

# Authority Limits of Minister of Finance In Appointing Tax



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# CONSTITUTIONAL HISTORY CENTER

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# Editorial Greetings

Salam jumpa buat para pembaca Majalah Konstitusi. Tak terasa, kita sudah memasuki bulan kesepuluh tahun ini. Meski pandemi melanda, namun semangat bekerja semua pegawai Mahkamah Konstitusi termasuk Tim Media MK tak pernah surut.

Belakangan, hampir semua instansi pemerintah menerapkan pola shift *Work From Home* (WFH) dan *Work From Office* (WFO). Demikian pula Mahkamah Konstitusi dalam menjalankan aktivitas sehari-hari. Kegiatan Bimbingan Teknis Hukum Acara Perselisihan Hasil Pilkada Serentak pun digelar secara virtual. Selain itu digelar rapat pleno bagi gugus tugas untuk penanganan perselisihan hasil Pilkada Serentak 2020. Mengingat Pilkada Serentak 2020 tinggal beberapa bulan.

Majalah Konstitusi Edisi Oktober 2020 menyajikan beragam informasi. Baik berita ruang sidang, berita nonsidang, serta rubrik-rubrik khas lainnya. Satu lagi, penyampaian informasi mengenai Mahkamah Konstitusi juga dilakukan melalui media sosial seperti facebook, instagram maupun twitter yang dikemas dengan apik dan artistik.

Kita berharap, semoga pelaksanaan sidang penanganan Perselisihan Hasil Pilkada Serentak 2020 yang jatuh pada tahun depan akan berjalan lancar, damai dan memberikan keadilan. Semoga!



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## MAIN REPORT



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## THE AUTHORITY OF THE MINISTER OF FINANCE TO APPOINT THE CHAIRMAN OF THE TAX TRIBUNAL IS ADMINISTRATIVE ONLY

The authority of the Minister of Finance to propose candidates for Chairman and Deputy Chairman of the Tax Court is considered to obscure the understanding of independent judicial power. The involvement of external parties of the court in choosing leadership has the potential to interfere with independence. Tax Court Judges must be free to determine their own leadership without involving the Ministry of Finance. The involvement of the Minister of Finance is only administrative in nature to follow up on the results of the election for the leadership of the Tax Court.

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ACTION



THE CONSTITUTIONAL COURT WINS THE THE UNQUALIFIED OPINION ( WTP) OPINION AWARD 10 TIMES IN A ROW

## EX AEQUO ET BONO

Throughout October 2020, the law and politics have shown interesting dynamics. Demonstration, joint approval of the The House of Representatives and the President on the Job Creation Bill. The two poles of the narrative are formed in such a way. On the one hand, it is said, the bill is intended for the good that is built for progress. On the other hand, objections were voiced because they thought the formation process and its materials were problematic, which could potentially harm the rights of citizens.

In the midst of this narrative battle, various aspirations emerged. From the first narrative, an appeal was born that those who feel disadvantaged or dissatisfied with the Job Creation Bill take the available route, namely the constitutional judicial review route in the Constitutional Court. From the second narrative, opinion is divided. There are those who are ready to take him to the Court, but there are those who do not want the mechanism. So, what is being demanded is that the President immediately stipulates a *perpu* to revoke the Job Creation Law shortly after it is promulgated.

As aspirations and opinions, both are right to be called out within the corridors of law and democracy. Each of them has an argument. Bringing the Job Creation Law to the Constitutional Court means using the lanes opened and provided by the constitution. Meanwhile, demanding the President to issue a *perpu* is a political route that also has precedents. In the past, President SBY had issued a *perpu* to revoke the latest Regional Head Election Law which was just passed. This step was taken after hearing and witnessing the response to widespread public rejection of the law in question. Now, the conditions are almost the same. The Job Creation Law reaped a reaction. The difference is that there is a kind of opinion framing that taking the effort to the Constitutional Court is useless and will not change the situation. At this point, it is important to put a common understanding on the legal building that was built and agreed upon according to the 1945 Constitution.

Against that condition, it seems a bad tradition are still practiced. People like to comment outside the court on a case. They like to go too far in analysis, even with a tone that 'interferes' with the judge. In fact, it seems to have preceded the ongoing judicial process. The objective prediction may be fine. The problem is provocative predictions that tend to be insinuating. The Court is only said to be fair when the decision is what it wants. If the decision is different, that means the Court is unfair. If that happens, it is not the law and democracy that are being or are about to be enforced. But the mobocracy, the mob that imposes their will.

Mindset which shouldn't be about winning or losing. In the Constitutional Court, what you want to seek and find is justice. All important parties understand that in every petition for judicial review, at the end after the *petitum*, the sentence is always contained: If the Panel of Judges decides otherwise, ask for the fairest possible decision (*ex aequo et bono*). The sentence is meaningful and has profound implications. The Petitioner consciously entrusted the Constitutional Court completely to adjudicate the legal issue.

Including the commitment to accept whatever the decision is, if the Constitutional Court has a different standard of justice than the Petitioner wants. In other words, if you have taken a case against the Constitutional Court, then whoever is, must have a mentality that the decision is 'rejected', 'unacceptable', and at the same time ready to be 'granted'. Don't just prepare to be "granted" it. Do not then, because it was not granted, then deny the *ex aequo et bono* comment, refuse and even more so shout that the Constitutional Court has acted unfairly. Also, do not cover up the inability to argue convincingly in court with a narrative of scapegoating anyone.

To find justice, it is certain that the Court will dig from any source. That is the full authority of the Court. For that, what can be done, the Court opens and facilitates all public access to participate in the trial process. This is in line with the statement of Ray M. Doubles (1965), "A trial is a public event. What transpires in the courtroom is public property". Thus, it is the public's right to know that judges and all court officials are responsible for the trials that are their duty to be carried out in a fair and trustworthy manner.

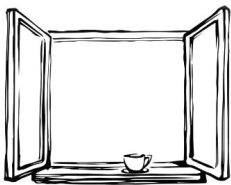
And most importantly, the law is enforced fairly and correctly. This means that the trial may be accessed openly as a form of fulfillment of public rights. The trial may be broadcast by the media as case handling publicity. Doubles said, as long as there is open space for public access, it is hoped that there will be no arbitrary and despotic trial.

At the trial of the Constitutional Court, at least the public could witness and listen to the argumentative battles presented by all parties involved. In accordance with the principle of *audi et alteram partem*, the statements of all parties, whether it is the Petitioner, Law Formers, or Related Opinions are heard in a balanced manner. From the arguments and facts that were raised in the trial process, among other things became the basis for the Constitutional Court's decision, in addition to the evidence and conviction of the judge. Even though it was opened in such

a way, does not mean giving the right or allowing anyone, including the mass media to involve themselves too far in the trial through opinions outside the trial. If it has become a case, all parties should refrain from lust from commenting just for popularity. Respect and monitor the process. There is no need to create a provocative narrative that is cloudy and negates the process that is or will be running. If you feel that you have an interest in the case, ask yourself to be officially involved in the dialectic in the courtroom by submitting yourself as a Related Party. It will be more elegant.

Finally, it needs goodwill, contribution, and collective awareness of all parties in this matter. The country of India is a state of law. One of the prerequisites for establishing a rule of law is respect for court decisions, including the Constitutional Court decision. So, it is important from the beginning, from now on to have the understanding and courage to respect the process and accept whichever will be decided by the Constitutional Court. After all, all trials have been widely opened. Want anything else? That is the rule of law that has been agreed upon to enforce. Greetings of the Constitution!





Window

# GIDEON

I D.G.Palguna

*“Because one man sat down and wrote a letter, no felony defendant need ever fear facing a court alone. Gideon v. Wainwright extended the law’s protection to all. More than that, it gave justice a better name “*

*(Because a man sits down and writes a letter, no accused criminal should be afraid to face trial alone. The decision in the Gideon v. Wainwright case has extended legal protection to everyone. Moreover, the decision in that case has provided better name justice).*

**Collin Evans,**

*Case resume writer Gideon v. Wainwright.*



**G**ideon. In full, Clarence Earl Gideon. It was the name of the boy Collin Evans described sitting down and writing the letter. He’s not an important person. Just a bum having an unfortunate accident: being in the wrong place at the wrong time. If you have had a chance to “run into” a book edited by Edward W. Knappman, *Great American Trials, Vol 2: 1950-2001* (Second Edition, Gale Group-Thomson Learning, 2002), turn to pages 794-797. There, under the heading “Clarence Earl Gideon Trials: 1961 & 1963,” you will find a resume of the story of the “heroic” homeless man named Gideon in fighting for his constitutional rights

right up to the US Supreme Court which started from a letter which turned out to fundamentally change the US criminal justice system. What’s that letter? Although written only in pencil and in terrible handwriting on five sheets of double folio lined paper, the letter was not just any letter but a petition for writ of certiorari. So, it’s no kidding. In simple terms, a petition for writ of certiorari can be defined as “an Petition submitted by a person or party to the Supreme Court of the United States of America to be pleased to examine a final decision on the case of that person or party.” If a petition for certiorari is accepted by the United States Supreme Court, meaning that the Supreme Court is pleased to hear the petition, the Court will then issue an order called a writ of certiorari (often abbreviated as certiorari or just cert), namely an extraordinary order directed to a subordinate court to submit the minutes of a case (cq the case for which the petition for certiorari is requested) for review by the Supreme Court. This is what happened in the case of Gideon.

The story which later gave birth to a decision which is considered as one landmark decisionsThe history of the Supreme Court of the United States begins on the morning of

June 3, 1961. A policeman who was on patrol in Panama City, Florida, saw the doors of the Bay Harbor Poolroom open. After entering, the police found a cigarette machine and a jukebox that had been uncovered (stolen). Eyewitness accounts led to the arrest of Clarence Earl Gideon, a homeless middle-aged man who sometimes worked odd jobs helping out in the area. Gideon was accused of breaking into the building by force (breaking and entering). It was a minor crime under Florida state law. Gideon maintained his innocence. During the trial, Gideon was not accompanied by legal counsel. He also asked the judge who tried him to provide legal advice because economically, he could not afford legal advisory services. Florida’s court of first instance rejected the request because — under Florida state law — the provision of legal counsel to incapacitated defendants only applies if a person is convicted of an offense punishable by death. Meanwhile, the charges against Gideon were only minor crimes.

Long story short, the eight witnesses who were invited to testify regarding Gideon’s innocence, were unable to convince the judge. In the trial, which took less than a

day to complete, Gideon was found guilty. Three weeks after the guilty decision was handed down, Judge Robert L. McCrary, Jr. sentence the skinny vagrant with thick glasses to a maximum sentence of five years in prison. The decision against Gideon was based solely on the testimony of a witness named Henry Cook who was submitted by Assistant State Attorney William E. Harris. In the trial, Cook only explained that at around 05.30 at the time of the incident he saw Gideon inside poolroom. After seeing Gideon through the window for a while — according to witnesses — Gideon came out clutching a bottle of wine and then phoned. A few moments later a taxi arrived and Gideon left. Gideon's question to the witness, "Why was the witness in that place so early?"; The witness only replied that he came home from a dance in Apalachicola. If only at that time Gideon had been accompanied by experienced legal counsel, the witness's answer might have been more in-depth and might even have benefited Gideon. But that didn't happen. Judges, of course, cannot possibly take over the role that a lawyer should be doing.

This decision infuriated Gideon, especially when his request for legal counsel was rejected. He then submitted a request writ of habeas corpus to the Florida State Supreme Court to order his release on the grounds that he had been illegally imprisoned. Gideon's request was rejected. Just a side note: a writ of habeas corpus is used, primarily by federal courts in the United States, to determine the legality of a convicted state's imprisonment.

In prison, this vagrant, who seems quite intelligent, accidentally finds an article about it Due Process

Clause of the Fourteenth Amendment to the United States Constitution. This is where the petition for certiorari story in handwriting starts. The reason for the Supreme Court accepting this petition is to answer the question of whether the right to be assisted by legal advisers guaranteed by the Sixth Amendment to the Constitution applies to defendants who are tried under state law? The Supreme Court's approval to accept Gideon's petition inevitably made Abe Fortas — Gideon's legal adviser during the trial at the Supreme Court — shocked. Because previously, in the case of *Betts v. Brady* (1942), the Court is of the opinion that the refusal of state courts to provide legal counsel for incapacitated defendants who are convicted of a criminal act is not a violation of the Due Process Clause in the Fourteenth Amendment. That is, in Fortas's hunch, agreeing to try Gideon's petition implied that the Supreme Court was showing its willingness to reconsider its stance in *Betts v. Brady*.

Sure enough, on March 18, 1963, the Court unanimously abandoned its stand in the case *Betts v. Brady*. The Court emphasized that the right to be assisted by legal advisers guaranteed by the Sixth Amendment is a fundamental right and very important for the presence of a fair trial. Therefore it must be declared valid for the states through the Due Process Clause of the Fourteenth Amendment. In the ruling led by the progressive Chief Justice Earl Warren, the Court emphasized that there would be no fair trial if a person being tried who was too poor to hire a legal advisor was not provided with legal counsel by the state.

With the Supreme Court's decision, Gideon has the right to a retrial. 5 August 1963 was the

day the retrial was held. So Gideon went back to face Judge Robert L. McCrary, Jr. in a courtroom in Panama City. The difference is, this time Gideon is not alone. He is now accompanied by lawyer experienced, Fred Turner. Henry Cook is again the main witness presented by the public prosecutor. However, this time, his form was dreadful under the threat of persistent sharp questions from Fred Turner. The most disturbing thing that caused his testimony to be questioned by the jury was that he admitted that at the previous trial he had hidden his criminal record. Partly it was the reason for Cook's poor performance that led the jury in this retrial to finally find Gideon innocent.

The release of Gideon from the indictment of a crime, of course, greeted Gideon and his legal counsel with joy. However, whether he realized it or not, Gideon's persistence in defending his constitutional rights was not just a struggle for himself, but a struggle for citizenship as well as humanity. The proof, as a result of the Supreme Court's decision against Gideon, it was recorded that there were 2000 (two thousand) people who were previously convicted without being accompanied by legal counsel during the trial process, immediately released after the decision was made in the State of Florida. So, are the wise words of Supreme Court Justice Felix Frankfurter, "Wisdom too often never comes, and so one ought not to reject it simply because it comes late" (Wisdom does not come too often, so someone should not reject it just because he arrives late). ■

# THE AUTHORITY OF THE MINISTER OF FINANCE TO APPOINT THE CHAIRMAN OF THE TAX TRIBUNAL IS ADMINISTRATIVE ONLY



**The authority of the Minister of Finance to propose candidates for Chairman and Deputy Chairman of the Tax Court is considered to obscure the understanding of independent judicial power. The involvement of external parties of the court in choosing leadership has the potential to interfere with independence. Tax Court Judges must be free to determine their own leadership without involving the Ministry of Finance. The involvement of the Minister of Finance is only administrative in nature to follow up on the results of the election for the leadership of the Tax Court.**

**T**hree Tax Court judges, namely Haposan Lumban Gaol, Triyono Martanto, and Redno Sri Rezeki, submitted a judicial review of Law Number 14 of 2002 concerning the Tax Court (Tax Court Law) to the Constitutional Court (MK). The Petition was received at the Registrar's Office of the Constitutional Court on 23 January 2020. The Petition was recorded in the Registration Book for Constitutional Cases on 30 January 2020 with Number 10 / PUU-XVIII / 2020.

As for the material tested by the Petitioners, namely Article 5 paragraph (2) and Article 8 paragraph (2) of the Tax Court Law. According to the Petitioners, Article 5 paragraph (2) and Article 8 paragraph (2) of the Tax Court Law contradicts Article 24 paragraph (1), Article 28D paragraph (1) and Article 28D paragraph (2) of the 1945 Constitution.

The essence of the petition concerns two constitutionality issues questioned by the Petitioners. First, the matter of coaching by the ministry of finance in Article 5 paragraph (2) of the Tax Court cannot be interpreted as coaching

the Ministry of Finance, including in proposing the Chairperson and Deputy Chairperson of the Tax Court. Second, the phrase "from the judges" and the phrase "proposed by the Minister" in Article 8 paragraph (2) of the Tax Court Law must be interpreted as the Chairperson and Deputy Chairperson of the Tax Court elected from and by the judge and proposed by the Tax Court for one term of five years. .

Before entering into the subject matter of the petition, the Petitioners in their petition outlined the existence and organizational structure of the Tax Court. The Petitioners reveal a portrait of the actual condition of the Tax Court which does not yet have its own building facilities because the Minister of Finance has not established the organizational structure of the Tax Court as an organizational builder.

#### **The existence of the Tax Court**

Tax Court within the scope of justice is under the Supreme Court (Supreme Court). as stated in Article 24 paragraph (2) of the 1945 Constitution. The position of the Tax Court is explicitly stated in the Elucidation of Article 27 paragraph (1) of Law Number 48 of



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## MATERIAL OF TESTED TAX COURT LAW

### Article 5 paragraph (2) of the Tax Court Law

“Organizational, administrative and financial development for the Tax Court is carried out by the Ministry of Finance.”

### Article 8 paragraph (2) of the Tax Court Law

“The Chairperson and Deputy Chairperson are appointed by the President from the Judges proposed by the Minister after obtaining the approval of the Chief Justice of the Supreme Court.”

## ARTICLE IN THE 1945 CONSTITUTION AS A TEST INSTRUMENT

### Article 24 Paragraph (1) of the 1945 Constitution

“Judicial power is an independent power to administer the judiciary in order to uphold law and justice.”

### Article 28D Paragraph (1)

“Everyone has the right to recognition, guarantee, protection and legal certainty that is just and equal treatment before the law.”

### Article 28D Paragraph (2)

“Everyone has the right to work and to receive fair and proper compensation and treatment in an employment relationship.”

2009 concerning Judicial Powers. In addition, it is also clearly stated in Article 9A paragraph (1) of Law Number 9 of 2004 concerning State Administrative Courts as amended by Law Number 51 of 2009 concerning State Administrative Courts. Then Article 27 paragraph (2) of Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 16 of 2009, explicitly states that the Tax Court Decision is a decision of a special court in the court environment. State Administration. In accordance with Article 5 and Article 11 paragraph (1) of Law Number 14 of 2002 concerning Tax Courts, technical guidance for the judiciary for the Tax Court and general guidance and supervision

of Tax Court judges is carried out by the Supreme Court, while organizational, administrative and financial fostering for the Tax Court, it is conducted by the Ministry of Finance.

### Tax Court Organizational Structure

The organizational structure and working procedures of the Tax Court as stipulated in Article 6 of the Tax Court Law consists of the Head, Member Judges, Secretary and Registrar. However, this has not been determined by the Minister of Finance as a supervisor for the organization so that the Court does not have a Nomenclature (since 2002 or 18 years ago).

The absence of stipulation of the organizational structure and work procedures of the Tax Court

has resulted in, among other things, the Tax Court does not have its own budget because it does not have a Work Unit (Satker) to manage budget allocations. Then, as a State Official, the Tax Court Judge has not been registered with the State Civil Service Agency (BKN), so that it affects the existence and rights of the Tax Court Judge. Another consequence is that the Tax Court does not yet have its own building (still borrowing the back of the BPKP building on Jalan Hayam Wuruk No.7, Central Jakarta).

This condition is very ironic, because the Tax Court is the court that handles the largest disputes in Indonesia. In one year the Tax Court must examine and decide tax disputes of approximately 10,000 disputes. Nearly 80% of Petitions for reconsideration that are handled by the Supreme Court TUN Chamber come from tax disputes decided by the Tax Court Judge.

### Independence of the Tax Court Judge

The existence of judges as executors of independent judicial power cannot be separated from the respectful and strategic position of this institution. The need for this position will be seen to be important when the judiciary intersects the behavior and activities of the government apparatus.

The contact between the judiciary and government agencies will determine the extent to which the judiciary is located and the position of freedom. If the body has a fair attitude and action and upholds the applicable laws and regulations, its position as the executor of judicial power will be honorable and commendable.

Therefore, the implementation of the duties and powers of judges as the executor of judicial power and the activities of the government

apparatus must be given a distance. The procedure for the appointment of the Chairperson and Deputy Chairperson on the proposal of the Minister of Finance does not provide an open space for the limited independence and independence of Tax Court Judges in examining and deciding tax disputes.

### Chief Minister's Proposal

The Petitioners suffered constitutional losses related to the recommendation of the Chairperson and Deputy Chairperson of the Tax Court by the Minister of Finance. The Petitioners argue, Article 5 paragraph (2) and Article 8 paragraph (2) of the Tax Court Law obscures the understanding of independent judicial powers. The judicial power should not be under the influence or potential influence, thoughts, or feelings that directly or indirectly cause the Tax Court judges to be in legal uncertainty and their independence.

“The appointment of the chairman and deputy chairperson proposed by the minister in this

case is the Minister of Finance, in Article 8 paragraph (2) of the Tax Court Law creates problems in the system of appointment and dismissal, in particular relating to the independence of independence and authority of judges or tax court institutions,” said Haposan Lumban Gaol in the preliminary examination of case Number 10 / PUU-XVIII / 2020 which was held at the Constitutional Court on Wednesday (12/2/2020).

Indeed, the judges of the tax tribunal are not deprived of their independence in making decisions, although they are still under two agency guidance, namely the Supreme Court and the Ministry of Finance. Supreme Court guidance regarding judicial techniques. Meanwhile, the development of the Ministry of Finance involves fostering organization, administration and finance. This is possible because the two forms of guidance are guaranteed in Article 5 paragraph (3) of the Tax Court Law, namely that they cannot reduce the freedom of judges. On the other hand, Article 21 paragraph

(2) of Law Number 48 Year 2009 allows organizational, administrative and financial arrangements to be regulated according to the specifics of each court.

The reduced independence of judges here is due to the lack of transparency of the Minister of Finance's authority to propose a Chair and a Deputy Chairperson (without clear parameters). According to the Petitioners, this has the potential to reduce the provisions of Article 5 paragraph (3) of the Tax Court Law.

### Different Selection Mechanisms

Since the Tax Court was established in 2002, the mechanism for proposing the Chairperson and Deputy Chairperson of the Tax Court has been carried out differently. The nomination of the Chairperson and Deputy Chairperson of the Tax Court was once carried out through an election mechanism from and by a judge to be further proposed to the Minister of Finance.

The process of nominating the Chairman of the Tax Court has



Para Pemohon saat menghadiri sidang pengujian UU Pengadilan Pajak



PHILIPAS MURKITA

Pihak Pemerintah saat akan memberikan keterangan pada sidang pengujian UU Pengadilan Pajak

also been carried out based on a recommendation from the previous chairman before retiring. In addition, there has also been a proposal for a Deputy Chairperson made by the Head of the Tax Court for further due diligence to be carried out by the Ministry of Finance.

### **Nepotism, Like and Dislike**

There are no clear provisions governing the requirements and mechanisms for proposing the Chairperson and Deputy Chairperson of the Tax Court. When compared to other courts, the pattern of promotion and transfer of judges is clearly regulated in the Chief Justice Decree Number 48 / KSupreme Court / SK / II / 2017 concerning Promotion Patterns and Judges' Movements in Four Courts of Justice.

The unclear requirements and inconsistency of the mechanism for proposing the Chairperson and Deputy Chairperson of the Tax Court as described above have the potential for nepotism and "like and dislike" to occur. The unclear proposal process ultimately resulted in legal uncertainty and justice for

the Petitioners. Therefore, according to the Petitioners, the mechanism for proposing the Chairperson and Deputy Chairperson must be carried out through an election process from and by the Tax Court Judge, so as to guarantee the independence and independence of the judge.

"For the sake of the realization of an independent judicial power that upholds law and justice, the authority of the minister of finance or as an executive to propose the Chairman and Deputy Chair of the Tax Court needs to be eliminated because the independence of the judicial power in essence must be free from the influence of the executive body or other powers in society," continued Haposan.

### **Periodization of Tax Court Leadership**

The Tax Court is only located in the Capital City of the State (Article 3 of the Tax Court Law), so there is only one Tax Court in Indonesia. Since there is only one Tax Court, the absence of a period of office of the Chairperson / Deputy Chairperson of the Tax Court will

cause the Chair / Deputy Chair to serve until retirement because there is no transfer pattern. The absence of a pattern of transfer and promotion in the Tax Court has the potential to hinder the process of developing a judge's career. The Chairman / Deputy Chairperson cannot be dismissed unless he has committed a criminal act, violated the code of ethics, at his own request, is constantly physically or mentally ill, is incapable of carrying out his duties, has passed away (Articles 13,14 and 15 of the Tax Court Law).

When compared with the tenure of other institutions which number only 1 (one) in Indonesia such as the Supreme Court, Constitutional Court and the Judicial Commission, the terms of the positions of Chairperson and Deputy Chairperson are regulated in the Law so that leadership in organizations moves dynamically and healthily.

Discussions related to the term of office of the Chairperson and Deputy Chairperson conducted by the Head of the Tax Court and the Ministry of Finance have been going on for quite a long time. However, until now there is no way out. This is because the Minister of Finance and the Supreme Court must have a strong and clear legal basis to determine the term of office of the Chairperson and Deputy Chairperson of the Tax Court because the guidance for the Minister of Finance and the Supreme Court must consider the independence and freedom of judges as regulated in Article 5 paragraph (3) of the Tax Court Law.

Whereas the function of leadership in a modern organization is undeniably very important for the existence and progress of the organization. With no limitation on the term of office of the Chairperson and Deputy Chairperson of the

Tax Court, there will be potential for authoritarian action, abuse of power (Abuse of Power). due to the stagnation of the regeneration of organizational leadership, which is contrary to Article 28D Paragraph (1) and Paragraph (2) of the 1945 Constitution.

Based on all the arguments above, according to the Petitioners, it would be very appropriate if the Constitutional Court stated that the provisions of Article 5 paragraph (2) and Article 8 paragraph (2) of Law Number 14 of 2002 are potentially qualified articles that violate the principle of protection of guarantees of legal certainty, equality before the law, an independent judicial power, and fair and proper treatment in working relations. Therefore, the Petitioners conclude, Article a quo is not proportional and incomplete so that it automatically contradicts Article 24 Paragraph (1) and Article

28D Paragraph (1) and Paragraph (2) of the 1945 Constitution.

### **Plea for Damages**

In the petition, the Petitioners asked the Court to grant all petitions. Namely stating that Article 5 paragraph (2) of the Tax Court Law remains constitutional and still has binding legal force as long as it is interpreted as fostering the Ministry of Finance, excluding proposing the Chairperson and Deputy Chairperson of the Tax Court.

The Petitioners also asked the Constitutional Court to state the phrase “from the Judges” and the phrase “proposed by the Minister” in Article 8 paragraph (2) of the Tax Court Law contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted that the Chairperson and Deputy Chairperson are elected from and by the Judge and proposed by

the Tax Court for 1 (one) term of office of 5 (five) years.

### **The views of the People’s representative council**

The House of Representatives (DPR) submitted a written statement received by the Registrar’s Office on August 27 2020. The The House of Representatives responded to the Petitioners’ argument which stated that Article 5 paragraph (2) of the Tax Court Law is unconstitutional because it injures the principle of judicial power as stated in Article 24 Paragraph (2) UUD 1945. According to the People’s Representative Council, this argument is completely groundless. The provisions of Article 24 Paragraph (2) of the 1945 Constitution actually show that the Supreme Court is the pinnacle of the judicial body under it, so that it can be interpreted that the Supreme Court has the authority to provide



Ketua Mahkamah Agung Republik Indonesia, Prof. Dr. M. Hatta Ali., SH., MH., melantik dan mengambil sumpah dua orang Wakil Ketua Pengadilan Pajak pada Jum’at pagi, 20 Maret 2020 di Gedung Mahkamah Agung lantai 13, Jakarta.

## MAIN REPORT

guidance to special judicial bodies that are regulated based on certain laws, including the Tax Court.

In understanding the substance of the provisions of Article 5 paragraph (2) of the Tax Court Law, it cannot be read separately, but must be understood as a whole. The provisions of Article 5 paragraph (1) of the Tax Court Law are affirmed, "The technical guidance for the Tax Court Agency is carried out by the Supreme Court". This shows that as a special court, the tax court is under the guidance of the Supreme Court. This is reinforced by the provisions of Article 11 of the Tax Court Law which states, "General guidance and supervision of judges is carried out by the Supreme Court". In addition, it is also emphasized in Article 5 paragraph (3) of the Tax Court Law that both technical, organizational, administrative and financial guidance must not reduce the freedom of judges in examining and deciding tax disputes. So that according to the The House of Representatives,

The House of Representatives is of the view that the election and appointment of a person as a tax judge must take into account the skills and expertise elements concerned in the field of taxation. The inclusion of the Minister of Finance in the process of determining the Chairperson, Deputy Chairperson and Judge of the Tax Court is certainly related to the authority of the Minister of Finance as the state treasurer who manages state finances, including formulating standards, policies, and systems and procedures related to the management of state finances in the context of implementing the APBN / APBD. So the Minister of Finance is considered to know the competence of the Chairperson, Deputy Chairperson and Judge of the tax court in the field of taxation considering that tax policy often changes in line with economic developments and state financial conditions.

Regarding the potential for nepotism and "like and dislike" in the

process of proposing the Chairperson and Deputy Chairperson, The House of Representative of Indonesia Republic explained that this was just the Petitioners' unwarranted concern. If the election of the Chairperson and Deputy Chairperson of the Tax Court from and by members of the tax court judge is as the Petitioners wish, then this could interfere with the implementation of the duties of the Tax Court judge by the potential for differences in views among the Tax Court judges themselves in determining who is nominated and elected as Chairman. and Tax Court Representatives. This of course has been anticipated by the legislators by not regulating the appointment of the Chairperson and Deputy Chairperson of the Tax Court by members of the Tax Court judges themselves.

Regarding the Petitioners' petition to stipulate the periodization of the Chairperson and Deputy Chairperson of the Tax Court, namely for 1 (one) term of office of 5 (five) years, the Indonesian Parliament



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explained that this was not the authority of the Constitutional Court as a negative legislator to formulate new norms in the Tax Court Law. This regulation is the open legal policy for the formers of the law.

The Petitioners feel that their constitutional rights have been impaired by the enactment of the a quo articles. In fact, according to the The House of Representatives, this is not a constitutional loss experienced by the Petitioners. This is a concern of the Petitioners who feel that they have missed the opportunity to become Chairman of the Tax Court so that the Petitioners' arguments are very irrelevant to make the provisions of the a quo article contradict the 1945 Constitution.

#### **President's statement**

The President delivered an oral statement before the Court hearing. The President also submitted a written statement on July 7, 2020 and submitted an additional written statement on July 21, 2020.

The government is of the view that the Minister of Finance oversees agencies that have duties and functions related to state revenue in the tax sector, so the Minister of Finance has knowledge of the competencies of candidates for Chair and Deputy Chair of the Tax Court. Therefore, it is very appropriate if the Minister of Finance is appointed as the party proposing the Chairman and Deputy Chair of the Tax Court.

After receiving proposals for Chairperson and Deputy Chairperson of the Tax Court from the Minister of Finance, the proposal must first obtain approval from the Chief Justice and subsequently appointed by the President. "This shows that when he will appoint the chairman and deputy chairman of the tax court, the President needs the opinion of the Chief Justice of the Supreme Court as the holder of the judicial power and the Minister of Finance as one of the executive powers to create inter-agency checks

and balances," said Head of Advocacy Bureau of the Ministry of Finance, Tio Serepina. when delivering the President's statement in a trial held at the Constitutional Court on Tuesday (7/7/2020).

These things clearly show that the tax court has a specificity and also gives the Minister of Finance the authority to nominate candidates for Chair and Deputy Chair of the Tax Court. However, later the chairman of the Supreme Court who will approve the elected candidate will be appointed by the president.

In addition, there is a Memorandum of Understanding between the Supreme Court and the Judicial Commission (KY) and the Ministry of Finance Number 135 / KMA/ SKB / VII / 2010, Number 08 / KS-KY / VII / 2010, Number: MOU-1681 / MK / 2010, guidance and supervision of the Tax Court Judge is carried out in a coordinated manner according to the authority of each agency.

Thus, even though the recommendation of the Chairperson and Deputy Chairperson of the Tax Court is carried out by the Minister of Finance, guidance for Tax Court Judges is not only carried out by the Ministry of Finance, but also by independent state institutions in accordance with statutory provisions, namely Supreme Court and KY.

Regarding the independence of Judges in deciding disputes at the Tax Court, it is evidently guaranteed in Article 5 paragraph (3) of the Tax Court Law. Therefore, it is not appropriate for the Petitioners to state that the provisions regarding the fostering of organization, administration and finance as well as the recommendation of the Chair and Deputy Chair of the Tax Court by the Minister of Finance as stipulated in Article 5 paragraph (2) and Article 8 paragraph (2) of the Tax Court Law violate the constitution. Article 8 paragraph (3) of the Tax Court Law is irrelevant / has no relationship at all with the independence of

the Chair and Deputy Chair of the Tax Court. Even the Petitioners are aware that the Tax Court Judges have not reduced their independence in making decisions, even though they are still under two institutional guidance, namely the Supreme Court for technical guidance and the Ministry of Finance for organizational development.

In addition, the guidance mandated by the Minister of Finance by Article 5 paragraph (2) of the Tax Court Law is organizational, administrative and financial development. Thus, there is absolutely no relationship between the coaching and the independence of the Tax Court Judges. The Minister of Finance does not have the authority to impose any sanctions or actions against the Tax Court Judge.

Although the Chairperson and Deputy Chairperson of the Tax Court were proposed by the Minister of Finance, this does not mean that the Minister of Finance is won in tax disputes. "Based on the data, the decision of the Tax Court Judge Board that defeated the Minister of Finance was more than the one that won," said Tio Serepina.

#### **Constitutional Court Legal Considerations**

The Tax Court is the exercise of judicial power which has the authority to resolve tax disputes. Tax disputes are disputes between the interests of the people as taxpayers and the interests of the people as tax connoisseurs that cannot be equated with other public disputes, especially private disputes. So in tax disputes it is necessary to settle disputes quickly to provide legal certainty both for taxpayers regarding their payment obligations and for countries that need tax revenues to finance government administration activities.

The nature of tax decisions that create certainty for both taxpayers and tax collectors so that a number of disputed tax amounts can be

immediately utilized by taxpayers and by the state for the benefit of the people and the role of the government in this case is the Ministry of Finance to maintain the State Budget (APBN). ). The Court can understand that until now the Tax Court is still under the guidance of the Ministry of Finance as an institution where one of its main tasks is to take care of state finances and revenues, one of which comes from taxes or in other words related to the tax court which must be one roof (one roof system). ) under the Supreme Court.

“Therefore, as long as the duties and authority of the Tax Court judges are not disturbed by their independence in adjudicating a case, such a policy is an open legal policy for the legislators regarding the existence of the Tax Court which is still under the guidance of the Ministry of Finance. “Constitutional Justice Manahan MP Sitompul said reading the legal considerations of Decision Number 10 / PUU-XVIII / 2020 in a hearing held at the Constitutional Court on Monday (28/9/2020).

However, the question is whether this guidance should be included in the selection of the Chairman and Deputy Chair of the Tax Court. To answer this question, the Court first describes judicial power as an independent power to administer the judiciary in order to uphold law and justice as a constitutional basis that regulates court judges in carrying out their duties and powers who cannot be under the influence, pressure and feelings that reduce their concentration on freedom in upholding law and justice.

Judges must be able to implement their freedom as a responsible freedom, freedom in the corridor of orderly laws and regulations in force by carrying out the main duties of the judicial power in accordance with the procedural law and prevailing laws and regulations without being influenced by the

government, interests, pressure groups, the media. print / electronic, and influential individuals. The product produced by a judge from a judicial body is a judge's decision, therefore the product of the judge must contain the values of certainty and justice based on the Almighty God. Therefore, every decision of the judicial body which originates from the actualization of the independence of the judge through legal considerations, truly reflects and radiates philosophical values,

### **Chief Judge Chosen**

Judges through the chairman / deputy chairperson must also have freedom in the management of their organization as in a judicial body in general, including in this case the Tax Court. The meaning of freedom for judges, apart from judges in carrying out the duties of judicial power, also may not be bound by anything and / or pressured by anyone. Judges are also free to do anything, one of which is to organize their existence in a judicial body by choosing a chairman and a vice chairman to lead the judges themselves in carrying out their daily duties.

In addition to serving as judges who exercise judicial power to examine and decide cases, the chairperson and deputy chairperson of the judiciary body also has duties in internal organization of the judicial body such as supervising or implementing the duties and behavior of judges and ranks in a judicial institution and regulating the division of tasks judge. Furthermore, in carrying out their day-to-day duties in a judicial body, of course they interact with each other, whether related to their main duties or those related to daily personal life. That way the judges can get to know each other or explore the character of each judge himself.

Thus, if there is an election for the leadership of a judicial body, in this case the chairperson and deputy

chairman of the court, the judges can actually choose or determine the judge who is their choice to be the leader who brings the progress of the organization in serving justice seekers. These judges no longer require external involvement from the court in selecting the chairperson and vice chairman. This is because the intensity of interaction with outsiders can potentially interfere with the independence of a judge and lead to personal subjectivity who will be elected to become a leader with a specific purpose, especially to benefit his interests.

Thus based on these considerations, according to the Court, the guidance of the Ministry of Finance to the tax court does not mean that the Ministry of Finance is involved in the selection of the chairman and vice chairman of the Tax Court. Because, tax court judges, apart from being free in exercising judicial power, tax judges must also be free in determining their own leadership to organize the duties and authorities of the judiciary without involving external parties, in this case the Ministry of Finance, which does not necessarily know more deeply about their quality or character. -Each of the judges.

### **The Involvement of the Minister of Finance is Administrative**

Therefore, according to the Court, the procedure for selecting the chairman and deputy chairman of the Tax Court must be released from the involvement of the Minister of Finance so that the judges can reflect more on their choices according to their conscience based on considerations of the capability, integrity and leadership of the prospective leaders, as well as the results of their choices, the judges can be held accountable for the consequences of their choice.

“With such considerations, the involvement of the Minister of Finance is only administrative in nature to follow up on the results

of the election for the chairman / deputy chairman which is forwarded to the President after obtaining approval from the Chief Justice of the Supreme Court. Likewise, with regard to proposing dismissal with respect and disrespect for the Chairman and Deputy Chair of the Tax Court, the involvement of the Minister of Finance is only administrative in nature, “

### **Leadership Periodization**

According to the Court, the most basic democratic practice that must be applied in an organization is the periodic leadership rotation, to prevent authoritarianism and abuse of power. The existence of internal control by means of time limitation is based on the assumption that continuous power can make leaders tend to abuse power.

Periodization in a position is not just so that management changes occur. Another thing that is no less important is creating a process of regeneration and regeneration in an institution or career path for the activists of the organization.

Therefore, it is very important that the head of the tax court, namely the Chairperson and Deputy Chairperson of the Tax Court, is given a limit of term of office or periodization to avoid any worries as considered by the Court. Therefore, if referring to the legal considerations, the relevant terms of office for the Chairperson and Deputy Chairperson of the Tax Court are one five-year term of office.

Based on the foregoing considerations, according to the Court the Petitioners' argument which states that the phrase “from the judges” in Article 8 paragraph (2) of the Tax Court Law is contrary to the 1945 Constitution and does not have binding legal force as long as it is not interpreted that the Chairperson and Deputy Chairperson are elected from and by Judges and proposed by the Tax Court for one term of office of five years are legally reasonable.

Meanwhile the arguments of the Petitioners' petition insofar as the phrase “proposed by the Minister” is groundless according to law and the Court interprets it as “proposed through the minister”.

As a result, the Court in its decision stated that some of the petitions had been granted. “To partially grant the Petitioners' petition,” said Chief Justice of the Constitutional Court Anwar Usman reading the sentence of Decision Number 10 / PUU-XVIII / 2020 in a hearing held at the Constitutional Court on Monday (28/9/2020).

The Constitutional Court's decision also states Article 8 paragraph (2) of the Tax Court Law

which states, “The Chairperson and Deputy Chairperson are appointed by the President from the Judges proposed by the Minister after obtaining the approval of the Chief Justice of the Supreme Court”, contrary to the 1945 Constitution and has no binding legal force as long as not interpreted as “the Chairperson and Deputy Chairperson are appointed by the President who is elected from and by the Judges who are subsequently proposed through the Minister with the approval of the Chief Justice of the Supreme Court for 1 (one) term of office of 5 (five) years.” ■

NUR ROSIHAN ANA

### **DECISION QUOTE NUMBER 10 / PUU-XVIII / 2020**

Review of Law Number 14 of 2002 concerning the Tax Court against the 1945 Constitution of the Republic of Indonesia.

#### **Petitioner**

Haposan Lumban Gaol, Triyono Martanto, and Redno Sri Rezeki

#### **Injunction**

1. Partially granted the Petitioners' petition;
2. State Article 8 paragraph (2) of Law Number 14 of 2002 concerning the Tax Court (State Gazette of the Republic of Indonesia of 2002 Number 27, Supplement to the State Gazette of the Republic of Indonesia Number 4189) which states, “The Chair and Deputy Chairperson are appointed by the President from the Judges who proposed by the Minister after obtaining the approval of the Chief Justice of the Supreme Court”, contradicts the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted as “Chairperson and Deputy Chairperson are appointed by the President who is elected from and by the Judges who are subsequently proposed through the Minister with the approval of the Chief Justice of the Supreme Court for 1 (one) term of office of 5 (five) years”;
3. Stating that the Petitioners' petition in relation to Article 5 paragraph (2) of Law Number 14 of 2002 concerning the Tax Court (State Gazette of the Republic of Indonesia of 2002 Number 27, Supplement to the State Gazette of the Republic of Indonesia Number 4189) cannot be accepted;
4. Reject the Petitioners' petition other than and the rest.
5. Order the loading of this decision in the State Gazette of the Republic of Indonesia accordingly.



## THE LAW ON HANDLING COVID-19 AGAIN WAS SUED

DIN Syamsuddin, Amien Rais, and friends, are not discouraged from seeking justice regarding state financial policies in dealing with the Covid-19 pandemic as stipulated in Law 2/2020. For the second time, the Petitioners consisted of 56 individual Petitioners and a number of them, among others, the Head of the Islamic Unity Center

(PP Persis), Al-Irsyad Women, the Executive Board of the Al-Irsyad Youth. The inaugural session of Case 75 / PUU-XVIII / 2020 was held by the Constitutional Court (MK) on Tuesday (22/9/2020) afternoon. The Petitioners examined Article 2 paragraph (1) letter a number 1, letter a number 2 and letter a number 3, Article 6 paragraph (12), Article 27 and Article 28 Annex to Law 2/2020.

The Petitioners convey that the articles tested are expressly and implicitly inconsistent with the principles of a rule of law regulated by the 1945 Constitution. This is based on the fact that several a quo provisions give the President absolute authority, in addition to negating the The House of Representatives and DPD as state institutions to exercise their authority in the field of legislation or the formation of laws. In addition, the a quo provisions also provide immunity for institutions and / or implementers of policies and policies in the framework of implementing the a quo provisions in the attachment to Law 2/2020 in the event of irregularities or acts of abuse of authority are not criminal acts. For this reason, the Petitioners asked that the articles tested be declared contrary to the 1945 Constitution. (Nano Tresna A.)



## NOT FULFILLING FORMAL REQUIREMENTS, PETITION FOR CRIMINAL PROCEDURE CODE REVIEW UNACCEPTABLE

THE Constitutional Court judged the petition for judicial review of Law Number 8 Year 1981 regarding the Criminal Procedure Code (KUHAP). For this reason, the Court decided that the Petitioners' petition was unacceptable. This was the warning of the decision on Case Number 56 / PUU-XVIII / 2020 which was read out on Monday (28/9/2020).

Channy Oberlin Aritonang as Petitioner for Case 56 / PUU-XVIII / 2020 examined a number of articles in the Criminal Procedure Code, namely Article 1 number 14, Article 184 paragraph (1) and paragraph (2). The Petitioner is an individual Indonesian citizen who considers that his constitutional rights have been impaired. The Petitioner explained in his argument that he felt cheated

by unscrupulous State Civil Servants (ASN) at Bappenas who promised the Petitioner's child to be accepted to work at PT Aneka Tambang. After the Petitioner followed the information provided by the ASN person, the Petitioner's child was not accepted to work at PT Aneka Tambang, while the Petitioner had transferred a sum of money to the ASN person.

In the legal considerations read out by Deputy Chief Justice of the Constitutional Court Aswanto, the Court considered that the Petitioners' petition did not meet the formal requirements of the petition systematically. In the section on legal standing, the Petitioner did not specify a causal relationship that the validity of the article being tested was deemed to be detrimental to the Petitioner who had reported fraud in recruitment brokers and the termination of the investigation process.

"The Petitioners only describe concrete cases that have no relevance to the norms tested, namely the statements of the Petitioners' Witnesses related to the fraud allegedly experienced by the Petitioners. In the part of the reasons for the petition, the Petitioner did not convey any arguments against the contradiction between the articles petitioned for and the articles which were the basis for the examination in the 1945 Constitution. The Petitioners only describe the concrete cases experienced without any constitutional arguments regarding the contradiction of the proposed norms with the norms of the 1945 Constitution which are used as the basis for testing," said Aswanto. (Nano Tresna A.)

## PETITION FOR JUDICIAL REVIEW OF THE HUMAN RIGHTS LAW CANNOT BE ACCEPTED

THE request for review of Law Number 39 Year 1999 concerning Human Rights (Human Rights Law) was ultimately not accepted. Decision Number 52 / PUU-XVIII / 2020 was read out on Monday (28/9/2020). The judicial review of the Human Rights Law was proposed by Alamsyah Panggabean, a resident of Tanjung Botung Village, Barumon District, Padang Lawas Regency, North Sumatra Province.

The Court in the legal consideration of the decision stated that the Petitioners submitted a review of Article 15 of the Human Rights Law. However, the Petitioners question in the initial reasons for the petition (posita) is regarding the formation of Padang Lawas Regency which is based on Law Number 38 of 2007 concerning the Establishment of Padang Lawas Regency in North Sumatra Province (Law 38/2007).

According to the Petitioner, the phrase "personally" in Article 15 of the Human Rights Law is contrary to the 1945 Constitution as long as it is not interpreted as "collectively". However, the Petitioners did not provide further arguments where there was a conflict between the phrase "personally" a quo and Article 28C paragraph (2) of the 1945 Constitution. According to the Court, this did not meet the requirements

as stipulated in Article 5 of the Constitutional Court Regulation Number 06 / PMK / 2005 regarding Guidelines for Proceeding in Judicial Review.

"The absence of adequate arguments from the Petitioner regarding the unconstitutionality of the phrase" personally "in Article 15 of Law 39/1999, and the absence of an explanation for the relationship between the phrase and the Petitioner's description of Law 38/2007, according to the Court, resulted in the Petitioner's petition being incomprehensible. Therefore, based on this, the Court is of the opinion that the Petitioners' petition is vague," said Constitutional Justice Wahiduddin Adams who read out the Court's opinion. (Nano Tresna A.)



## THE CONSTITUTIONAL COURT CONFIRMS RERUNS CAN BE DONE WITH PERMISSION

PETITION for reviewing Law Number 11 Year 2008 concerning Electronic Information and Transactions (UU ITE) submitted by PT. Nadira Intermedia Nusantara was finally rejected. The trial for pronouncing the decision on Case Number 78 / PUU-XVII / 2019 took place on Tuesday (29/9/2020).

Previously, Case Number 78 / PUU-XVII / 2019 was filed by PT. Nadira Intermedia Nusantara. The Petitioner argued that he had been harmed by the enactment of Article 25 Paragraph (2) letter a of the Copyright Law because he was deemed to have conducted "re-broadcasting". The Petitioner who implemented the provisions of the Broadcasting Law to distribute at least 10% of the programs of public broadcasting institutions (TVRI) and private broadcasting institutions (private TVs broadcasting free to air) were actually reported by employees of PT. MNC SKY VISION to the police for broadcasting MNC Group TV creations.

The Court is of the opinion that the existence of Article 32 paragraph (1) Law no. 11/2008 and Article 25 paragraph (2) letter a of Law no. 28/2014 in no way closes a person's right to store, process and convey information. In fact, the a quo norm regulates that this right is exercised within the legal framework, that certain information which is public

or private property can still be conveyed by other parties as long as it has the permission of the party holding the right concerned. Thus, continued Saldi, the norm of the a quo law only regulates that this right is implemented in the framework of protecting other parties who have legal rights to control certain information as copyright.

"Therefore, Article 32 paragraph (1) of Law No. 11/2008 does not contradict Article 28F of the 1945 Constitution. Because the right to obtain information and convey information can be carried out by subscribed broadcasters after obtaining permission from the broadcast rights owner. Based on all legal considerations above, the Court is of the opinion that the Petitioners' petition is groundless according to law in its entirety," concluded Constitutional Justice Saldi Isra. (Nano Tresna A.)





## UNACCEPTABLE REVIEW OF ACT ON FISCAL BALANCE BETWEEN CENTRAL AND REGIONAL GOVERNMENT

THE Constitutional Court (MK) has decided that it cannot accept the petition for review of Article 19 paragraph (2) letter b and paragraph (3) letter b and Article 20 paragraph (2) letter b of Law Number 33 Year 2004 concerning Financial Balance between the Central Government and the Government Regions (Law 33/2004). This was conveyed by the Chief Justice of the Constitutional Court Anwar Usman while leading the plenary session of the pronouncement of Decision Number 63 / PUU-XVIII / 2020 which was held on

Monday (28/9/2020) in the Plenary Court Room.

This Petition was submitted by the Blora Civil Society Alliance Association, Sujad, Umar Ma'ruf, Jalal Umaruddin, Susanto Rahardjo, Febrian Candra Widya Atmaja, Exi Agus Wijaya. The Petitioners tested the constitutionality of the norms of Article 19 paragraph (2) letter b, paragraph (3) letter b, and Article 20 paragraph (2) letter b of Law Number 33 Year 2004 concerning Financial Balance between the Central Government and Regional Government against the 1945 Constitution .

In the Court's legal considerations read out by Constitutional Justice Arief Hidayat, it was said that the substance of the petition submitted by the Petitioners regarding the distribution of revenue-sharing funds was a regional right. Thus, this problem is also part of the issue of rights and / or affairs that fall under regional authority. Therefore, the Court states that the party that can apply for a norm review being petitioned for is the Regional Government and not an individual, a group of people, a customary law community unit, a public or private legal entity.

"Thus, the Petitioners do not have the legal position to act as Petitioners in the a quo petition," said Arief in a hearing attended by the parties via video conference from their respective residences. (Sri Pujianti)

## RULES CONCERNING THE FREEDOM OF THE CONSTITUTIONAL ACADEMIC PULSE

THE Constitutional Court (MK) decided that the petition for judicial review of Law Number 12 of 2012 concerning Higher Education (Higher Education Law) related to the rules regarding freedom of academic pulpit was not acceptable. Decision Number 53 / PUU-XVIII / 2020 was read out by the Chief Justice of the Constitutional Court Anwar Usman accompanied by eight other constitutional judges on Tuesday (29/9/2020) afternoon.

This Petition was submitted by Muhammad Anis Zhafran Al Anwary who is a student of Universitas Brawijaya. In their petition, the Petitioner argued that Article 9 paragraph (2) of the Higher Education Law was deemed contrary to Article 28; Article 28C paragraph (1); Article 28E paragraph (2) and paragraph (3); Article 28F; and Article 28I paragraph (2) of the 1945 Constitution. According to the Petitioner, the a quo article eliminates the right of the academic community as students to freely convey thoughts, opinions and information based on the clumps and branches of knowledge they master.

Regarding the petition, Constitutional Justice Manahan MP Sitompul who read out the Court's legal considerations said that the Petitioner's petition was vague because it did not fulfill the formal requirements of the petition as referred to in Article 30 and Article 31 of the Constitutional Court Law and Article 5 paragraph (1) PMK 6/2005. In

addition, continued Manahan, the meaning petitioned by the Petitioner in the petitem is a practice so far that is in line with the meaning of Article 9 paragraph (2) of Law 12/2012. The freedom of the academic pulpit is the authority of the professor and / or lecturer, but that does not mean that students cannot have the right to argue in an academic forum forum. The right of opinion from students in an academic pulpit, still exists under the auspices of professors and / or lecturers who have authority in the families and branches of their knowledge.

Thus, the Court found that the mismatch between the posita and the petitem had caused confusion or confusion regarding the a quo petition. So that the Court found it difficult to understand the meaning of the petition and did not consider further the main points of the Petitioner's petition. (Sri Pujianti)



## THE CONSTITUTIONAL COURT: THE PETITIONER DOES NOT HAVE THE LEGAL POSITION TO REVIEW THE MINERBA LAW

THE Constitutional Court (MK) decided that it could not accept the petition for the Judicial Review of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law) against the 1945 Constitution. The session for pronouncing Decision Number 58 / PUU- XVIII / 2020 was held on Tuesday (29/09/2020) at the Plenary Court Room. The request for judicial review of the Minerba Law was submitted by the Constitutional Advocates Association (AAK), Bahrul Ilmi Yakup, Dhabli K. Gumayra, Yuseva, Iwan Kurniawan, Mustika Tanto, and Rosalina Pertiwi Gultom.

In the legal considerations read out by Constitutional Justice Enny Nurbaningsih, the Court was of the opinion that the Petitioners were unable to describe clearly and in detail what constitutional losses were actually experienced by the enactment of the provisions of Article 35 paragraph (1) and paragraph (4) of Law 3/2020 which in essence, it states that the mining business is carried out based on a business license from the Central Government and the Central Government can delegate the authority to grant Business Licensing to the provincial Regional Government in accordance with the provisions of laws and regulations.

According to the Court, the Petitioners as an



association in the form of a civil legal entity (AAK), individual Indonesian citizens and work as lecturers, advocates, as well as individual Indonesian citizens who are currently pursuing mining law, have not suffered losses either directly or indirectly with the enactment of norms. a quo and there is also no cause-and-effect relationship between the presumption of constitutional impairment and the enactment of the norm petitioned for review.

Enny emphasized that although the Court has the authority to try the a quo petition, because the Petitioners do not have the legal standing to submit the a quo petition, the Court did not consider the main points of the Petitioners' petition. Thus, the Constitutional Court stated that the Petitioners' petition could not be accepted. As a result, the Constitutional Court's decision stated that the petition could not be accepted. "On trial, declaring the Petitioners' petition unacceptable," said Chairman of the Plenary Meeting of the Constitutional Justices Anwar Usman. (Sri Pujianti)

## THE CONSTITUTIONAL COURT DECIDES CASE ON BABEL ISLANDS PROVINCIAL GOVERNMENT MINERBA LAW

THE Constitutional Court (MK) held a hearing to pronounce the decision on the case review of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law) against the 1945 Constitution. The Court was of the opinion that the Petitioner's petition was unclear (obscure). As a result, in the decision, the Constitutional Court stated that the Petitioners' petition could not be accepted. Such is Decision Number 65 / PUU-XVIII / 2020 which was read out on Tuesday (29/9/2020) in the Plenary Court Room of the Constitutional Court.

The request for a review of the Minerba Law was submitted by the Regional Government of the Bangka Belitung Islands Province, which in this case was represented by the Governor of the Bangka Belitung Islands, Erzaldi Rosman, together with the leaders of the The House of Representatives of the Bangka Belitung Islands, namely Didit Srigusjaya, Hendro Apolo, Muhhammad Amin, and Amri Cahyadi. As for the material of the Minerba Law petitioned for review in the Constitutional Court, namely Article 4 paragraph (2), Article 7, Article 8, Article 17 paragraph (2), Article 21, Article 35 paragraph (1), Article 37, Article 40, Article 48 letters a and b, Article 67, Article 100A, Article 122, Article 140, Article 151, Article 169B paragraph (5) letter g, Article 173B, and other articles as long as they are interpreted as "removing / changing the authority of the Provincial Government". According to the Petitioner, mining problems as introduced in the consideration of "considering" the Minerba Law are not caused by the factor of regional

autonomy and regulatory authority. The policy to restore the centralization of mining affairs in the Central Government is not a solution, but is more caused by changing policies and the tug of war between the Central and Regional Governments.

After the Court juxtaposed the Petitioners' evidence with a copy of the Minerba Law obtained from the State Secretariat's Legal Information Documentation Network (JDIH), there were differences between the two. In the copy of the Minerba Law from the State Secretariat JDIH, there are no provisions in Article 100A and Article 169B paragraph (5) letter g as petitioned by the Petitioners. "The Petitioners also did not describe the contents of the articles meant in the petition so that the Court could not understand the articles intended by the Petitioners," said Constitutional Justice Arief Hidayat reading out the legal considerations of the decision.

The Petitioners asked the Court to declare to return the articles of the Minerba Law to their original state before the amendment. According to the Court, such a petition may only be considered and fulfilled as long as the petitioned for is clear and has implications for legal vacuum. "According to the Court, the Petitioners' petition is unclear (vague)," said Arief. (Utami Argawati)





## THE CONSTITUTIONAL COURT WINS THE THE UNQUALIFIED OPINION ( WTP) OPINION AWARD 10 TIMES IN A ROW

The Constitutional Court (MK) again won the Unqualified Opinion (WTP) award for the 10th time in a row. This award was presented virtually by the Minister of Finance Sri Mulyani at the 2020 National Working Meeting (Rakernas) of Government Financial Accounting and Reporting held by the Ministry of Finance of the Republic of Indonesia on Tuesday (22/9/2020). The Secretary General of the Constitutional Court M. Guntur Hamzah as well as several other structural and functional officials of the Constitutional Court witnessed the annual activity with the theme "Challenges of State Financial Accountability in Handling the Covid-19 Pandemic and National Economic

Recovery" from the Meeting Room of the Constitutional Court Building virtually.

In this activity, Sri appreciated the number of WTP Opinions obtained by ministries, state agencies and local governments which increased from 81 institutions in the 2018 period to 84 institutions in the 2019 financial reporting period. He hopes that this achievement can be maintained and improved considering this can be also used as an indicator of the better governance of ministries, institutions, and regional governments in carrying out the functions of financial responsibility and state governance.

In addition to the Constitutional Court, a number of ministries and state

institutions have received WTP Opinion awards 10 times in a row, including the People's Consultative Assembly, the People's Representative Council, the Riau Provincial Government, the Aceh City Government, the Palembang City Government, the Nagara Raya Regency Government, the Regency Government West Lampung, and the Jepara Regency Government. In addition, awards were also given to ministries and state institutions as well as local governments who won 5 consecutive WTP Opinions in 286 financial reports spread across 34 provinces in Indonesia. ■

(SRI PUJIANI / LULU ANJARSARI)



HUMAS MIKIFA

Constitutional Justice Enny Nurbaningsih became a resource person for the webinar on the Analysis of Legislative Formulation Training organized by the Education and State Secretariat Ministry Training, Friday (25/9) in Jakarta. Public Relations / Ifa Photo.

## LAW IS A POLITICAL PRODUCT

Constitutional Justice Enny Nurbaningsih was the resource person for the Training on Analysis of the Preparation of Legislation. This activity was organized by the Education and Training Center of the Ministry of State Secretariat on Friday (25/9/2020) afternoon virtually. Starting the meeting, Enny touched on legal politics in Indonesia which determines the direction of legal policies and legislation in order to carry out legal reform towards the law to aspire to. The politics of law in Indonesia is still a matter of debate among many experts regarding the location of legal politics.

Enny said that there were views of a number of figures regarding the debate on legal politics. Those who study constitutional law generally study more positive law. But the Belinfante legal expert says otherwise. Not only studying positive law when we study

constitutional law. But there are also other factors that are very influencing beyond the positive law. One of them is related to legal politics. Therefore, Belinfante puts the study of political law as part of constitutional law.

From these various views, continued Enny, there is one interesting view, namely the view of the national figure, Mochtar Kusumaatmadja. This view has been around for quite some time but is very relevant for discussion. This is related to the formation of laws, in this case the formation of laws. Many people only talk about the law in a normative way, sometimes bumping into a side that doesn't really understand. Because it turns out that there are several factors that greatly influence how the law can then be formed.

Regarding the legal formation process in Indonesia, according to Enny,

it cannot be separated from political institutions that play an important role in determining the formation of laws. When talking about political institutions, it cannot be separated from the choice to determine what will be regulated as part of legal provisions. The struggles regarding the choices to be taken in the process of forming the law are very decisive.

"For example, there is a member of the The House of Representatives who proposes a Music Law which raises such a debate. This is an interesting matter. Because this is the suggestion of the constituents, whether it represents the interests of the people in the majority, or only certain groups. Meanwhile, the substance of the proposed law is actually more on copyright issues. Even though we already have the Copyright Law," said Enny. ■

(NANO TRESNA ARFANA/NUR R.)



Constitutional Justice Saldil was the inspiration for a virtual meeting held by Andalas University (Andalas University), Friday (25/9) in Jakarta. Public Relations Photo / Gani

## THE STORY OF LIFE'S JOURNEY

Who doesn't know the figure of the Constitutional Justice Saldi Isra? His figure has become an inspiration, especially for the alma mater where he studied and started his career path, namely Andalas University (Unand). This was revealed in an online talk show with sources from Andalas University's extended family, on Friday (25/9/2020) night. The event entitled "Andalas University Inspiring" was organized by the Green Studio of the Faculty of Agriculture Andalas University (FAPERTA Andalas University) which was hosted by the Dean of the Faculty of Agriculture Andalas University Andalas University Munzir Busniah and Biology Lecturer Henny Herwina, Saldi, briefly telling his life journey.

In the event, Saldi shared that after graduating from High School he then tried to pursue his dream of studying at Bandung Institute of Technology. However, he had to take the bitter pill for failing to become an Bandung Institute Of Technology student again. But it did not stop there, Saldi Isra returned to the State Higher

Education Entrance Examination 1989 by registering with Bandung Institute Of Technology again. Again he failed. Three failed attempts, Saldi Isra then migrated to Jambi to look for work. After the money he had was deemed sufficient to enter college, finally Saldi Isra tried his luck again to register State Higher Education Entrance Examination in 1990. Saldi Isra chose three majors, namely Sriwijaya University Mining Engineering as the first choice, Civil Engineering Andalas University, and Andalas University Law Science as the last choice. Law Science is an option that he did not think about because he submitted it to fill the social studies major. But who would have thought, Saldi Isra actually passed State Higher Education Entrance Examination in the Department of Law Science which he had never thought of before. However, when he majored in Law Science, he doubted himself whether he could attend the lecture.

"In the midst of that doubt, I took the 1st semester exam and when the results came out beyond my expectations. My GPA at that time

was 3.71, I thought that by studying I was still not sure I got that much IP. Then, I improved the way I studied in semester 2 and took the exam again for my IP 4, you know in semester 2. There I started to think that maybe God had deliberately hidden a place that I had to search repeatedly to find. And finally I found him at the Faculty of Law. Then, I started thinking about what I want to be at the Faculty of Law. My imagination at that time was to be a lawyer, to be an advocate at that time or if not a lecturer," Saldi said. According to him, to back up it, Saldi had to read and write a lot.

Saldi said, he started writing seriously when he finished his bachelor's degree. "So I just started my writing published in the Koran Singkalang, if I'm not mistaken," said Saldi. Then, continued Saldi, when he finished the crush, life got heavier and heavier. Writing is a compulsion. Then Saldi began to learn to write slowly.

Graduated as the best law degree from Andalas University, Saldi Isra was immediately proposed by Bung Hatta University to become a lecturer there, although in less than a year, he returned to his alma mater in October 1995. He continued to write and send his writings to *Republika*. Apart from teaching, Saldi Isra is also active in writing. He has successfully written several books and published by several publishers. While teaching, Saldi Isra also continued his master's degree in Malaysia. Between his activities as a lecturer, Saldi is known to be active as a writer in various mass media and journals both nationally and internationally. The thousands of works that he wrote since he was a student have made him widely known among the public. No wonder, if his face is often milling about in mass media, both electronic and print, as a source. He is also known as the Director of the Center for Constitutional Studies (PUSaKO) Faculty of Law Andalas University who pays attention to constitutional issues. Not only that, he is also actively involved in the anti-corruption movement in the country. ■

UTAMI ARGAWATI/LULU ANJARSARI



HUMAS MKCGANIE

# THE MOST REALISTIC CHOICE IN PANDEMIC TIMES

Constitutional Justice Arief Hidayat was the keynote address at a national seminar held by the Faculty of Law UPN Veteran East Java and Faculty of Law, Trunojoyo University, Wednesday (30/9) at the Constitutional Court Building. Public Relations Photo / Gani.

Constitutional Justice Arief Hidayat gave a keynote at the National Seminar and Call of Papers with the theme “Law and Technology Transformation in Strengthening and Resilience of the State in the New Normal Era” on Wednesday (30/9/2020) virtually through the Zoom Petition. This activity was held in collaboration with the Faculty of Law, UPN Veteran East Java and the Faculty of Law, Trunojoyo University. In the event, Arief delivered a keynote with a specific theme according to his position and experience as a Constitutional Court Justice, namely “Virtual Trials at the Constitutional Court”. Arief stated that the judiciary should not stop as far as possible to provide legal certainty, benefits, and justice for justice seekers. In all situations, the judiciary should continue to ‘stand tall’ in line with the large duties and roles it plays.

Likewise the Constitutional Court (MK). It must be admitted, during the Covid-19 pandemic it was hard for all

parties to feel. The impact permeates all aspects of life, including in the fields of law and justice. For the Constitutional Court, continued Arief, since its inception the Constitutional Court has declared itself a modern and trusted court, this situation is addressed rationally. The use of modern information technology, which has actually been implemented and accompanied the Constitutional Court so far, is increasingly finding its urgency and momentum in the current Covid-19 pandemic.

“One of them is how to readiness to apply modern information technology tools with all the supporting resources to hold a virtual trial,” said Arief to the speakers and seminar participants.

At the beginning of the Covid-19 pandemic, the Constitutional Court decided to postpone trials of all cases. As a result, legal certainty and justice through decisions as expected by justice seekers are hampered. On that basis, based on the evaluation and analysis carried out on a number of aspects, the Constitutional Court took steps to

re-organize face-to-face trials in the courtroom by applying strict health protocols to Constitutional Justices, The Constitutional Court employees, and other parties present. Apart from that, the Constitutional Court also limited the number of parties who attended directly in the courtroom. The Constitutional Court determined that each party present was at most 5 (five) people, either legal or principal. In addition, the Constitutional Court also gave options to the parties who would participate in the trial,

However, with the re-implementation of the Large-Scale Social Restrictions (PSBB) strictly in the DKI Jakarta area about two weeks ago, the Constitutional Court took a firm policy to hold virtual trials. That is, the Constitutional Justice Panel Board is in the court room of the Constitutional Court, while the parties are allowed to attend only virtually.

“At this point, the Petition of remote (virtual) trials with the help of the latest information technology tools is the most realistic option,” said Arief. ■

UTAMI ARGAWATI/NUR R.



HUMAS MKCGANE

## THE COURT'S PROCEDURE LAW

Constitutional Justice Daniel Yusmic P. Foekh was a resource person in the Advocate Professional Special Education (PKPA) activity held by DPC Peradi Ambon, Friday (2/10) at the Constitutional Court Building. Public Relations Photo / Gani.

Constitutional Justice Daniel Yusmic P. Foekh explained the material "Constitutional Court Procedure Law" virtually (online) in Advocate Professional Special Education (PKPA) on Friday (2/10/2020). This activity was organized by DPC Peradi Ambon in collaboration with the Pattimura University Law Faculty. As an introduction, Daniel explained about judicial power in Indonesia. "Article 24 Paragraph (2) of the 1945 Constitution states," Judicial power is exercised by a Supreme Court and judicial bodies under it in the environment of general courts, religious courts, military courts, state administrative courts, and by a Constitutional Court. . "

Furthermore, Daniel said, based on Article 24C Paragraph (1) it is stated, "The Constitutional Court has the authority to judge at the first and last levels whose decisions are final to examine the law against the Basic Law, decide disputes over the authority of state institutions whose authority is granted by The Constitution, decides the dissolution of political parties, and decides disputes over the

results of general elections. " Then Article 24C Paragraph (2) of the 1945 Constitution states, "The Constitutional Court is obliged to give a decision on the opinion of the House of Representatives regarding alleged violations by the President and / or Vice President according to the Constitution."

Apart from that, added Daniel, there is another additional authority for the Constitutional Court, namely adjudicating disputes over the results of regional head elections until a special judicial body is formed. In the legal considerations of the Constitutional Court Decision Number 97 / PUU-XI / 2013, the Constitutional Court stated that in order to avoid doubt, legal uncertainty and the vacuum of the institution that has the authority to resolve disputes over regional head election results because there is no law regulating this matter, the settlement of election result disputes regional heads remain under the authority of the Constitutional Court.

In this presentation, Daniel also discussed the trials at the Constitutional Court, which consisted of preliminary

examination panel sessions and plenary hearings of trial examinations. The panel session is attended by three Constitutional Justices, while the plenary session is attended by at least seven Constitutional Justices. The Constitutional Court sessions are open to the public, except for the Judges Consultative Meeting (RPH). In addition, those who wish to litigate at the Constitutional Court can apply for a video conference in accordance with the Constitutional Court Regulation (PMK) Number 18 of 2009. Another and very important thing is the pronouncement of the decision. The Constitutional Court adjudicates at the first and last level the decisions are final. The decision has permanent legal force since it has been pronounced in a plenary session open to the public. In accordance with Article 47 of the Constitutional Court Law. "The Court's decision is erga omnes. Even though it was requested by individuals or individuals, the enforcement of the decision is binding on all citizens or the general public and influences legal politics in Indonesia," said Daniel. ■

NANO TRESNA ARFANA/NUR R



HUMAS MKIBAYU

# EFFORTS TO FIGHT FOR CONSTITUTIONAL RIGHTS

Constitutional Justice Suhartoyo in the Class VIII Advocate Professional Special Education (PKPA) activity held by the Faculty of Law, As-Syafi'iyah Islamic University in collaboration with DPN Peradi on Saturday (3/10/2020). Photo: Public Relations / Bayu.

Procedural law relates to the means or instruments that must be understood when becoming an advocate. This is useful for enforcing material laws relating to problems faced by principals. Without mastering it, an advocate or legal attorney may not be able to fight for constitutional rights and justice for the principals he helps. That was the opening statement expressed by Constitutional Justice Suhartoyo in the Class VIII Advocate Professional Special Education (PKPA) activity held by the Faculty of Law, As-Syafi'iyah Islamic University in collaboration with DPN Peradi on Saturday (3/10/2020) through the Zoom Meeting. "With regard to the Constitutional Court,

In the Constitutional Court, continued Suhartoyo, the law of the procedure is slightly different from the respective authorities that accompany it. Some of the powers of

the Constitutional Court referred to in the constitution include examining laws against the Constitution, resolving disputes over the authority of state institutions, deciding to dissolve political parties, and decide on disputes over general election results, while the Constitutional Court's obligation is to provide an opinion on suspected violations by the president according to the 1945 Constitution. There is also additional authority granted by the 1945 Constitution, but not derived from the constitution, namely handling disputes over the results of Regional Head Elections (PHP Kada).

In connection with the procedural law of judicial review (PUU), Suhartoyo explained that with regard to the procedural law of judicial review, what must be understood is that there is a formal and material examination. In this procedural law of judicial review, the nature of the case is not a controversial

case, adversarial, and a case where there are no parties and only a Petitioner and no Respondent. If someone submits a request for a judicial review at the Constitutional Court, it is possible that there is a related party and the Government and the The House of Representatives in this case only act as information providers. "So the Government and the The House of Representatives explained everything at the request of the Constitutional Court. On the basis, there was a petition by the Petitioner so that the Constitutional Court summoned the The House of Representatives / Government regarding the existence of a formal and material review of a legal product made by the legislators," explained Suhartoyo. ■

SRI PUJIANTI/LULU ANJARSARI



THUMAS MKIFA

## UNLIMITED TIME

Deputy Chief Justice of the Constitutional Court Aswanto was a resource person for the 3rd Batch of the Advocate Professional Special Education (PKPA) organized by the Indonesian Advocates Association (Peradi) in collaboration with Halu Oleo University through the Zoom Meeting Petition, Sunday (4/10) in Jakarta. Public Relations / Ifa Photo.

**D**eputy Chief Justice of the Constitutional Court (MK) Aswanto was a resource person for Special Education for Advocate Professionals (PKPA) Batch 3 with the theme "Court Judicial Procedure Law." This activity was organized by the Indonesian Advocates Association (Peradi) in collaboration with Halu Oleo University through the Zoom Meeting Petition on Sunday (4/10/2020). At the event, Aswanto conveyed the legal basis for the formation of the Constitutional Court, namely based on Article 24 Paragraph (2) of the 1945 Constitution, in which judicial power is exercised by a Supreme Court and judicial bodies under it in the environment of general courts, religious courts, military courts, environment state administrative court, and by a

Constitutional Court. "So, Article 24 Paragraph (2) of the 1945 Constitution is the basis for the formation of the Constitutional Court," said Aswanto.

Aswanto explained, the authority of the Constitutional Court is regulated in Article 24C Paragraph (1) and Paragraph (2) of the 1945 Constitution, Law no. 24 of 2003 concerning the Constitutional Court as amended by Law no. 8 of 2011 Article 10 paragraph (1) and paragraph (2). And regulated in Article 29 paragraph (1) and paragraph (2) Law no. 48 of 2009 concerning Judicial Power. However, continued Aswanto, in the development of the exercise of authority, the Constitutional Court stated that Article 50 of Law no. 24 of 2003 contradicts the 1945 Constitution. Article 50 contains provisions which state that the laws that can be reviewed

by the Constitutional Court are those promulgated after amendments to the 1945 Constitution. According to him, this article has been declared unconstitutional based on the Constitutional Court Decision Number 066 / PUU-II / 2004 Law No.1 of 1987 on Kadin). Thus, the Constitutional Court has the authority to examine all laws that have been passed. Other than that, based on Decision No. 138 / PUU-VII / 2009 The Constitutional Court stated that it had the authority to examine Government Regulations in Lieu of Law (Perpu). The Constitutional Court's legal considerations stated that the Perpu created new legal norms with the same force as the Law. ■

UTAMI ARGAWATI/NUR R.

# SWELLING REGULATIONS IN THE EXECUTIVE TERRITORY

Constitutional Justice Saldi Isra became a resource person for the launch and discussion of the book "The Main Thought of Arranging Legislation in Indonesia." This activity was held by the Center for Pancasila and Constitutional Studies, Faculty of Law, University of Jember on Wednesday (7/10/2020) virtually. "Congratulations to Dr. Bayu Dwi Anggono as the author of a book relating to regulation arrangement in Indonesia. For me, books are a picture of eternity. If people want to put their thoughts in written form, it means that he is leaving his immortality for the crowd, to be discussed. Regardless of whether people agree or disagree with what we write, it becomes another matter. This is part of the responsibility of an academician to enrich literacy, especially literacy in constitutional law. More specifically, readings related to legislation. Moreover, the issue of

legislation is an issue that we have never finished discussing after the amendments to the 1945 Constitution," said Saldi.

Saldi continued, related to the discussion in the book regarding the arrangement of regulations in Indonesia is a central topic that cannot be discussed comprehensively. Many thinkers, reviewers, constitutional law circles, especially in relation to legislation, have carried out studies of regulatory arrangements that have been shaken by looking at the number of laws. For example, there is a statement that Indonesia is hyper regulation. There are too many laws and regulations in Indonesia. "We don't argue with that kind of opinion. But as a person who is given the basic capital to examine more comprehensively our regulations, of course we have to look at them from various points of view. One of the points that is

often forgotten when talking about regulations,

Further responding to hyper regulation in Indonesia, Saldi questioned the point where there was an overflow of regulations outside the normal limits. At least data on the number of laws in Indonesia that are still effective compared to the number of Government Regulations, Keppres, Perpres, Ministerial Regulations. "It turns out that many regulatory swelling occurs in the executive area. I am almost certain to say that hyper regulation actually exists in the executive realm," added Saldi. Saldi conveyed, an effort to fix the swelling of regulations in Indonesia is by fixing the process of the birth of regulatory products in the executive area. If this can be done, according to Saldi, serious problems with the swelling of regulations can be resolved. ■

(NANO TRESNA ARFANA/NUR R.)



HUMAS MKCGANTIE

Constitutional Justice Saldi Isra became a resource person for the launch and discussion of the book "Principles of Arrangement of Legislation in Indonesia." This activity was held by the Center for Pancasila and Constitutional Studies, Faculty of Law, University of Jember, Wednesday (7/10) virtually at the Constitutional Court Building. Public Relations Photo / Gani.



HUMAS MKRIFA

## ORGANIZING THE LEGAL SYSTEM

The Constitutional Court Judge Wahiduddin Adams inaugurated the Constitutional Court Laboratory, which was established by the Sharia Faculty of IAIN Jember, on Friday (9/10) at the Constitutional Court Building. Public Relations / Ifa Photo.

Constitutional Justice Wahiduddin Adams was a guest speaker in a public lecture with the theme “The Authority of the Constitutional Court in Managing the Legal System in Indonesia” organized by the Sharia Faculty of the State Islamic Institute (IAIN) Jember, on Friday (9/10/2020) in the morning virtually. In the event, Wahiduddin also inaugurated the Laboratory of the Constitutional Court (MK) which was founded by the Sharia Faculty of IAIN Jember. Wahiduddin in his remarks on the inauguration of the laboratory said that the boundaries between the field of “legal science” as a legacy from Western thought and the field of “sharia science” are getting thinner. Studies of the Constitution and the “Constitutional Court” are dominated by references from western scholars. However, a laboratory on the Constitutional Court was established at the Sharia Faculty. “Therefore,

Furthermore, in his public lecture presentation, Wahiduddin Adams discussed the topic of the idea of constitutionalism which became the basis for the formation of the Constitutional Court. Then, regarding the duties of the Constitutional Court in constitutional review which affects the arrangement of the harmonization of legislation. In the final section, Wahiduddin examines the problems faced by the Constitutional Court. He said that democratic practices that prioritize quantity may violate the 1945 Constitution. Wahiduddin said that the majority vote does not necessarily reflect truth and justice. Amendments to the 1945 Constitution have transferred the supremacy of the People’s Consultative Assembly to the supremacy of the constitution.

According to him, this fundamental change needs to provide institutional and constitutional mechanisms as well as the presence of institutions

that resolve the possibility of disputes between state institutions that have become equal and balance and control each other (checks and balances). Along with that, an idea emerged that the review of statutory regulations needs to be traditionalized and even formalized in positive legal rules.

Wahid said, the essence of the Constitutional Court’s authority to conduct constitutional review is that the cases submitted to the Constitutional Court are those that have a major influence on people’s lives. The constitution is not only a written document that is considered sacred. “What is more important is how constitutional values can become a part of people’s lives. The spirit of the constitution becomes alive and is brought to life by the community. Constitutional testing is at a different level from testing other laws and regulations,” he stressed. ■

UTAMI ARGAWATI/NUR R

# SCOPE OF LEGISLATIVE TESTING

Review of legislation is not only related to judicial review at the Constitutional Court (MK), but also those at the Supreme Court (MA). For this reason, students must read and understand various references so that in filing a case later, both the Constitutional Court and the Supreme Court can really understand so that the test can be carried out properly. This was conveyed by Constitutional Justice Enny Nurbaningsih in an online public lecture with the theme "Testing of Legislation in Indonesia" on Friday (9/10/2020) night. This activity was organized by the Faculty of Law, Gadjah

Mada University, and was attended by 12 second semester students of the Master of Law Litigation.

Regarding the constitutionality test conducted by the Constitutional Court, Enny said that what was assessed was the formal and material aspects of the norms tested. There are several measuring instruments used as a barometer of judgment, including the official text of the Constitution, written documents that are closely related to the text of the UUD, constitutional values that live in the practice of state administration in Indonesia, and values that live in people's cognitive

consciousness. Meanwhile, in relation to the Supreme Court's authority, Enny said that the Supreme Court was determined to have limited judicial review authority. That is, it can only examine statutory regulations under statutes with conditions that must be examined at the cassation level. "So, in essence the Constitutional Court has the authority to conduct constitutionality testing, meanwhile, the Supreme Court has the authority to test the legality of norms," said Enny. ■

(SRI PUJANTI/LULU ANJARSARI)



Constitutional Justice Enny Nurbaningsih in an online public lecture with the Faculty of Law, Gadjah Mada University, Friday (9/10) Public Relations / Gani Photo.

HUMAS MKKGANIE



HUMAS MICHANDI

## DISPUTE OVER ELECTION RESULTS IN ELECTION SCHOOLS

Deputy Chief Justice of the Constitutional Court (MK) Aswanto was a resource person for the Election School organized by Masika ICMI South Sulawesi in collaboration with General election supervisory agency and the South Sulawesi General Election Commissions on Saturday (10/10/2020) online afternoon, Public Relations / Hamdi Photos.

**D**eputy Chief Justice of the Constitutional Court (MK) Aswanto was the resource person for the Election School organized by Masika ICMI South Sulawesi in collaboration with General election supervisory agency and the South Sulawesi General Election Commissions on Saturday (10/10/2020) online afternoon. Aswanto presented the material "Ethical Court and Election Dispute".

Talking about election disputes referring to the 1945 Constitution, said Aswanto, the elections meant were legislative and presidential elections. Then where is the location of the regional head elections (pilkada)? The Constitutional Court's decision several years ago (Decision Number 97 / PUU-XI / 2013) stated that the pilkada was not an election regime but a regional government regime. But over time, there are many discussions about pilkada, most people think that the pilkada is an election regime. "Indeed, if we look at the constitutional basis, it is somewhat different, there is Article 18 of the 1945 Constitution and Article 22E of the 1945 Constitution," Aswanto said.

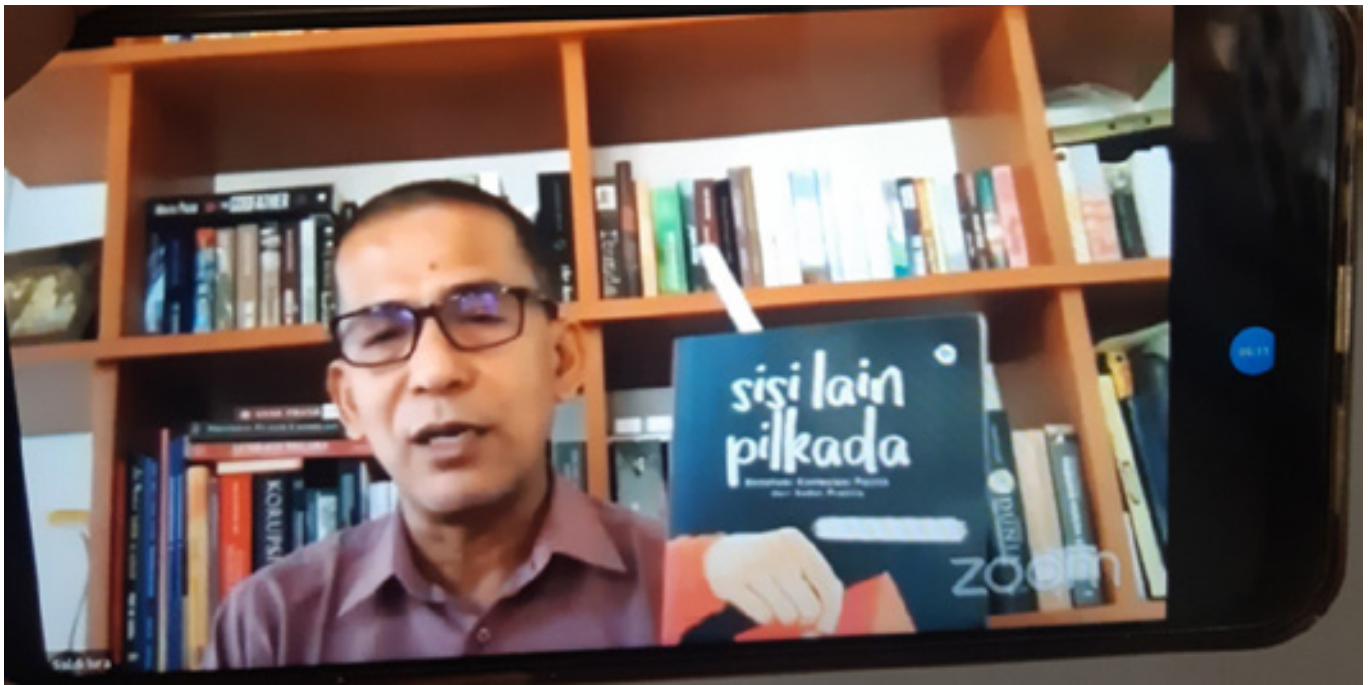
Regarding the dispute over the election results, continued Aswanto, it is not only the dispute over the results of the legislative and presidential elections, but also the disputes over the results of the regional elections. Aswanto said, Law no. 10/2016 as Amendment to Law no. 8/2015 which is also the Amendment to Law no. 1/2015 is the stipulation of Perpu No. 1/2014. "At the time the perpu was submitted to the The House of Representatives, the one given the authority to resolve regional election disputes was a special court. It was based on the Constitutional Court's decision on the Regional Head Election Law. The Court decided that the pilkada was not an electoral regime, therefore it was not under the authority of the Court. As we know, the authority of the Court based on the Constitution has four powers and one obligation. This includes election disputes as contained in Article 22E of the 1945 Constitution," Aswanto explained.

So why can the local election dispute be brought to the Constitutional Court? Aswanto explained that the Supreme Court (MA) has the authority

to handle disputes over the results of the first election. Then the Supreme Court transferred its authority to the high court to handle election disputes at the district / city level. Meanwhile, the election disputes at the provincial level are still handled by the Supreme Court. However, along with the times, through long discussions, the authority to handle disputes over the election results was transferred to the Constitutional Court. After the Constitutional Court Decision was issued, the Court emphasized that handling disputes over the results of the elections was not within the Court's authority.

"But why is the Court still handling it? Because there is a clause in the Constitutional Court Decision which states that it is the special court that has the authority to handle disputes over the results of the elections. But as long as there is no special court, then the handling of dispute over the results of the elections remains the authority of the Constitutional Court," explained Aswanto. ■

NANO TRESNA ARFANA/NUR R



Constitutional Justice Saldi Isra became a resource person for the Discussion and Book Review activities organized by the Faculty of Social and Political Sciences, Andalas University, on Saturday (10/10) in Padang. Public Relations / Ifa Photo.

## DISCUSS ELECTION DISPUTE THOROUGHLY

Constitutional Justice Saldi Isra was the keynote speaker at the "National Virtual Meeting of Masters Students of Election Governance in Discussion and Book Discussion Activities on the Other Side of the Regional Head Election: Understanding Contestation from a Practical Point of view", on Saturday (10/10/2020) morning virtually. During the event, Saldi started by dissecting the book written by Asrinaldi. He said that this book tells about the practical point of view of the regional elections. However, the book does not discuss the practical side of dispute resolution in the Constitutional Court (MK). He hopes that this book can explain the parts of a book written that has been published so that readers can track the progress of the writing. Apart from that, according to Saldi, there is another side that can be described so that it is more comprehensive and can be fully understood.

After dissecting the book, Saldi continued by explaining the final stage of the dispute settlement of regional head elections (pilkada) in the Constitutional Court. He said that Article 22E of the 1945 Constitution regarding general elections (pemilu) does not include pilkada. Regional Head Election, he continued, was included in the regional government division. So that it raises the opinion that the election is different from the pilkada. However, according to Saldi, between the elections and the pilkada there is no difference when viewed from the context of direct elections. Saldi said, Article 24A of the 1945 Constitution states that the Supreme Court (MA) has the authority to judge at the cassation level, examine statutory regulations under the law against laws, and have other powers granted by law. Initially, he continued, the election dispute resolution process was carried out by the Supreme Court. However, Over time, the Supreme Court

objected to exercising the authority to examine regional election disputes because they thought that the other authorities would be delayed to be resolved. Meanwhile, the Constitutional Court once issued the authority to resolve the regional head elections due to trauma. In the future, continued Saldi, the legislators must determine whether to force the Supreme Court to settle the election dispute, return to the Constitutional Court, or form a special court. According to Saldi, when creating a special court, in the Indonesian legal system the special court would still be under the Supreme Court. He also said that the Constitutional Court was still upholding the mandate given by the Constitution and the Law. ■

UTAMI ARGAWATI/LULU ANJARSARI



HUMAS MK/GANIE

## DESPITE THE PANDEMIC, TECHNICAL GUIDANCE ON DISPUTE RESULTS OF REGIONAL HEAD ELECTIONS IS STILL HELD VIRTUAL

The Chief Justice of the Constitutional Court Anwar Usman along with the Deputy Chief Justice of the Constitutional Court Aswanto accompanied by the Secretary General of the Constitutional Court M Guntur Hamzah and the Constitutional Court Clerk Muhidin opened the Trainers Convention for Candidates for Candidates and Facilitators for Technical Guidance on Election Result Dispute in a virtual case, Friday (02/10) at the MK Building Public Relations Photo / Gani.

Welcoming the holding of simultaneous regional head elections on 9 December 2020, the Constitutional Court through the Pancasila and Constitutional Education Center will hold technical guidance on the Court's procedural law in handling PHP Kada. Even though the world is being confronted by Covid-19, the Constitutional Court as the last place for justice seekers to resolve disputes over the election results, continues to strive to carry out its duties and functions. Armed with optimization of communication technology, the Constitutional Court carried out online and offline technical guidance. On this first occasion throughout October 2020, the Constitutional Court invited the

parties who would be directly involved in the Simultaneous Regional Election to attend to listen to various provisions regarding the provisions of proceedings at the Court.

### Preparation for Guidance for Regional Election Disputes

Chief Justice of the Constitutional Court (MK) Anwar Usman opened the Trainers Convention for Candidates and Facilitators for Technical Guidance on Election Result Dispute, Friday (02/10/20) at the Constitutional Court Building. This activity is carried out virtually as a preparation for the 2020 Regional Head Election on December 9, 2020. "The implementation of the pilkada is indeed a dilemma, but whatever happens, our preparations

must be matured," explained Anwar, opening the event.

To the participants who followed online, Anwar invited the participants to work with the intention of worship. "And as a human being, it is impossible to work beyond his ability, therefore good cooperation between employees is needed," he ordered.

In the event organized by the Pancasila and Constitution Education Center, there were also speakers, namely Deputy Chief Justice of the Constitutional Court Aswanto, Constitutional Justice Saldi Isra and Constitutional Justice Suhartoyo. The three of them provided material to the participants consisting of substitute clerks, researchers, judicial officers, and judges' secretaries in the judicial field.

"There are changes in the procedures regulated in the PMK (Constitutional Court Regulation), through this activity we want to equalize perceptions," said Aswanto.

According to Aswanto, there have been a number of changes in the registration of requests for dispute over the results of the elections. If in the previous Constitutional Court Regulation, continued Aswanato, petition registration can be done many times, then with this Constitutional Court Regulation the petition can only register once in the first 3x24 hours. "So there is no need to go back and forth to the Constitutional Court building," he said.

Furthermore, said Aswanto, revision of the petition can only be done once in the second 3x24 hours, and if there is another correction the petitioner can submit it in the preliminary hearing.

Meanwhile, Constitutional Justice Saldi Isra in his presentation explained that the new Constitutional Court Regulation made it easier for officers who received case requests, so that the task load that previously rests on officers who received case petitions has shifted to the constitutional judges. Saldi revealed that previously he had experience that the answer submitted by the defendant in a trial was different

from the written answer submitted to the Court.

Constitutional Justice Suhartoyo on the same occasion said, in Constitutional Court Regulation Number 5 of 2020 concerning Procedures for Procedures in Cases of Dispute on the Results of the Election for Governors, Regents and Mayors (PMK 5/2020), encouraging the candidate pair team to be ready with evidence to be presented in the trial. . "And it must be prepared to become a petitioner or any related party, by continuing to monitor the progress of regional election cases that enter through the mkri.id page," he said. ■

ILHAM M./LULU ANJARSARI





THOMAS MICKAGNIE

## PROCEDURAL LAW TECHNICAL GUIDANCE FOR GENERAL ELECTION COMMISSIONS: BETWEEN FULFILLMENT OF DEMOCRATIC RIGHTS AND HEALTH

The Chief Justice of the Constitutional Court Anwar Usman accompanied by the Secretary General of the Constitutional Court M Guntur Hamzah officially opened the Legal Technical Guidance for the Handling of Disputes on the Results of the 2020 Election for Governors, Regents and Mayors For the General Election Commission virtually, Tuesday (6/10) at the Constitutional Court Building Public Relations Photo / Gani.

**A**head of the 2020 Concurrent Regional Head Elections, the Constitutional Court (MK) is preparing itself as a judicial institution that adjudicates the final results. One of the preparations made by the Constitutional Court was to hold Technical Guidance on Procedure for Handling Dispute Cases on the Results of the 2020 Election for Governors, Regents and Mayors for the General Election Commission. This inaugural technical guidance in 2020 was held by the Pancasila Education Center and the Constitutional Court of the Constitutional Court in a virtual manner and was attended by participants from 32 provinces organizing the

simultaneous regional elections on Tuesday (6/10/2020).

The Chief Justice of the Constitutional Court, Anwar Usman, in his remarks said that in a pandemic condition, the state's responsibility in the health sector as stated in Article 28H paragraph (1) of the 1945 Constitution is not easy to fulfill. , the current condition is very dilemma for the state to hold the 2020 simultaneous regional elections. On the one hand, the state must fulfill the democratic rights of the people, but on the other hand, there is the right to implement health protocols which are also part of fulfilling the rights of the people in the health sector.

"These challenges and choices seem tough. Even the implementation of all of these was to be held on 23 September 2020, but changed to 9 December 2020. The decision to continue implementing this agenda has been determined by the Government and the The House of Representatives. So, the simultaneous Regional Head Election will be implemented with strict health protocols with many adjustments, including later the dispute settlement process in the Constitutional Court," explained Anwar in an activity that was also attended virtually by Plh. The Indonesian General Election Commission, Ilham Saputra, and the Secretary General of the Constitutional Court M. Guntur Hamzah.

## Serious Learning

Meanwhile, the executive chairman of the The General Election Commission of the Republic of Indonesia, Ilham Saputra, in his remarks said that the General Election Commissions institution had enthusiasm to participate in this activity by assigning parties who could represent the institution. Ilham revealed that the holding of the Simultaneous Regional Head Election in 2020 is the 4th concurrent regional election agenda that has been carried out by the General Election Commissions. However, he admitted that this election requires heavier preparation because there are more election participants than in previous years. Even though the General Election Commissions has quite good experience in holding elections and also resolving disputes over the results of the Constitutional Court, the existence of the Technical Guidance for Procedural Law in this period is felt to be very important and must be followed properly, seriously,

carefully, and seriously. "It is also hoped that the Constitutional Court will have a breakthrough, especially in the trial during this pandemic. Of course the Constitutional Court will have certain rules to support this. Like how do we compile a dispute request and tips or strategies for formulating answers and evidence that will be given to the trial at the Constitutional Court later," said Ilham.

## Understanding of Procedural Law

Meanwhile, in this activity report, the Secretary General of the Constitutional Court M. Guntur Hamzah conveyed that the agenda of this activity was attended by around 352 online participants and 10 participants directly at the MK Pusdik, who came from the General Election Commission, starting from the RI General Election Commissions, General Election Commissions Provinces / Regencies / Cities spread over 32 provinces that will hold the 2020 Regional Head

Election Simultaneously. More clearly, Guntur said that the 220 simultaneous Regional Elections have been assigned to 270 regions with 374 regional head candidate pairs which will be held on 9 December 2020. The Constitutional Court in this case obtained additional authority to adjudicate the settlement of the dispute over the results. "To succeed in this national agenda,

## Prepare the Constitutional Court Regulation 2020

The Constitutional Court (MK) has one additional authority, namely to examine and adjudicate cases of disputes over the results of regional head elections. Regarding this authority, in the 2020 Regional Head Election, the Constitutional Court made a provision as outlined in the Constitutional Court Regulation Number 5 of 2020 concerning Procedures for Disputes over Election Results of Governors, Regents and Mayors. In this case, the object of the dispute that will be examined



Constitutional Justice Daniel Yusmic P. Foekh as a guest speaker in the Legal Technical Guidance for Handling Dispute Cases on the Results of the 2020 Governor, Regent and Mayor Election for the General Election Commission on Wednesday (7/10/2020). Photo: Public Relations / Hermanto

and tried by the Constitutional Court is the General Election Commission (Respondent) Decree regarding the determination of the disputed votes acquired by the regional head elections which are significant and can influence the determination of the elected candidate.

This was conveyed by Constitutional Justice Daniel Yusmic P. Foekh when he was a guest speaker in the Legal Technical Guidance for Handling Dispute Cases on the Results of the 2020 Governor, Regent and Mayor Election for the General Election Commission on Wednesday (7/10/2020). This activity was held by the Center for Pancasila and Constitution Education and was attended by virtually 352 participants from 32 provinces.

In the material entitled "Procedures for Dispute Cases on the Results of the 2020 Governor, Regent and Mayor Election," Daniel discussed more of the articles in Constitutional Court Regulation 4 and Constitutional Court Regulation 5 of 2020 which are prepared to face the settlement of Dispute Cases on the Results of Governor Elections, Regents and Mayors in 2020. Based on the latest Constitutional Court Regulation, explained Daniel, there was an update regarding the Related Party which in the previous PHP Kada was the candidate pair for regional head who received the most votes in the election. However, in the 2020 Regional Head Election, Election Observers who are registered and receive accreditation from General election supervisory agency can become Related Parties. With a note, the Related Party has a direct interest in the petition submitted by the Petitioner.

"In addition, at the PHP Kada trial, the Respondent previously delivered an answer before the trial, but at PHP Kada 2020 it was sufficient to convey it during the examination session or the second trial," explained Daniel, who delivered the material accompanied by

the Young Registrar I MK Triyono Edi Budhianto as moderator.

### Development of the Court

In the second session of this technical guidance, Senior MK Pan M. Faiz also participated in sharing knowledge with the participants with an explanation entitled "The Constitutional Court in the Indonesian State Administration System." In his presentation, Faiz opened the discussion by introducing models of constitutional courts in the world, namely a constitutional court with a judicial review system, a constitutional council with a judicial preview system, and a constitutional court / council with a hybrid review system.

Faiz explained more clearly that the judicial review system places new laws that can be submitted for review after they become laws or are ratified as laws. In this model, of course there will be complaints because the norms have been painstakingly drawn up, but later because they were sued and it turns out that their existence could have been canceled by the Constitutional Court. However, the advantage of this system is that the mismatch of norms can be seen concrete or has the potential to occur because it has been implemented in the life of the wider community.

### Online Procedures

Meanwhile, in the third session of this technical guidance, Young Clerk II MK Wiryanto explained the material entitled "Mechanisms and Stages, Activities, Schedules, Handling Dispute Cases on the Results of the 2020 Governor, Regent and Mayor Election." In his presentation, he requested that the technical guidance participants first understand the procedural law of the Constitutional Court before entering the case handling stage mechanism, especially during this pandemic there were several rules and procedures that were adjusted by the

Constitutional Court to still be able to hold hearings in compliance with the health protocol has been established by the Government in preventing the spread of Covid-19. Wiryanto admitted that the Constitutional Court encouraged all activities between the parties in filing the 2020 PHP Kada case as much as possible online,

### Answer in Description

In the last session of technical guidance on the second day, Substitute Registrar of Level I Syaiful Anwar shared his experiences in a presentation entitled "The Respondent's Response Compilation Techniques". In this session, Syaiful provided more techniques for preparing answers than the theory of a petition. According to him, ideally from the answers from the dalildali that were submitted to the Constitutional Court in every handling of the PHP Kada case, the General Election Commissions as the Respondent should provide a statement.

"If those who have frequently proceeded to the Constitutional Court, then the Petitioners' arguments or contradictions must have been commonly made. In essence, there is no need to elaborate, the Respondent simply answered firmly in the description aimed at the object of the Petitioners argued, which contained rebuttals, such as the Respondent's correct vote counting. That is the main thing that the Respondent needs to understand," explained Syaiful.

### Details of the Court's Authority in Handling Election Disputes

Parties who appear as plaintiffs in filing cases at the Constitutional Court (MK) do not need to have an advocate background. People who feel their constitutional rights have been impaired can apply. Likewise with the Regional Head Election, the party that can file a dispute as a Petitioner is

a pair of candidates who think that their vote acquisition has suffered a loss. This was conveyed by the Deputy Chairperson of the Constitutional Court Aswanto in the official closing ceremony of the Legal Technical Guidance for Handling Dispute Cases on the Results of the 2020 Election of Governors, Regents and Mayors for the General Election Commission (KPU) on Wednesday (8/10/2020). This technical guidance was organized by the Center for Pancasila and the Constitutional Education of the Constitutional Court in a virtual manner which was attended by participants from 32 provinces organizing the simultaneous regional elections

"Therefore, whether there is an advocate or not is a problem. That may be what causes many parties to feel more comfortable in litigating at the Constitutional Court because it is not too structural, does not charge any fees, and at the time of settlement of disputes over vote acquisition in election disputes, a special room is also provided for the General Election

Commissions and General election supervisory agency," said Aswanto.

Furthermore, Aswanto said, the Constitutional Court is still given a trial for the Handling of Dispute Cases on the Results of the 2020 Governor, Regent and Mayor Election, as long as there is no special court to examine this matter. If there is a special court, the Constitutional Court will be able to focus on the implementation of its main authority, namely judicial review. Considering that the handling of the PHP Kada case, continued Aswanto, was quite energy consuming and the Court had to postpone trials of constitutional cases that had been submitted by various parties.

However, continued Aswanto, it does not mean that the Constitutional Court is not serious in handling the 2020 PHP Kada case. According to him, the Constitutional Court has been preparing for Constitutional Court Regulation Number 5 of 2020 for a long time, including preparing the stages of handling the case. This is done because the Constitutional Court is the

final "gateway" from the completion of PHP Kada, so it is necessary to make adjustments with the organizers of the regional head election. "So, long ago the Constitutional Court has coordinated with the General Election Commissions institution to formulate provisions in the settlement of Regional Head Election cases later in the Constitutional Court," Aswanto added.

For information, this technical guidance activity is aimed at increasing understanding and increasing knowledge of PHP Kada procedural law. This activity was held for three days (6 - 8/10/2020). As for the material provided, among others, related to answer compilation techniques; the practice of preparing the Respondent's response, and electronic information systems. Meanwhile, technical guidance material was delivered by competent speakers in their fields, such as Constitutional Justices, Registrars, Junior Registrars, Researchers, and Constitutional Court Employees. ■

SRI PUJANTI/LULU ANJARSARI



The Deputy Chief Justice of the Constitutional Court Aswanto closed the event of Legal Technical Guidance on Case Handling for the Results of the 2020 Election for Governors, Regents and Mayors for the General Election Commissions on a virtual basis, Wednesday (8/10) in Jakarta. Public Relations / Ifa Photo.



HUMAS MKRIFA

## TECHNICAL GUIDANCE FOR PROCEDURAL LAW FOR GENERAL ELECTION SUPERVISORY AGENCY: THE KEY TO A SUCCESSFUL AND DEMOCRATIC REGIONAL HEAD ELECTION

The Chief Justice of the Constitutional Court Anwar Usman together with the Secretary General of the Constitutional Court M. Guntur Hamzah opened the event for the Legal Technical Guidance of Concurrent Regional Election Results in 2020 for the Election Supervisory Body, Tuesday (13/10) at the MK Building Public Relations / Ifa Photo.

The Chairman of the Constitutional Court Anwar Usman gave a keynote speech in the opening of the Technical Guidance (Bimtek) of the Procedure for Dispute Results of the Simultaneous Election of Governors, Regents and Mayors in 2020 for the Provincial, Regency / City Election Supervisory Bodies (General election supervisory agency). This activity was held virtually on Tuesday (13/10/2020) night at the Pancasila and Constitution Education Center, Cisarua, Bogor.

"On this occasion, I would like to give special emphasis that General election supervisory agency at the central and provincial levels as well

as district / city Election Supervisory Committee are the key players for the implementation of successful and democratic elections. This Technical Guidance was held by the Constitutional Court with the hope of building synergy between state institutions in order to realize the mandate of the 1945 Constitution in the framework of building a democratic state based on law," said Anwar.

Anwar conveyed that democracy is a concept of a form of political government that applies almost evenly throughout the world. The involvement of people in one system of government around the world seems to be a necessity that cannot be avoided. The

form of community involvement in government through a democratic system which has become known as general elections. People in the concept of democracy are constructed as the main stakeholders or the owner of the highest sovereignty in the state administration system. Therefore, continued Anwar, in order to maintain the continuity of the democratic process and to safeguard the interests of various groups, the norm which becomes a common consensus and binds all of them is the Constitution. This concept is known as nomocracy or norm sovereignty.

## **Biggest Regional Head Election**

Chairman of the Election Supervisory Agency, Abhan, expressed his gratitude to the Constitutional Court for providing technical guidance to General election supervisory agency. Even though it is implemented virtually, this activity does not diminish the meaning and purpose of technical guidance. "This technical guidance is very important for us to prepare something that later in the process of dispute over the regional election results, the position of General election supervisory agency will be the party giving information. I think this is important for us," said Abhan.

Abhan continued, 2020 is the biggest regional election. A total of 270 regions will hold regional elections in 2020. The role that the General election supervisory agency ranks must play as election organizers, namely how to solve various problems that will not lead to disputes over the results of the Constitutional Court. "I think this requires hard work from our ranks, of course to maximize efforts to prevent, supervise, and function to take action in dispute resolution processes in the 2020 Regional Head Election stages," said Abhan.

## **Regional Head Election Referee**

The second day of Technical Guidance on Procedure for Disputes on the Results of Simultaneous Election for Governors, Regents and Mayors in 2020 for the Provincial, Regency / City Election Supervisory Bodies (General election supervisory agency) held by the Constitutional Court (MK) at the Pancasila and Constitution Education Center, Cisarua on Wednesday (14 / 10/2020) filled with various material sessions virtually. Constitutional Justice Suhartoyo together with Constitutional Justice Manahan MP Sitompul presented the material "Law of Procedure for Dispute Result of Election for Governors, Regents and Mayors in 2020". Suhartoyo said formally in the Constitutional Court

Regulation No. 5/2020 explained that a day after the Petition for a dispute over the results of the elections was entered into the Constitutional Case Registration Book (BRPK), General election supervisory agency would receive a copy of the petition from the Petitioner.

"After that, hierarchically, ladies and gentlemen, will gradually obtain a copy of the Petition according to the needs relating to the General election supervisory agency that oversees the Petition submitted in the case concerned. This means that when you get a copy of the request, you will no longer send any information. In the past, General election supervisory agency sent a statement before the trial. During the trial, General election supervisory agency delivered a response to the case filed by the Petitioner, the copy of which was given to you, one day after the Petition was submitted to the BRPK. This method is simpler, you can prepare a more comprehensive statement," Suhartoyo explained to the 400 General election supervisory agency members who were present at the technical guidance.

Suhartoyo said, one thing the Constitutional Court would apply in the 2020 Regional Head Election Result Dispute (PHP Kada) trial was that there was no room for uncertainty for General election supervisory agency. "In the past, the information was delivered two days before the trial. But for the 2020 Regional Head PHP case handling trial, it was submitted during the session with the agenda of receiving General election supervisory agency's statement, the Related Party's statement and the Respondent's response. So even though ladies and gentlemen get a copy of the Petition one day after the copy of the Petition is submitted to the BRPK, but actually the copy of the Petition is not final. Because at the preliminary hearing, the petition will have the potential to make a *renvo* or revision," explained Suhartoyo regarding the significant

changes in the latest Constitutional Court Regulation.

## **Regional Head Election Supervision Coordinator**

Constitutional Justice Manahan touched on Law no. 6 of 2020 which regulates the postponement of the implementation stage of regional head elections due to the Covid-19 pandemic, so that the schedule for the pilkada session which was originally planned for September 2020 became December 2020. The General Election Commissions determined that simultaneous regional elections would be held on December 9, 2020. Then related to the dispute over trial results Regional Head Election must refer to the Regulation of the Constitutional Court (PMK) No. 5 of 2020 as the newest Constitutional Court Regulation. "For example, the accreditation of election observers was originally with the General Election Commissions but now it is in the hands of General election supervisory agency, so it becomes the authority of Provincial General election supervisory agency or Regency / City General election supervisory agency," said Manahan who also explained that Law no. 10 of 2016 still uses the term Regency / City Panwas.

Manahan conveyed that General election supervisory agency is the supervisory coordinator of all regional head elections. In addition, General election supervisory agency is the Information Provider, so it must have data about what it has done in the field of supervision. The duties of General election supervisory agency have been stipulated in Article 22B of Law no. 10/2016. The duties of the Provincial General election supervisory agency are stipulated in Article 28 of Law no. / 2015. The duties of Regency / City General election supervisory agency are stipulated in Article 30 and Article 33 of Law no. 10/2016.



The Deputy Chairperson of the Constitutional Court Aswanto became the speaker and at the same time closed the Technical Guidance on Procedure for Dispute Result of Simultaneous Election of Governors, Regents and Mayors in 2020 for Provincial, Regency / City Election Supervisory Bodies (General election supervisory agency) virtually, Thursday (15/10) at the MK Building . Public Relations Photo / Gani.

### Embryo Judicial Review

The Secretary General of the Constitutional Court M. Guntur Hamzah presented the material "The Constitutional Court in the Indonesian State Administration System". Guntur said, in accordance with the consensus of legislators in Indonesia, the Constitutional Court was formed. "However, it is necessary to know the background of the establishment of the Constitutional Court. Therefore I want to refresh all of you regarding the Constitutional Court in our State Administration System," added Guntur.

In simple terms, said Guntur, talking about the institutional history of the Constitutional Court, this first happened in Austria. Meanwhile, the history of the practice of the Constitutional Court was the first time

in the United States. But the embryo of the birth of a judicial review occurred in England in 1701. At that time the British understood that the King was never wrong and always right. Over time, John Locke's conceptual understanding of the separation of powers within the state emerged, and then the paradigm emerged that parliament is never wrong. An expert named Suzanna Sherry also said that there was no judicial review practice, the judge could not review the law, let alone cancel the law as a parliament product. It was only then that a judge named Sir Edward Coke said that when the parliament acted, in case the law made by parliament is against public rights, common sense, the legal system in England, then all can be monitored. Parliamentary actions should be monitored. If it contradicts,

the parliamentary action must be said to be invalid and the law can be tested. But in practice, says Guntur, there has never been a single law in Britain that has been overturned.

### Mechanism for Submitting a Regional Head Election Result Dispute Petition

The next session with the material "Mechanisms and Stages, Activities, Schedule for Handling Dispute Cases on the Results of the 2020 Election of Governors, Regents and Mayors" delivered by the Young Clerk I of the Constitutional Court Triyono Edy Budhiarto. "The Stages of Handling Dispute Cases on the Result of the Election of Governors, Regents and Mayors in 2020 begin with submitting the Petitioners' petition, then completing

and correcting the Petitioner's petition. After that, it will conduct an examination of the completeness and revision of the Petitioner's petition," said Triyono Edy Budhiarto.

Regarding the Mechanism for Submitting a Request for Dispute on the Results of the Regional Election in 2020, said Triyono Edy Budhiarto, it was made after the announcement of the General Election Commissions's decision on election vote count results on December 16-26, 2020 (provinces) and December 13-23 (districts and cities). Whereas for submission of Petitions on December 16 2020-5 January 2021 at 24.00 WIB (province), submission of Petitions on December 13 2020-5 January 2021 at 24.00 (district / city).

### **General election supervisory agency Information Preparation Techniques**

The Technical Guidance activity on the second day was closed with the material "Techniques and Discussions on the Compilation of General election supervisory agency Information in Disputes over the Results of the 2020 Election for Governors, Regents and Mayors" which was conveyed by the Substitute Registrar of the Constitutional Court Rizki Amalia. The systematics of General election supervisory agency's statement, according to Rizki Amalia, includes, among other things, the name and address of the General election supervisory agency and a clear description related to the Petitioner's petition.

Then regarding the preparation of the General election supervisory agency statement, it must contain the identity of the Petitioner as well as the General election supervisory agency statement related to the subject of the Petition which includes the implementation of supervision that has been carried out for

all stages of the election implementation along with supporting evidence. In addition, follow-up on findings and / or reports and dispute resolution, namely the results of dispute resolution for all stages in the implementation of the election along with supporting evidence.

### **Election Supervisor is not an easy job**

Deputy Chairperson of the Constitutional Court Aswanto officially closed the Legal Technical Guidance for the Results of Simultaneous Election of Governors, Regents and Mayors 2020 for the Provincial, Regency / City Election Supervisory Body (General election supervisory agency) on Thursday (15/10/2020) afternoon virtually. Aswanto said, technical guidance on this occasion was a reunion for him because before becoming a constitutional judge, Aswanto had been an election organizer. Aswanto has empirical experience as chairman of the South Sulawesi Provincial Election Supervisory Committee. Not only that, Aswanto was also heavily involved as a selection team in the recruitment of supervisory committees at the provincial and district / city levels.

"At that time the election supervisor was not permanent and his name was not General election supervisory agency but Election Supervisory Committee. So that at least, I can understand what the duties and authorities of General election supervisory agency colleagues in the field are. Even after I finished carrying out my duties as Election Supervisory Committee of South Sulawesi Province at that time, the recruitment of supervisory committees at the provincial and district / city levels often involved me as the selection team. I always remind my friends who want to participate in the selection, that the job of an election supervisor is not an

easy job. To be an election supervisor, both central and district / city, must have a strong mentality. Because those who feel dissatisfied with the election results tend to protest and even take physical actions," said Aswanto.

Therefore, said Aswanto, it is not easy to become a General election supervisory agency commissioner at the provincial, district / city levels. "That is why I give my appreciation to Ladies and Gentlemen who are pleased to be commissioners of General election supervisory agency in both provinces and districts / cities," said Aswanto.

Previously, several material sessions were given in this Technical Guidance. There is material "Law of Dispute Result of the Election of Governors, Regents and Mayors in 2020". Then the material "The Constitutional Court in the Indonesian State Administration System" and material "Mechanisms and Stages, Activities, Schedule for Handling Disputes on the Results of the Election for Governors, Regents and Mayors in 2020" as well as material on "Techniques and Discussion on Preparation of Information for General election supervisory agency on Election Results of Governors, Regents and Mayors. 2020 Year ". In addition, the material "Practices for Preparing Information for General election supervisory agency on the Results of the 2020 Election for Governors, Regents and Mayors" and material on "Electronic Case Handling Information Systems". ■

NANO TRESNA ARFANA / NUR R.



## TECHNICAL PROCEDURE GUIDANCE FOR POLITICAL PARTIES: NOT ONLY DEPENDS ON THE CONSTITUTIONAL COURT

Chief Justice of the Constitutional Court (MK) Anwar Usman officially opened the Technical Guidance for the Handling of the Results of the Governor Election, Regent Dam, Mayor for Political Parties virtually through the Zoom Meeting Petition, on Tuesday (20/10/2020) night. In the event which was attended by the Minister of Law and Human Rights Yasonna Hamonangan Laoly, Anwar said that in essence the regional head election or pilkada is a concrete means for the people to determine their representatives to sit in executive positions at the regional level.

"Public participation in the elections is a form of people's sovereignty in a democratic system. In accordance with the name *demos* which means people and *kratos* which means government," said Anwar in front of 398 technical guidance participants. According to

Anwar, with the pilkada, the people can directly elect candidates for leaders in the regions.

Therefore, Anwar continued, the regional election is the delegation of people's sovereignty to a person or pair of candidates (*paslon*). For this reason, he continued, so that the purity of the people's voice is maintained, the election process must be designed in a transparent manner with strict and accountable supervision. This is done so that the electability of the regional head gets strong legitimacy because it has a direct mandate from the people.

"The success of case settlement at the Constitutional Court does not only depend on the Constitutional Court, but also depends on the various parties, especially the candidacy itself, the success team from the candidate pair and the candidate's attorney who will later accompany the parties who will

The Chief Justice of the Constitutional Court Anwar Usman and the Secretary General of the Constitutional Court M Guntur Hamzah gave key lectures as well as officially opened the Technical Guidance for Handling the Results of the Election for the Governor, Regent Dam, Mayor for Political Parties virtually through the Zoom Meeting Petition, Tuesday (20/10) at the Constitutional Court Building. Public Relations Photo / Gani.

be litigating at the Court," said Anwar. According to Anwar, simultaneous regional elections were held in 2015, 2017 and 2018 with similar regulatory substances.

### Thoroughly discuss procedural law

The second day of Technical Guidance on Procedure for Disputes on the Results of Simultaneous Election of Governors, Regents and Mayors in 2020 for Political Parties (*Parpol*) held by the Constitutional Court (MK) at the Pancasila and Constitutional Education Center, Cisarua on Wednesday (21/10/2020) filled with various sessions of material virtually.

Constitutional Justice Wahiduddin Adams together with Constitutional Justice Saldi Isra presented the material "Law of Procedure for Dispute Result of Election for Governors, Regents and Mayors in 2020". Wahiduddin said that the Constitutional Court prepared two Constitutional Court Regulations

regarding disputes over the results of regional head elections, namely Constitutional Court Regulation No. 4 and 5 of 2020. Wahiduddin said that in every regional head election, the Constitutional Court always updates the MK regulations (PMK). "The Constitutional Court replaced the Constitutional Court Regulation - Constitutional Court Regulation to make it run smoother. So the old Constitutional Court Regulation - Constitutional Court Regulation did not apply. That is what we think is the benchmark in resolving the handling of cases resulting from local election disputes," he explained.

With regard to election participants, Wahiduddin continued, it is generally known that the participants are the pairs of candidates for governor, deputy governor, candidate pairs for regents and vice regents, pairs of mayors and deputy mayors. He further explained that at the 2020 Regional Head Election, election observers who were registered and received accreditation from General election supervisory agency could become Related Parties. However, the Related Party has a direct interest in the petition submitted by the Petitioner. Meanwhile, Constitutional Justice Saldi Isra explained that the Constitutional Court deliberately reduced the pile of problems at an early stage. So, at this time the Constitutional Court took the stance that registration was carried out once. "So once the case is registered there will be no more additions and all kinds of things," explained Saldi.

### Vote Difference Threshold

Furthermore, regarding Article 158 of the Regional Head Election Law regarding thresholds not listed in the Constitutional Court Regulation, Saldi said the Constitutional Court would assess the accuracy of the article in the process. Saldi said, Constitutional Court Regulation functions to regulate things that are not mentioned in the Law. "If the petitioner uses the argument of Article 158 because it does not meet the threshold, the Court will prove it first. Because later there will be information

from various parties including related parties and General election supervisory agency as well as evidence in the file," explained Saldi.

With this, continued Saldi, the Constitutional Court will judge to get the truth and then decide together the subject matter. In addition, the Constitutional Court will also decide cases by conducting preliminary discussions conducted in the panel, which will then be followed by the results of the panel at the plenary which is decided by 9 constitutional judges. So, continued Saldi, all constitutional judges participated in the decision.

### Disputes over the results of regional head elections mechanism

In the next session with the material "Mechanism and Stages, Activities, Schedule for Handling Dispute Cases on the Results of the 2020 Election for Governors, Regents and Mayors" was delivered by the Young Registrar III Wiryanto. "Announcement of the results of the examination of the completeness and correction of the Petitioners' petition, continues with the recording of the Petitioner's petition in the e-BRPK," he explained.

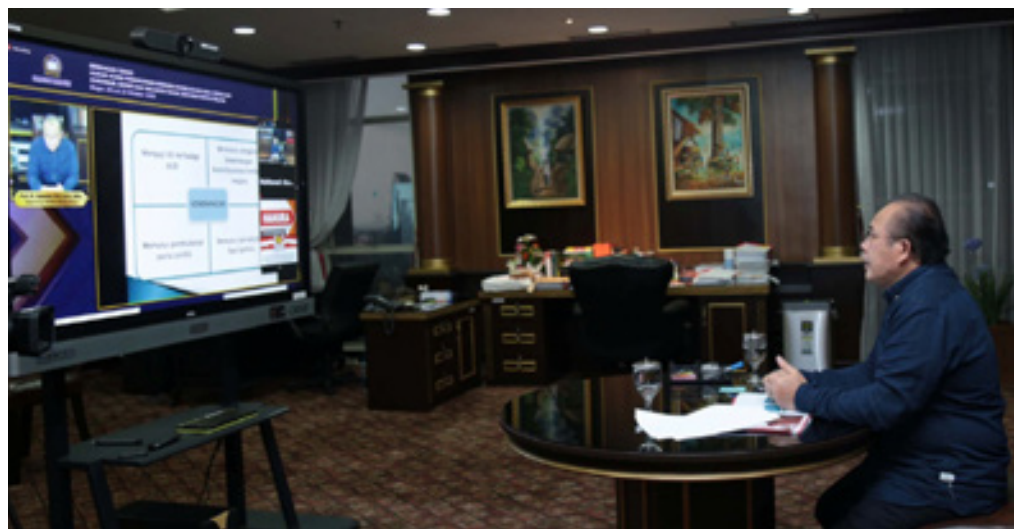
Wiryanto said that the announcement of the results of the

examination of the completeness and revision of the Petitioner's petition, continued with the recording of the Petitioner's petition in e-BRPK. After that, submit a copy of the Petition to the Respondent and General election supervisory agency. Then, submitting an Petition as a Related Party and then notification of the hearing to the parties. The next stage, conducts preliminary examinations, a trial of evidence and a Judge Consultative Meeting. Until finally, the decision / decision is pronounced as well as submission and delivery of a copy of the decision / decision.

### Difference in Votes

Meanwhile, the material "Techniques and Discussions for the Preparation of Petitioners and Information from Related Parties in the Dispute on the Results of the 2020 Election for Governors, Regents and Mayors" delivered by the Substitute Registrar of the Constitutional Court Syukri Asy'ari. Syukri said, the object of petition for an election case is limitative because there is only one, namely the vote count results determined by the General Election Commissions.

Syukri emphasized that the Petition registration grace period has not changed. This is because it has been



The Deputy Chief Justice of the Constitutional Court Aswanto provided material in virtual technical guidance on the results of simultaneous election results for governors, regents and mayors in 2020 for political parties, Wednesday (21/10) at the Constitutional Court Building. Public Relations / Ifa Photo.

stipulated by law. He said, the grace period no later than 3 days from the announcement of the vote acquisition. "If online 24 hours can be sent to the Court. Since the start of the elections, the registration requirements have not changed, but are still the same as before," he said.

### The Court's Authority

The Technical Guidance activity on the second day was closed with the material "The Constitutional Court in the Indonesian State Administration System" presented by the Deputy Chairman of the Constitutional Court Aswanto. Aswanto said, the Constitutional Court is an institution of judicial power to judge a norm in the Act in line with the norms in the constitution. "Do not let our human rights have been guaranteed by law but then negated by a law," he explained.

Then, Aswanto explained that the Constitutional Court has 4 powers, namely examining laws against the 1945 Constitution, resolving disputes over the authority of state institutions, deciding the dissolution of political parties, and adjudicating disputes over the results of general elections. He said that the dissolution of political parties had never been decided by the

Constitutional Court.

### Political Parties Have an Important Role in Democracy

Technical Guidance on Procedure for Disputes on the Results of Simultaneous Election of Governors, Regents and Mayors in 2020 For Political Parties (Parpol) was officially closed by the Deputy Chairperson of the Constitutional Court Aswanto virtually on Thursday (23/10/2020) afternoon.

In his speech, Aswanto said that political parties in a democratic government system are institutions that have an important role. "We cannot deny that the existence of political parties greatly determines the development of the nation's democracy. When friends in political parties can implement how to do democracy in the internal sphere, then transmit it and affect the wider community, of course our country in the future can implement a better democracy," said Aswanto.

In addition, Aswanto said, as a judge, the Constitutional Court must be able to work professionally and maintain communication with anyone, including political parties. He said that political parties play a role in fighting for people's rights through the legislative

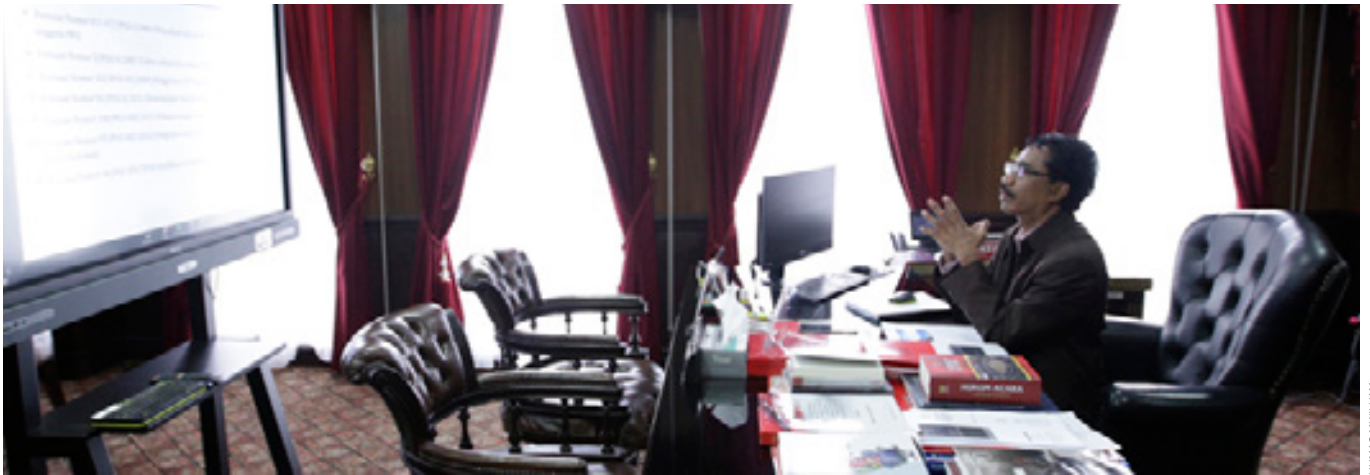
election mechanism including regional head elections. "Because each of us has a duty and function. Even the duties and functions in the Constitutional Court are closely related between the Constitutional Court and Political Parties," he said.

For information, this activity was held for 3 days, Tuesday - Thursday (20-22/10/2020) from various national political parties. This technical guidance activity was attended by 398 participants consisting of 384 participants participating online (online) and 14 participants taking part offline at the Pancasila and Constitution Education Center, Cisarua, Bogor. Resource persons who attended this technical guidance consisted of constitutional judges, substitute clerks to IT staff who explained the ins and outs of procedural law disputes over the results of regional head elections. ■

UTAMI ARGAWATI/LULU ANJARSARI

The Deputy Chairperson of the Constitutional Court Aswanto closed a series of Legal Technical Guidance activities for the Simultaneous Results of the 2020 Governor, Regent and Mayor Election for Political Parties, Thursday (23/10) in Jakarta. Public Relations / Ifa Photo.





HUMAS MKILHAM

Constitutional Justice Daniel Yusmic P. Foekh as a resource person in the Paralegal Studies for Churches XII Training held by the Bethel Indonesia Legal Aid Institute (LBH) virtually on Friday (25/9/2020). Photo: Public Relations / Inspiration.

# CONSTITUTIONAL JUSTICE AND THE DEVELOPMENT AND CHALLENGES OF THE WORLD OF LAW

It has been eight months since the Covid-19 pandemic has undermined Indonesia. Various efforts are continuously made by the Government and national stakeholders in overcoming it. Likewise with the Constitutional Court (MK), which in the mandate of the constitution also plays a role in improving citizens' understanding of the constitution. In the limitation of physical meetings, through technology-based public lectures, constitutional judges try to remain present to share knowledge, experience, and practice of legal knowledge for citizens.

## Paralegals Help Poor Citizens

Since the existence of Law Number 16 of 2011 concerning Legal Aid, paralegals can still proceed to court to provide legal assistance to poor and poor citizens. So, lecturers or law faculty students who are members of an accredited legal aid institution (LBH) can certainly provide assistance to people in need. This was stated by

Constitutional Justice Daniel Yusmic P. Foekh when he was a guest speaker at the XII Paralegal Studies for Churches Training held by the Bethel Indonesia Legal Aid Institute (LBH) virtually on Friday (25/9/2020).

In the activity moderated by Raja Basar AN Harefa from LBH Bethel Indonesia, Daniel said that in connection with the existence of this legal aid, the judicial review was submitted to the Constitutional Court in two case requests, namely the registered case Number 59 / PUU-X / 2012 and Number 88 / PUU. -X / 2012. Although the petition was withdrawn in the Petition Number 59 / PUU-X / 2012 and it was declared rejected in the Petition Number 59 / PUU-X / 2012, in terms of legal considerations the Constitutional Court Number 88 / PUU-X / 2012 stated that the parties who can provide legal assistance.

"Legal aid is provided to legal aid recipients who face legal problems, ranging from civil and criminal law. Legal aid recipients are any person or group

of poor people who cannot fulfill their basic rights properly and independently. So, if you meet someone who has civil or criminal law problems, then this can be done by a paralegal in his defense," explained Daniel in a presentation that raised the topic of discussion on "Duties, Functions and Authorities of the Constitutional Court."

In connection with the struggle for the constitutional rights of citizens in equality in the field of law, Daniel explained to the training participants who came from various regions such as East Kalimantan and Maluku that the presence of the Constitutional Court as part of the judicial power in Indonesia. Daniel stated that the Constitutional Court was actually one of the institutions that exercised an independent judicial power to administer the judiciary to uphold law and justice. Because, continued Daniel, judicial power is related to the protection of human rights and the rights of citizens. ■

SRI PUJANTI/LULU ANJARSARI



## THE CHIEF JUSTICE OF THE CONSTITUTIONAL COURT ATTENDS A VIRTUAL PANCASILA MAGICAL DAY COMMEMORATION CEREMONY

The Chief Justice of the Constitutional Court, Anwar Usman, took part in a virtual ceremony to commemorate the Pancasila Power Day 2020, on Thursday (1/10) at the MK Building. Public Relations / Ifa Photo.

Chief Justice of the Constitutional Court (MK) Anwar Usman attended the Pancasila Pancasila Day Commemoration ceremony 2020 which was held at the Pancasila Sakti Monument, Lubang Buaya, East Jakarta, Thursday (1/10/2020) in the morning virtually. The Pancasila Pancasila Day Commemoration Ceremony 2020 was led by the President of the Republic of Indonesia Joko Widodo and attended by the Vice President of the Republic of Indonesia Ma'ruf Amin. After the report from the ceremony officer, the Chairman of the Indonesian People's Consultative

Assembly Bambang Soesatyo read the text of Pancasila, followed by the reading of the text of the Preamble of the 1945 Constitution by the Chairperson of the DPD RI La Nyalla Mattalitti.

Then, the Chairman of the Indonesian Parliament Puan Maharani read and signed the pledge of loyalty to Pancasila. "With the Grace of God Almighty, we who carry out this ceremony are fully aware that since the proclamation of the independence of the Unitary State of the Republic of Indonesia on August 17, 1945, in fact there have been many undermines both from within the country and abroad to

the Unitary State of the Republic of Indonesia," said Puan. when reading the vows.

The Pancasila Sanctity Day Commemoration Ceremony this time is different from previous years because it was held in the midst of the Covid-19 pandemic. Although not all ceremony participants can attend physically, they can still participate in the ceremony virtually and the ceremony can still take place solemnly. Before the ceremony was closed, the Coordinating Minister for Human Development and Culture Muhadjir Effendy read a prayer for the good of the Indonesian nation. ■

UTAMI ARGAWATI/NUR R.



## THE CHIEF JUSTICE OF THE CONSTITUTIONAL COURT GIVES A LECTURE AT THE RELIGIOUS BANK INDONESIA (BI) STUDY PROGRAM

The Chief Justice of the Constitutional Court Anwar Usman gave a lecture at a routine review event held by Bank Indonesia (BI) on a virtual basis, Monday (5/10) at the Constitutional Court Building. Public Relations Photo / Gani.

The Chief Justice of the Constitutional Court Anwar Usman gave a lecture at the routine study program "BI Religion" held by Bank Indonesia (BI) on Monday (5/10/2020) in virtual afternoon from his office on the 15th floor of the Constitutional Court Building. "As we all know, the teachings of Islam were revealed as a blessing for all worlds. Therefore, as Muslims we have a responsibility to practice Islamic teachings as well as possible," said Anwar Usman in an event attended by BI Governor Perry Warjiyo, BI Deputy Governors as well as BI officials and employees.

Anwar said that Muslims are a window display or a mirror of the

teachings of Islam. If Muslims are wrong in practicing religious teachings, it is also wrong for people outside of Islam to perceive the teachings of Islam. As Muslims, said Anwar, the most perfect and perfect example is the Prophet Muhammad SAW.

Anwar continued, the presence of the Prophet Muhammad SAW had given all mankind infinite blessings, namely the light of guidance that had penetrated the darkness of ignorance. History has told that before the Prophet Muhammad was born, life at that time was full of troublesome deeds that ruined human life. Even the heinous deeds of mankind have degrading their dignity and dignity to the lowest point. Thanks to the exemplary and

leadership of the Prophet Muhammad, there were at least three major changes experienced by mankind. These changes include the social sector, the field of faith, the field of state politics.

Currently, said Anwar, national leadership in a circular and limitative manner has been determined in the Constitution, for a maximum of five years and can be re-elected to the same office, only for one term of office through the general election mechanism. Therefore, the problem of circulation and the format of national leadership in this context is certain without the need to be interpreted or interpreted differently. ■

NANO TRESNA ARFANA/LULU ANJARSARI



Inauguration of Ahmad Sudiro (left) as a permanent professor at Tarumanegara University in the field of Law, on Saturday (17/10) at the Tarumanegara University Building, Jakarta. Public Relations / Iffa Photo.

## CHAIRMAN OF THE CONSTITUTIONAL COURT: COOPERATION BETWEEN THE COURT AND HIGHER EDUCATION AS AN IMPLEMENTATION OF THE CONSTITUTIONAL MANDATE

Chief Justice of the Constitutional Court (MK) Anwar Usman through video taping congratulated Amad Sudiro as a Permanent Professor of Tarumanegara University in the field of Law, at Building M Campus 1 Tarumanegara University (Untar), Saturday (17/10). The event was also attended by Constitutional Justice Arief Hidayat and the Secretary General of the Constitutional Court M Guntur Hamzah.

Furthermore, Anwar Usman revealed that the Constitutional Court had carried out a number of activities in collaboration with the Faculty of Law, Untar. This is a form of commitment to the partnership between the Court and the campus world. "Some of the routine activities

held as a form of cooperation between the Constitutional Court and the Faculty of Law, Tarumanegara University, are the moot court competition for the Constitutional Court Chief Justice Cup," said Anwar in the video.

In addition, the commitment of the Constitutional Court's partnership with universities is manifested in various forms of activities, such as joint research, or the provision of research materials, for campus researchers, who wish to research the Constitutional Court decisions, or for students completing undergraduate or postgraduate studies. publishing journals, public lectures, internships, seminars, competitions or moot court competitions on the procedural law of the Constitutional Court and various other activities

At the event which was held by applying the health protocol, Amad Sudiro in his scientific oration entitled "Political Transformation of Justice as the Epicenter of Compensation Settlement Models for Aviation Service Consumers", highlighted the need to evaluate the value of compensation for aviation service consumers. According to him, aircraft manufacturers should also be responsible for providing compensation to consumers of aviation services, due to aircraft accidents caused by defects in the production of an aircraft, as a form of Petition of the theory of absolute responsibility, by taking into account the principles of benefit, justice and legal certainty. ■

ILHAM WIRYADI MUHAMMAD/NUR R



HUMAS MKGNIE

# THE DELEGATION OF THE INDONESIAN ADVOCATES CONGRESS WANTS TO PARTICIPATE IN CONSTITUTIONAL COURT TECHNICAL GUIDANCE

The Chief Justice of the Constitutional Court Anwar Usman accompanied by the Secretary General of the Constitutional Court M Guntur Hamzah received an audience for the Delegation of the Indonesian Advocates Congress (KAI), Tuesday (20/10) in the Delegation Room, Fl. 15 The Constitutional Court Building. Public Relations Photo / Gani.

Chief Justice of the Constitutional Court (MK) Anwar Usman accompanied by the Secretary General of the Constitutional Court M. Guntur Hamzah received an audience from the Delegation of the Indonesian Advocates Congress (KAI) on Tuesday (20/10/2020) afternoon on the 15th floor of the Constitutional Court Building. "Our visit to the Constitutional Court is as a friendship, which God willing can extend our life and open the door of sustenance," said Vice President of Indonesian Advocates Congress Lutfi Yazid accompanied by another Indonesian Advocates Congress Vice President Diyah Sasanti representing the President of Indonesian Advocates Congress Tjoetjoe Sandjaja Hernanto, who was unable to attend due to illness.

Furthermore, Lutfi, who represented Indonesian Advocates Congress, expressed his gratitude from the management and members of Indonesian Advocates Congress to the Constitutional Court because Indonesian Advocates Congress had participated in the Constitutional Court Technical Guidance (bimtek). According to Luthfi, the existence of technical guidance is very beneficial for members of the Central and regional Indonesian Advocates Congress. Technical Guidance materials such as the Constitutional Court Procedure Law, the history of the Constitutional Court in the world and Indonesia, including the authority of the Constitutional Court of the Republic of Indonesia, techniques for drafting Petitions and others add to the insights

of the administrators and members of the Central and regional Indonesian Advocates Congress.

The Chief Justice of the Constitutional Court Anwar Usman responded positively to Indonesian Advocates Congress 's desire to participate in the Constitutional Court Technical Guidance activities. Likewise the Secretary General of the Constitutional Court M. Guntur Hamzah. "Your Excellency, we have scheduled an online Technical Guidance of The Constitutional Court activity which is currently running. Hopefully later Indonesian Advocates Congress can participate and we will try. Technical Guidance participants must first be selected who can participate because it involves Zoom's capacity of only 400 people. Today we hold technical guidance for political parties," explained Guntur. ■

NANO TRESNA ARFANA/NUR R

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