public transportation drivers, and small restaurant owners, have also made the courtroom at the Constitutional Court an arena for fighting for their constitutional rights.

### Petition Clarity

The more widespread and varied groups of the general public who review the law to the Constitutional Court can be interpreted, the better the level of awareness

of the constitution of the people nowadays. Moreover, some Petitioners have reviewed the law without being accompanied by a legal representative. This practice has actually been going on for a long time.

Thirteen years ago, for example, a student guardian named Fathul Hadie Uthman, without being represented by a legal representative in the review of laws at the Constitutional Court, became the driving force that was showing concern over the government’s reluctance to allocate 20% of the state and regional budget for education. In the end, the Indonesian Teachers Association (PGRI) reviewed the APBN Law to the Constitutional Court in the following years.

Another example that occurred twelve years ago, Marten Boiliu, a security officer, reviewed the Manpower Law, which stipulates the expiration of the payment of labor wages after the two-year period has passed. According to him, this provision is unfair and contradicts Article 28D of the 1945 Constitution. The reason is that Marten and other employees were dismissed from their companies and were not given severance pay only because compensation claims were filed three years after being laid off. Marten managed to convince the Panel of Judges without being represented by a legal representative, so the expiry date was canceled. As a result, Marten and all workers and employees wherever they work are now no longer bound by provisions that are considered not to provide a sense of justice.

However, there is some review of laws proposed by the general public without being represented by a legal representative that the Constitutional Court did not accept because the formal requirements were not met. For example, many petitioners for review of laws are nonexperts about the law. They have never had a trial at the Constitutional Court. Apparently, They do not understand the difference between legal position and *posita*, which are a mandatory part of the petition. In fact, there is also a petition that in the *petitum* actually demands that the Petitioner has a salary and facilities at the level of the Minister. The reason is that the Petitioner’s expertise in the petition can help the Government improve the substance of the law.

The ambiguity of some of the petitions for review of laws has raised questions and criticism from members of

the House of Representatives (DPR), who often attend the Constitutional Court session. According to them, Laws that are made very seriously seem to be considered rules that can be easily reviewed by anyone who is not competent.

For some petitioners, judicial review is also often used as a trial and error or just to practice legal practice before actually entering the profession as an advocate. As a result, the quality and dignity of the trial in the Constitutional Court are considered lessened because the Panel of Judges hears petitions that have been known to be unclear from the start.

The problem is that the Constitutional Court is also subject to the *ius curia novit* principle; that is, judges are considered to know all the laws. Thus, the court cannot refuse the petition to be examined, adjudicated, and decided. It is possible that the petition systematically does not comply with the guidelines set out in the Constitutional Court Regulations, but substantially there are serious constitutional issues that need to be investigated.

### **Pro Bono Attorney**

The Constitutional Court's policy to not require the Petitioner to be represented by a legal representative has been implemented since its first time of establishment. Jimly Asshiddiqie, the then Chief Justice of the Constitutional Court, considers this liability because the Constitutional Court as a body guarding the constitution must be open to every layer of society who will fight for their constitutional rights. Besides, not all citizens have access to and the ability to contact or ask for assistance from a legal representative, in particular financially.

Suppose we use a perspective of comparative study. In that case, not all Constitutional Courts in other countries provide legal standing for individual citizens to review laws in their country. The judicial review must be submitted through a state institution with authority to do so. The difference is that submitting the petition on behalf of a new individual is possible when it comes to constitutional complaints cases, an important authority not possessed by the Constitutional Court of the Republic of Indonesia.

On the one hand, the Constitutional Court, which is no longer sacred, can be interpreted as a positive thing

because people from various backgrounds and professions can fight for their rights within the framework of the constitution. On the other hand, many petitions are considered formally inadequate or just have a simple non-constitutional issue, contributing to the low quality of the trial and the weight of the debate in the Constitutional Court.

In order to overcome these problems and to maintain the dignity and quality of the trial in the Constitutional Court, it is better in the future to start the discourse on requiring the assistance of legal counsel for the petitioners. This can at least minimize the petition that is made arbitrarily by the Petitioner outside the guidelines that have been made. Therefore, the petitioners are also not burdened with financial problems. The Constitutional Court can provide a list of legal aid organizations or advocates willing to provide legal assistance at the Court for free (*pro bono*). In this context, some advocacy organizations have recommended that advocates provide free legal assistance for at least 50 (fifty) working hours each year. The trial in the Constitutional Court can, of course, also be a form of "devotion" for advocates.

However, in order not to be judged as having a conflict of interest, of course, it must be firmly and clearly regulated that the Constitutional Court does not totally recommend legal aid organizations or certain advocates but only provides a list that the prospective petitioners freely choose. Henceforth, these prospective petitioners can contact and consult directly, starting from the preparation of the petition and court proceedings to the question of the petition's substance. Hence, the Constitutional Court staff responsible for the petition does not need to be bombarded with substantive questions from the prospective petitioners due to their own ignorance of the constitutional issues they submitted.

Therefore, the Court can still maintain its inclusive institutional nature, not "sacred," and open to all levels of society who wish to file a petition. However, the petition can also still maintain its formality and clarity. So, the Court will also be able to examine these matters more effectively and efficiently.

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## Understand Your Constitutional- Rights

