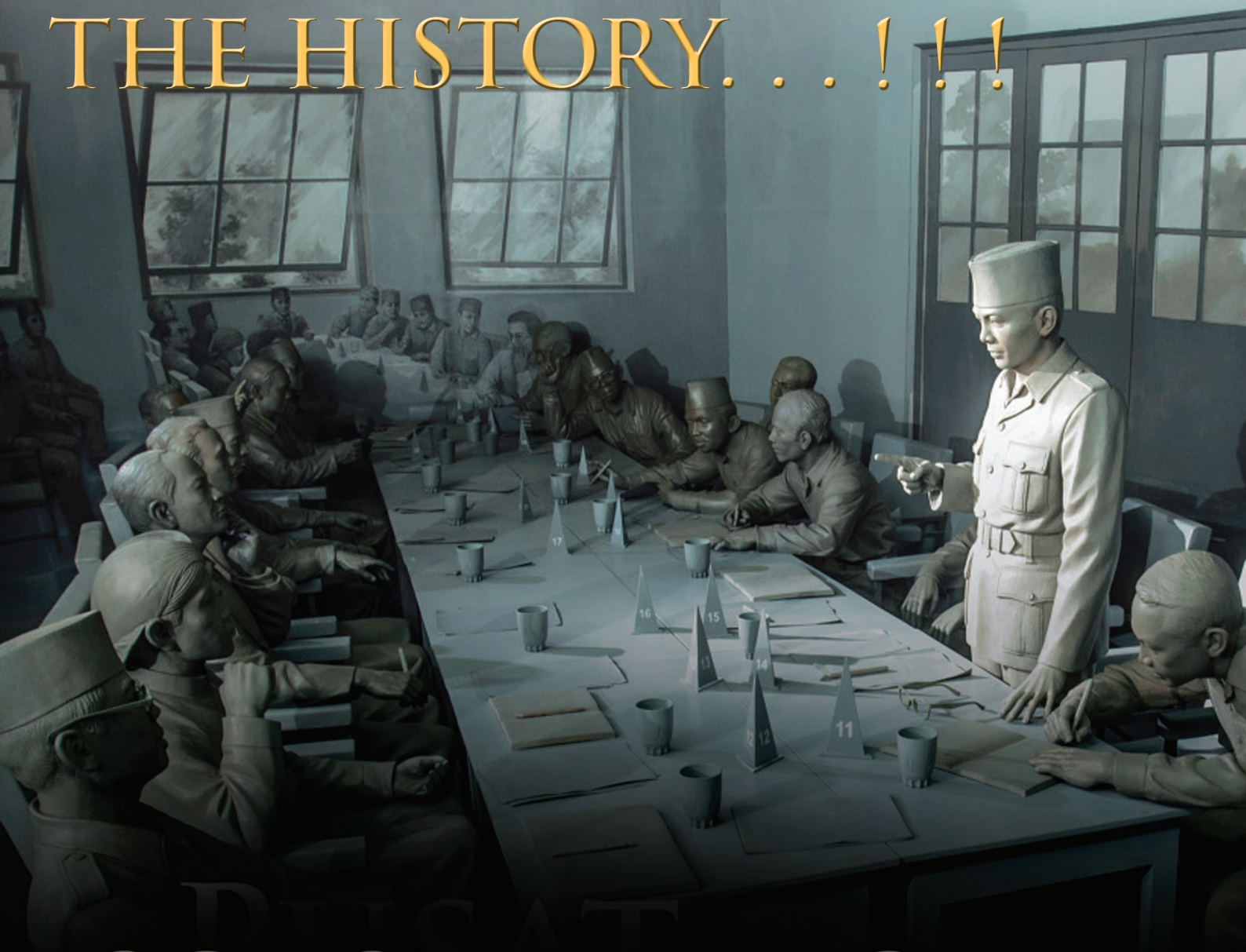


KONSTITUSI

Prevent Unprincipled Indonesian Migrant Worker Placement Companies (P3MI)



COME LEARN ABOUT
THE HISTORY...!!!



CONSTITUTIONAL HISTORY CENTER

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

KONSTITUSI

Number 166 ■ December 2020

DIRECTING BOARD:

Anwar Usman ■ Aswanto ■ Arief Hidayat
Enny Nurbaningsih ■ Wahiduddin Adams
Suhartoyo ■ Manahan MP Sitompul
Saldi Isra ■ Daniel Yusmic Pancastaki Foekh

DIRECTOR:

M. Guntur Hamzah

EDITOR IN CHIEF:

Heru Setiawan

DEPUTY EDITOR-IN-CHIEF:

Fajar Laksono Suroso

MANAGING EDITOR:

Mutia Fria Darsini

EDITORIAL SECRETARY:

Tiara Agustina

EDITOR:

Nur Rosihin Ana
Nano Tresna Arfana ■ Lulu Anjarsari P

REPORTER:

Ilham Wiryadi ■ Sri Pujianti
Yuniar Widiastuti
Panji Erawan
Utami Argawati ■ Bayu Wicaksono

CONTRIBUTOR:

Pan Mohamad Faiz
Bisariyadi
Luthfi Widagdo Eddyono
Wilma Silalahi
Paulus Rudy Calvin Sinaga
Devi Riyawati

INTERNATIONAL AFFAIRS

Sri Handayani
Immanuel Hutasoit
Sherly Octaviana
Wafda Afina

PHOTOGRAPHER:

Gani ■ Ifa Dwi Septian

VISUAL DESIGN:

Rudi ■ Nur Budiman ■ Teguh

COVER DESIGN:

Herman To

DISTRIBUTION:

Utami Argawati

EDITOR'S ADDRESS:

Gedung Mahkamah Konstitusi
Republik Indonesia
Jl. Medan Merdeka Barat No. 6
Jakarta Pusat
Telp. (021) 2352 9000 ■ Fax. 3520 177
Email: majalahkonstitusi@mkri.id
Website: www.mkri.id

Editorial Greetings

December 2020 can be said to be a political month. With the simultaneous regional head election on December 9 and mid-December, the Constitutional Court (MK) began receiving petitions for Regional Head Election Result Dispute (PHPKada) cases in 2020. So what makes the handling of election disputes this year different from previous elections?

The reason is none other than due to the implementation held amid the COVID-19 pandemic wave that badly hit Indonesia and other countries. Even the Constitutional Court was also affected by the pandemic. Several staff members were infected with covid, from mild symptoms (OTG) to those who need serious treatment due to their congenital disease. Sad news came from a civil servant of the Constitutional Court named Rahmat Santoso, often called *Bang Cocon*, and senior media photographer of the Constitutional Court Media, Gani Yogaswara, who drew their last breath because of COVID-19. The Constitutional Court, including the whole crew of the Constitutional Court Media, were deeply grieving the loss of *Bang Cocon* and *Kang Gani*. Farewell *Bang Cocon* and *Kang Gani*. May Allah SWT forgives their sins and accepts their worship; both were known for their full dedication. Hopefully, there will be no more victims of this pandemic. May we all be blessed with health and protection in carrying out our duties.

The Constitutional Court Task Force Team continues to prepare to handle Regional Election Result Dispute case in 2020, starting from receiving case registration, coverage, health, security, room arrangement, and others. The data showed that more than 100 Regional Election Result Dispute case have been submitted to the Constitutional Court, for the Provincial, Regency and City levels.

The Constitutional Court receives case registrations offline and online. Meanwhile, the news and actual information are still presented in the typical columns of Konstitusi Magazine, i.e. Editorial, Main Report, Courtroom, Action, Libraries, Classic Libraries, and others. Thus the foreword from the editor. We always look



@officialMKRI



@officialMKRI



Mahkamah Konstitusi RI



mahkamahkonstitusi



mkri.id

4

MAIN REPORT



ENTREPRENEURS COMPLAIN ABOUT P3MI'S CAPITAL DEPOSIT

Indonesian Migrant Worker Placement Company (P3MI) must have a minimum capital of 5 billion and has to put a minimum of 1.5 billion in deposits to government banks. This provision is considered burdensome to P3MI.

21 ACTION



- EDITORIAL GREETINGS **1**
- EDITORIAL **3**
- MAIN REPORT **4**
- CASE IN BRIEF **15**
- ACTION **21**

REVIEWING NATIONAL LEGALIZATION SYSTEM TO FREEDOM OF EXPRESSION

THE BLESSING OF DECEMBER

This year's regional head election (*pilkada*) are not merely historical records of political events, but, it was also 'the first' election held amid the difficulty due to the Covid-19 pandemic. It was unimaginable that a pandemic would intensely intervene in all aspects of life, including the country's plans and agendas. The unprecedented steps will unsurprisingly soon be taken as an option. As a result, unanimously, *pilkada* were held amid the pandemic. After months of delays, finally, *pilkada* in 270 regions were held simultaneously on December 9, 2020.

The election run relatively safe and smooth despite some challenges. Within a reasonable time, the votes have also been announced and determined by the Organizer.

Afterwards, the 'hot ball' goes to the Constitutional Court (MK). For the umpteenth time since the first simultaneous *pilkada* in 2015 to date, The Constitutional Court receives mandate (transitional) to decide on *pilkada* results disputes, however now the Court will carry out this mandate amid the unprecedented difficulty. However, the Constitutional Court as a judicial institution, unavoidably faces demands and the need to overcome any difficulties. Usually, in previous years, everything was 'festive' after the determination of the votes. At the Constitutional Court, the Principal Petitioners with a crowd of supporters enlivened the Constitutional Court Building for approximately three months. There would be hubbub once the petition registration is opened, even more during the trial, as if the Court was holding a big 'celebration'. The crowd would attract the "real sector" of the economy along the road in front of the Constitutional Court Building to squirm. Many street vendors tried to make fortunes from the crowd, regardless of any prohibition. Then finally, the crowd would be in its peak at the hearing for the verdict pronouncement.

This time, the Constitutional Court held another 'celebration', but it will be different: full of vigilance. Since the beginning of the process, the Constitutional Court has encouraged the optimal use of an electronic-based system for filing petitions, including the trial that will later rely on the latest technology devices, so as people do not need to come to Medan Merdeka Barat, although some loopholes were found in the field so far. The staff members' working hours are arranged in balance way. The working infrastructure is prepared in the highest safety design and concept. Mask is a mandatory attribute. Acrylic counters. Gloves. Keep a safe physical distance. A container for the file sterilization device is provided. Everything has a pandemic tone.

No crowds were allowed. The number of people (the Parties) who can enter the Constitutional Court area is limited. Only healthy people with direct and clear

intentions can enter. Healthy means at minimum having normal body temperature as shown in measurement device at each entrance. Higher temperature means the person must turn back and cannot go forward.

Although this policy came a bit later, the visitor/guest had to include Antigen swab test with negative result. Inevitably, health protocols are put forward as the priority. Every measures need to be taken to protect the health and safety of the Court's staff members, visitors/guests, and all parties. Human safety cannot be put at stake due to reckless work procedures, let alone being part of "trial and error".

This December, the Constitutional Court looks very busy. They work with utmost care, extra care, more than

anyone had noticed in the previous year. From the information displayed in real-time via the mkri.id page, 135 petitions have been submitted to the Constitutional Court. Interestingly, more than half of the petitions were submitted online, while others were submitted directly to petition acceptance counters. To know the exact number of cases, certainly, we still have to wait until all petitions are registered on January 18, 2021. The Constitutional Court must try all the petition submitted, and completed them within 45 working days from the time of registration according to the provisions.

It is unimaginable and unprecedented that the Constitutional Court will hold trial

over the *pilkada* result dispute amid the pandemic. Indeed, the Constitutional Court has held trial and decided on judicial review cases during this pandemic. However, we understand that judicial review cases and *pilkada* result dispute are of different nature. At least, trial of election result dispute has psychology and political competition aspects. The will to win is very likely to dominate the motives of the Parties. For this reason, the process of proving each argument is predicted to be the most exciting and interesting in the series of trials held amidst various adjustments during the pandemic.

The Constitutional Court has indeed planned some online and offline *pilkada* trial scenarios during the pandemic. However, since this is the first experience for the Constitutional Court and all of us, it will be thrilling and challenging. Hopefully, all will be well, going according to our plans and hopes.

This month is December, ten months since the Covid-19 pandemic health emergency was declared in March. There is a saying that December is a month full of love and blessings. Just as Javanese say, December is "*gedegedene sumber*" or the month with the biggest sources. Hopefully, the God Almighty will bless the *pilkada* result dispute handling at the Constitutional Court during this pandemic this December until the following months. Greetings, Konstitusi!



ENTREPRENEURS COMPLAIN ABOUT P3MI'S CAPITAL DEPOSIT



Wilman Malau as the Petitioner's attorney (right-side) explained subject of the petition on the preliminary hearing of Law No. 18/2017 concerning the Protection of Indonesian Migrant Workers. Wednesday (18/12) in the courtroom of the Constitutional Court.

Indonesian Migrant Worker Placement Company (P3MI) must have a minimum capital of 5 billion and has to put a minimum of 1.5 billion in deposits to government banks. This provision is considered burdensome to P3MI.



HUMAS MKR/FA

Law Number 18 of 2017 regarding the Protection of Indonesian Migrant Workers (PPMI Law) was challenged in the Constitutional Court (MK). Two petitions for judicial review of PPMI Law were submitted at different times, namely petition Number 83/PUU-XVII/2019 and petition Number 20/PUU-XVIII/2020.

The first petition was submitted by Association of Migrant Worker Placement Companies (Aspataki), received at the Registrar's Office of the Constitutional Court on December 9, 2019, with registration Number 83/PUU-XVII/2019 on December 11, 2019.

The second petition was submitted by H. Sunaryo, H.S. (Director of PT. Sentosa Karya) and Zarkasi (Director of PT. Asfiz Langgeng Abadi), received at the Registrar's Office of the Constitutional Court on March 2, 2020 and then recorded in the Registration Book for Constitutional Cases on Number 20/PUU-XVIII/2020 on March 4, 2020.

Aspataki made petition for judicial review of Article 54 paragraph (1) letter a and letter b, Article 82 letter a and Article 85 letter a, arguing that the provisions were

contradicting the 1945 Constitution because based on the prevailing statutory regulations, there was no institution called a "government bank". The existing institutions are only recognized as Commercial Banks and Rural Banks. While if it is on share ownership basis, BUMN Bank is the only one recognized, thus the phrase "to deposit money to a government bank" is unenforceable.

5 Billions Capital

Aspataki also objected to the obligation to have at least 5 billion paid-up capital stated in the company's establishment deed and to put money in a government bank in the form of a deposit of at least 1.5 billion, which could be disbursed at any time as collateral to fulfil obligations under the protection of Indonesian Migrant Workers (PMI). It will close the opportunity for an entity to carry out economic or business activities. Moreover, these requirements must be fulfilled in a relatively short time while the implementing regulations do not specify the position of PMI placement companies existing before the enactment of PPMI Law. According to Aspataki, 5 billion is not affordable by all entities, including P3MI,

given the sluggish global economic conditions, resulting in a decrease in P3MI activities. Moreover, following the PPMI Law enactment, the two main activities of P3MI, recruitment and training activities have been taken over by central and regional governments.

Therefore, increasing the P3MI paid-up capital is unreasonable, it could even cause some P3MI entities to close their business. In addition, the Rp1.5 billion deposit in fact is not necessarily used. This policy will close the opportunities for many Indonesian citizens who wish to work abroad. In addition, the money is intended to be used for cost of dispute settlement between prospective PMI or PMI with P3MI,

which is very detrimental to P3MI and contradicts the sense of justice.

According to Aspataki, the implementation of the obligation for P3MI to have at least 5 billion paid-up capital stated in the company's deed of establishment is unjust treatment, whereas, Article 32 of Law Number 40 of 2007 concerning Limited Liability Companies only stipulates a minimum of 50 million.

"The closed opportunity for P3MI to run its business means that it will close the opportunity for many Indonesian citizens who wish to work abroad," said Wilman Malau, Aspataki's attorney, at the trial held at the Constitutional Court, Wednesday, December 18, 2019.

Aspataki said that based on jurisdiction, any person who can be convicted is the person committing criminal act in the territory of the Unitary Republic of Indonesia (hereinafter referred to as NKRI). Any person who commits an act against the law oversea cannot be tried in the territory of NKRI. Article 82 letter a of the PPMI Law is detrimental to P3MI and does not adhere to the legal principles and legal jurisdiction, because under Article 82 letter a and Article 85 letter a of the PPMI Law, agency/user or any party employing PMI who is certainly foreign citizen (not Indonesian citizen) is the one who can potentially commit such acts outside the jurisdiction of NKRI. Thus, according to Aspataki, convicting

Article 54 paragraph (1) letter a and letter b of the PPMI Law

In order to obtain P3MI License as referred to in Article 51 paragraph (1), Indonesian Migrant Worker Placement Company must meet the following requirements:

- has paid-up capital stated in the company's deed of establishment of at least Rp5,000,000,000.00 (five billion rupiah);

- deposit money to a government bank of at least Rp1,500,000,000.00 (one billion five hundred million rupiah), that can be disbursed at any time as collateral to fulfil obligations under the Protection of Indonesian Migrant Workers;

Article 82 letter a of the PPMI Law

Sentenced to imprisonment of a maximum of 10 (ten) years and a maximum fine of Rp15,000,000,000.00 (fifteen billion rupiah), every person who deliberately places Indonesian Migrant Worker Candidate at:

- position and type of work not in accordance to the work agreement so that it harms the Indonesian Migrant Worker Candidate as referred to in Article 67 letter a; or
- place the Indonesian Migrant Worker in work not in accordance to the Work Agreement agreed upon and signed by the Indonesian Migrant Worker as referred to in Article 71 letter a.

Article 85 letter a of the PPMI Law

Sentenced to imprisonment of a maximum of 5 (five) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah), every person who:

- place Indonesian Migrant Worker in work not in accordance to the Work Agreement agreed upon and signed by the Indonesian Migrant Worker as referred to in Article 71 letter a;

P3MI or Indonesian citizens for the said placement under Indonesian criminal law violates the provisions of the Indonesian Criminal Code (KUHP) and Article 27 Paragraph (1) of the 1945 Constitution.

Aspataki argued that Article 82 letter a and Article 85 letter a of the PPMI Law do not adhere to principles of criminal law, namely the principles of equality before the law, territoriality and active nationalism. In addition, despite the agency/user or any party employing PMI is the one who can potentially commit such acts abroad, the sentence will be imposed to P3MI as if P3MI is the one carrying out the placement. Moreover, P3MI is not necessarily in and be with PMI abroad. Therefore the provision does not adhere to Indonesian criminal law, detrimental and impairs the sense of justice to P3MI. It would be different if the norms stipulated in Article 82

letter a and Article 85 letter a of the PPMI Law are imposed on every person signing the work agreement or amendments for such person is deemed to have been aware of his rights and obligations in each work agreement or amendment thereof. Therefore, the provisions of the *a quo* articles are contrary to Article 28D paragraph (1) of the 1945 Constitution.

Based on the arguments, Aspataki requested the Constitutional Court to declare Article 54 paragraph (1) letter a and letter b of the PPMI Law along the phrase: “(1) In order to obtain SIP3MI as referred to in Article 51 paragraph (1), Indonesian Migrant Worker Placement Company must meet the following requirements: a. has paid-up capital stated in the company’s deed of establishment of at least Rp5,000,000,000.00 (five billion rupiah); b. deposit money to a government bank of at least

Rp1,500,000,000.00 (one billion five hundred million rupiah), that can be disbursed at any time as collateral to fulfil obligations under the Protection of Indonesian Migrant Workers”, to not legally binding so that Article 54 paragraph (1) letters a and b read: “In order to obtain P3MI License for company newly established in the business of placing Indonesian migrant workers as referred to in Article 51 paragraph (1), Indonesian Migrant Workers Placement Company must meet the following requirements:

- a. has paid-up capital stated in the company’s deed of establishment of at least Rp5,000,000,000.00 (five billion rupiah);
- b. deposit money to a government bank of at least Rp1,500,000,000.00 (one billion five hundred million rupiah), that can be disbursed at any



(left-right) Oath by Zakarsih Kusdiono and Wisnu Wicaksono, witnesses presented by the Petitioner and who will reveal their witness on judicial hearing of Indonesian Migrant Worker Protection Law (UU PPMI)



Three experts: Sulistyowati Irianto, Ninik Rahayu, and Yuniyanti Chuzalifah presented by Migrant Care (Relevant Party) to give their statements on the judicial review of Law No. 18/2017 concerning Indonesian Migrant Workers Protection (PPMI), Wednesday (15/7/2020) in the courtroom of the Constitutional Court.

time as collateral to fulfil obligations under the Protection of Indonesian Migrant Workers;

Aspataki also requested the Constitutional Court to declare Article 82 letter a of the PPMI Law along the phrase: “a. position and type of work not in accordance to the work agreement so that it harms the Indonesian Migrant Worker Candidate as referred to in Article 67 letter a”; not legally binding so that Article 82 letter a reads: “a. position and type of work not in accordance with *the work agreement and the amendments on which the person signs*, so that it harms the Indonesian Migrant Worker Candidate as referred to in Article 67 letter a”;

Then to declare the Article 85 letter a of the PPMI Law, along the phrase “a. place Indonesian Migrant Worker in work not in accordance to the Work Agreement agreed upon and signed by the Indonesian Migrant

Worker as referred to in Article 71 letter a; to not legally binding so that Article 85 letter (a) reads: “a. place Indonesian Migrant Worker in work not in accordance to the Work Agreement agreed upon and signed by the Indonesian Migrant Worker *or the person* as referred to in Article 71 letter a”.

To support its petition, Aspataki submitted a document/written evidence. Aspataki also presented three experts and three witnesses. The three experts referred to were Dr. M. Hadi Shubhan, SH., MH., Prof. Dr. Abdul Rachmad Budiono, SH., MH., and Prof. Dr. Amiruddin, S.H., M.Hum. Meanwhile, the three witnesses presented were Zarkasih, Kusdiono, and Wisnu Wicaksono.

P3MI License Revoked

H. Sunaryo and Zarkasi stated in their petition that their constitutional rights were severely impaired by the provisions contained

in Article 5 letter d and Article 54 paragraph (1) letter b of the PPMI Law. The company license held by H. Sunaryo, and Zarkasid were revoked through the Decree of the Minister of Manpower of the Republic of Indonesia Number 107 of 2020 concerning the Revocation of the license for the Indonesian Workers Placement of PT Sentosa Karya Mandiri and the revocation of PT. Asfi Langgeng Abadi, although the legality of the company still exists. The revocation of the license made the company no longer able to carry out business activities as P3MI.

According to H. Sunaryo and Zarkasi, the phrase “Deposit of at least Rp1,500,000,000.00 (one billion five hundred million rupiah)” in Article 54 paragraph (1) letter b of the PPMI Law is very burdensome for the Petitioner in carrying out the government’s responsibility to provide work and a decent living for humanity. Whereas in the previous

provisions, Article 39 in Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad stipulates the requirement for putting money with a bank as collateral in the form of a deposit of Rp15,000,000 (fifteen million rupiah) at a government bank.

“The government is very inconsistent with the policies. On the one hand, the government tries to provide job creation in the country by introducing a regulation called the Omnibus Law. However, on the other hand, the government tries to hinder citizens from obtaining job through the Indonesian Migrant Worker Placement Company (P3MI) as a legal institution. In this case, there has been oddity and misguidance in the policy formulation in the Petitioner’s view,” said Khikmah as the Petitioner’s attorney at the Court

hearing, Tuesday, May 12, 2020.

Aside from inflation, deflation or any other terms, the government’s reason to increase the capital to at least 1.5 billion is certainly very discriminatory and unconstitutional, one of which is considering the role of P3MI so far. The role of P3MI is very central in supporting the country’s responsibility in guaranteeing every citizen’s constitutional rights to get a job and a decent living. According to the Petitioner, the enactment of the *a quo* provision has made the petitioner’s company and other companies, unable to continue the company’s activities, including the government unilaterally has revoked existing license regardless the license validity. The Petitioner considered this unconstitutional and discriminatory. Even the government can be said to have acted arbitrarily

against the policies for P3MI. The imposition of such revocation is contradicted to the basic principles in the constitution that prohibits any injustice to the citizens caused by retroactive regulations as stated in Article 28I paragraph (1) of the 1945 Constitution.

According to the Petitioner, the *a quo* norm should be provided an alternative, namely the deposit of 1.5 billion, which can be disbursed at any time but in the form of Bank Guarantee, where later the disbursement process can still be carried out at any time by the bank. This bank guarantee system applies in other statutory regulations, namely in Law of the Republic of Indonesia Number 8 of 2019 concerning the Implementation of Hajj and Umrah.



The preliminary hearing of judicial review on Indonesian Migrant Worker Protection Law (UU PPMI) to hear witnesses’ testimony presented by Migrant Care as the Relevant Party, Monday (10/8) in he courtroom of the Constitutional Court.



The Petitioner's Attorney followed the preliminary hearing of Law No. 18/2017 judicial review concerning Indonesian Migrant Workers Protection through video conference, Tuesday (12/5) in the courtroom of the Constitutional Court. Photo: PR/Ifa.

Therefore, the Petitioner requested the Constitutional Court to grant the Petitioner's petition by declaring Article 54 paragraph (1) letter b of the PPMI Law along the phrase "deposit money to a government bank of at least Rp1,500,000,000.00 (one billion five hundred million rupiah), that can be disbursed at any time as collateral to fulfil obligations under the Protection of Indonesian Migrant Workers" to be contrary to the 1945 Constitution insofar as it is not interpreted as a Bank Guarantee (Bank Guarantee by Any Bank) with a value of at least Rp1,500,000,000.00 (one billion five hundred million rupiahs) which can be disbursed at any time by the bank according to the government's request.

Frequent Petition on Migrant Workers Law

The Constitutional Court held 11 trials to examine the petition for judicial review of the PPMI Law submitted by Aspataki. Finally, in the verdict, the Court rejected Aspataki's petition. "Rejecting the Petitioner's petition in its entirety," said the Chief Justice of the Constitutional Court Anwar Usman reading the Decision Number 83/PUU-XVII/2019 in the trial, held on Wednesday, November 25, 2020.

However, it was not an unanimous decision. A total of four Constitutional Justices, namely Constitutional Justice Enny Nurbaningsih, Constitutional Justice Suhartoyo, Constitutional Justice

Aswanto, and Constitutional Justice Saldi Isra, had dissenting opinions.

The Constitutional Court in its legal consideration stated that the constitutionality issue of Indonesian Migrant Workers (PMI), previously known as Indonesian Workers Abroad, was one of the issues that have frequently been filed for judicial review petitions to the Constitutional Court since the enactment of Law Number 39 of 2004 regarding the Placement and Protection of Indonesian Workers Abroad (Law 39/2004). According to the records of the Constitutional Court, at least nine cases related to the judicial review of Law 39/2004 had been decided by the Constitutional Court.

The high public interest in judicial review of the Indonesian workers abroad arrangements encourages the country to guarantee the protection of migrant workers and their dignity in exercising their right to work as guaranteed by the 1945 Constitution and international law, as well as maintain the dignity of Indonesia.

International Convention

The country is obligated to protect citizens and their interests, as expressly stated in the Preamble to the 1945 Constitution, which reads, "Subsequent thereto, to form a government of the State of Indonesia which shall protect all the people of Indonesia and their entire native land,..." This country's obligation are now has been accepted and has been applied as a universal principle as reflected in various provisions of international law, both customary law and written international law, for example, the provisions of the 1961 Vienna Convention on Diplomatic Relation, ratified by the Government of Indonesia with Law Number 1 of 1982 concerning Ratification of the Vienna Convention Concerning Diplomatic Relation and its Optional Protocol on Obtaining Citizenship and Ratification of the Vienna Convention Concerning Consular Relation and Its Optional Protocol Regarding Obtaining Citizenship. Article 3 paragraph (1) letter b of the Convention expressly states that one of the duties of diplomatic representation is "protecting in the receiving State the interests of the sending State and its nationals, within the limits permitted by international law ". The State's

obligation to provide protection to its nationals abroad is also regulated in the provisions regarding foreign relations (vide Chapter V of Law of the Republic of Indonesia Number 37 of 1999 concerning Foreign Relation).

Indonesia's efforts in protecting Indonesian workers abroad have also been asserted by Indonesian Government participation on September 22, 2004, in New York by signing the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families without reservation. The signing demonstrates the Indonesian State commitment to protect, respect, promote and fulfil the rights of all migrant workers and their family members , which in turn hopefully contribute to the welfare of migrant workers and their family members.

As a follow-up to the signing of the Convention, the Indonesia Government has established various statutory regulations regarding the protection of workers to enhance PMI's protection (vide General Elucidation of Law Number 6 of 2012 concerning Ratification of the International Convention on The Protection of The Rights of All Migrant Workers And Members of Their Families. The establishment of Law 18/2017 (PPMI Law) replacing Law 39/2004 is part of efforts to realize the country's goals and implement the Convention objectives. Law 39/2004 is deemed inadequate in regulating the placement and protection of Indonesian Workers Abroad and needs to be replaced corresponding to the development and protection needs of PMI.

P3MI Professional, Bonafide, Commitment

Furthermore, the Court considered the Petitioner's arguments regarding the constitutionality of the articles of the PPMI Law challenged against the 1945 Constitution. The Court considered the amount of paid-up capital and deposits as stipulated in the *a quo* article as burden for P3MI to obtain P3MI License. However examined thoroughly, the philosophy and spirit of PPMI Law is to improve the protection for PMI.

The Court said that the legislator made the regulation on increasing the paid-up capital and deposit to government banks in order to guarantee the qualifications and credibility of P3MI as PMI placement executor. Considering the legal facts of various cases experienced by PMIs, preceded by P3MI's negligence in carrying out its duty and responsibility from PMI recruitment to the end of PMI's work, the increase in paid-up capital and deposit as regulated in *a quo* article is inevitable as currency values change and importantly for PMI dignity, represented by P3MI as the Government's partner in PMI placement.

The Court said P3MI entitled to obtain license should be the professional and bonafide P3MI which is earnestly committed to protect and guarantee the human rights of citizens working abroad as referred to in Article 28D paragraph (2) of the 1945 Consitution. The requirements stipulated in Article 54 are intended for P3MI as PMI placement executor will earnestly make plans professionally based on the company's capabilities and the



Surati as the Relevant Party'Witness from Indonesian Migrant Workers Union gave her explanation virtually on the second hearing of the judicial review Law No. 18/2017 concerning Indonesian Migrant Workers Protection, Wednesday (16/9) in the courtroom of the Constitutional Court.

facts thoroughly and rationally predicted which may affect the plans realization.

The Court added the requirements aim to prevent the establishment of irresponsible P3MI and to protect the object of P3MI business which is human being with all its honour and dignity. Furthermore, the Court stated that the requirements stipulated in Article 54 of the PPMI Law are intended to provide legal certainty, business certainty, and legal protection for P3MI, P3MI partners, PMI and/or PMI candidates, and governments that are interrelated and mutually responsible for the comprehensive protection of PMI.

Regarding the nomenclature of “Government Bank” in the *a quo* article, as challenged by the Petitioner, the Court said the *a quo* provision is not related to norms constitutionality. In addition, the Petitioner did not specifically explain the actual losses due to the use of the term government bank. In fact, the nomenclature

for “Government Bank” has already existed in Law 39/2004, on which the Petitioner has also put deposits to the said Government Bank.

The Court said the article challenged is general rule applying to all P3MIs. The requirement is adjustable as stipulated in Article 54 paragraph (3) of the PPMI Law, which states, “In accordance with the condition development, the amount of paid-up capital as referred to in paragraph (1) letter a and the guarantee in the form of deposits as referred to in paragraph (1) letter b can be reviewed and amended by Ministerial Regulation”.

Moreover, the provisions of the *a quo* article are also in line with Article 32 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies, stating “Laws regulating certain business activities can determine a minimum amount of company capital greater than the provision of authorized capital as referred to

in paragraph (1)”. Furthermore, the provision on the amount of paid-up capital and deposits for P3MI is open legal policy of legislator. According to the Court, the policy to increase the paid-up capital and deposit in certain amount does not exceed nor is abuse of the legislators authority, and does not contradict the 1945 Constitution, therefore the Court cannot revoke it. Considering aforementioned, Aspataki’s argument on the unconstitutionality of the norms of Article 54 paragraph (1) letters a and b of the PPMI Law is legally groundless.

The Petitioner argued that Article 82 letter a and Article 85 letter a of the PPMI Law contradicting Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution. Regarding the Petitioner’s argument, the Court considered that the phrase “every person” in criminal provisions means it applies to anyone who violates the criminal provisions, whether individuals, groups of people or legal entities. Therefore, the Court said the criminal provisions in Article 82 letter a and Article 85 letter a of the PPMI Law shall apply to anyone who violates *a quo* article. Additionally, the phrase “every person” is also intended to convict people involved in PMI placement activities that violate criminal provisions.

The Court said the formulation of the phrase “every person” is appropriate because under vicarious liability doctrine, shall any legal entity commits a criminal act, the person running the legal entity is the one convicted, not the legal entity. Furthermore, the *a quo* article regulates the prohibition and criminal sanctions imposed not only on person but also for legal entity as legal subject responsible for the PMI placement who can be held accountable for any harmful legal actions. It emphasizes the recognition, guarantee, protection, and fair legal certainty and equal treatment before the law as mandated in Article 28D paragraph (1) of the 1945 Constitution.

The Petitioner must also take notice that despite of the Petitioner’s argument on *a quo* article, it is closely related to the law implementation in the field and not directly related to constitutionality issues. According to the Court, the Petitioner view that the article enactment is unfair and imposed only on P3MI is mistaken. The Court said the license administration regulation change, which focuses more on PMI protection by integrated one-roof system made the criminal sanctions stipulated in the *a quo* article are not only focused on P3MI as executor of PMI placement abroad but also

all stakeholders related to placement PMI abroad, both individuals and corporations. The Court added that all stakeholders related to the PMI placement, from the central and regional government, P3MI, business partners, employers, related officials, must have the same perception or view in providing comprehensive protection for PMI. All PMIs must be protected from human trade, slavery and forced labour, victims of violence, abuse, crimes against human dignity, and any other treatments that violate human rights. Realizing this goal requires strict and consistent supervision and law enforcement. In this context, supervision includes protection before, during, and after the work. Meanwhile, law enforcement includes administrative and criminal sanctions. Thus, according to the Court, the provision is in line with Article 27 paragraph (1) of the 1945 Constitution.

The regulation change regarding the requirements for prospective PMI to be placed abroad proves the effort to protect PMI. In the PPMI Law, these requirements are regulated in more detail, layered and cumulative. The prospective PMI who will be placed abroad must submit PMI Placement Agreement and Work Agreement. To obtain SIP2MI (Recruitment license), P3MI must have placement Cooperation Agreement, PMI request letter from Employer, draft Placement Agreement, and draft Work Agreement.

According to the Court, Article 82 letter a and Article 85 letter a of the PPMI Law are inseparable from PMI protection efforts in the protection system (before, during, and after the work), in which all stakeholders are interrelated to provide maximum protection to prospective PMI and PMI. It indicates that no discriminatory treatment in law enforcement to the actions that undermine the PMI dignity, as argued by the Petitioner, as the *a quo* Law factually applying to every person, both individuals and/or corporations. Moreover, the Court also mentioned a guarantee from the Government in the PMI placement implementation. The Government will coordinate with the minister who administers government affairs in foreign relations as well as cooperate and collaborate with the country of destination for placement. Therefore, the concern on business partners or agencies that place PMI overseas would not convicted leading to the absence of protection and fair legal certainty for PMI has become refutable.

As the Court’s legal considerations in its previous decisions related to provisions relating to criminal policies, the Court believes that this is the legislators

authority, as it concerns conviction substantially related to the limitation of human rights that must involve or represent the people's will. With the aforementioned legal considerations, the Petitioner's argument regarding the unconstitutionality of the norms of Article 82 letter a and Article 85 letter a of the PPMI Law is legally groundless.

On the same day, the Constitutional Court also issued a verdict on the PPMI Law judicial review, petitioned by H. Sunaryo, H.S. (Director of PT. Sentosa Karya) and Zarkasi (Director of PT. Asfiz Langgeng Abadi). The Court stated in Decree No. 20/PUU-XVIII/2020 that the Petitioners' petition along Article 5 letter d of the PPMI Law can not be accepted, thus the Court rejected the Petitioners' petition.

"Rejecting the Petitioners' petition for the rest," said Chief Justice of the Constitutional Court Anwar Usman in the trial, held on Wednesday, November 25, 2020.

Government Bank

The Court believes that the norm of Article 54 paragraph (1) letter b of PPMI law challenged by H. Sunaryo, H.S., and Zarkasi is the norm challenged by Aspataki as aforementioned. However, the petition of H. Sunaryo, H.S., and Zarkasi has different basis and reasons from Aspataki's petition.

The Court, in its legal considerations, stated that H. Sunaryo, H.S., and Zarkasi argued that the phrase "Deposit of at least Rp1,500,000,000.00 (one billion five hundred million rupiah)" in Article 54 paragraph (1) letter b of the PPMI Law contradicts the 1945 Constitution, as it does not adhere to sense of justice. Regarding this proposition, H. Sunaryo, H.S., and Zarkasi did not challenge the amount of deposits to be deposited. Instead, in the *petitum*, they requested the norm to be interpreted as Bank Guarantee (by Any Bank) with the amount of at least Rp1,500,000,000.00 (one billion five hundred million rupiah), which can be disbursed at any time by the bank under the government's request. Thus, what the Petitioners requested was the money deposits in the form of deposits should be interpreted as Bank Guarantee, and government banks should be interpreted as "Any Bank."

The Court responded by referring the consideration of Decree Number 83/PUU-XVII/2019 filed by Aspataki, among others, the consideration of the qualifications and credibility of P3MI as the PMI placement executor. The Court said P3MI entitled to obtain license should be the P3MI which is professional, bonafide, and earnestly committed to protect and guarantee the human rights of citizens working abroad as referred to in Article 28D

paragraph (2) of the 1945 Consitution. The consideration above is the Court's stance regarding the constitutionality of the requirements stipulated by Article 54 paragraph (1) letter b of the PPMI Law. Therefore, regarding the *a quo* article, the Court has emphasized that there is no constitutionality of norms.

The next issue related to the *petitum* of the Petitioners regarding the deposit form that should be in the form of bank guarantee at any bank, the Court said granting this in fact may potentially create legal uncertainty and at the same time reduce the role of the government in creating accountability and bona fides from P3MI, which is responsible for the security and safety of the migrant workers. Without such legal certainty and bona fides, it will raise doubts about the P3MI professionalism, and in the long run, it will endanger the safety of migrant workers.

Due to the cross-border nature of the work and business of P3MI, the Court stated that the use of government bank is the right choice, because not all banks, or in the diction of the Petitioners, "Any Bank" can guarantee the bona fides of the company, evenmore for the PMI benefit in other countries. Moreover, government bank provides guarantee of security and easy access for services and protection for PMI. The Petitioners compared this requirements with the one in Law Number 8 of 2019 concerning the Implementation of Hajj and Umrah, which requires the Special Hajj Organizers (PIHK) and Umrah Pilgrimage Tour Organizer (PPIU) to have technical capabilities, personnel competence, and financial capacity to organize special Hajj service, evidenced by bank guarantee. The Court stated that the comparison was inaccurate because P3MI's business fields with PIHK companies and PPIU companies were very different and had very different implications. The requirements stipulated in Article 54 of the PPMI Law are intended to provide legal certainty, business certainty, and legal protection for P3MI, P3MI partners, PMI and/or PMI candidates, and governments that are interrelated and mutually responsible for the comprehensive protection of PMI. Thus the Petitioners' argument that the phrase "Deposit of at least Rp1,500,000,000.00 (one billion five hundred million rupiah)" in Article 54 paragraph (1) letter b of the PPMI Law creates injustice and discrimination is legally groundless. ■

NUR ROSIHIN ANA



JOB CREATION LAW ALLEGEDLY COMMERCIALIZES EDUCATION

JOB Creation Law has been challenged by individual Petitioners in case Number 91/PUU-XVIII/2020 and Number 95/PUU-XVIII/2020. The Petitioners for case Number 91/PUU-XVIII/2020 were Hakiimi Irawan Bangkid Pamungkas (Petitioner I), Novita Widiana (Petitioner II), Elin Dian Sulistiyowati (Petitioner III), Alin Septiana (Petitioner IV) and Ali Sujito (Petitioner V). The Petitioners for case Number 95/PUU-XVIII/2020 were Zakarias Horota (Petitioner I), Agustinus R. Kambuaya (Petitioner II), and Elias Patege (Petitioner III).

The Chairman of Panel, Constitutional Justice Arief Hidayat, informed that the Petitioners for Case Number 95/PUU-XVIII/2020 had withdrawn. Meanwhile, the Petitioners

for case Number 91/PUU-XVIII/2020 believe that the Job Creation Law is Law that applies Omnibus Law concept in order to simplify the regulation by changing 78 (seventy-eight) laws into 11 cluster of 1 (one) Job Creation Law. Out of the 78 Laws contents of which the paragraphs, articles, and/or parts of the norm provisions were amended or deleted during the discussion process, some has defied the legislation establishment principles including the principle of clarity of purpose, efficiency and serviceability, clarity of formulation, and openness.

On October 5, 2020, DPR (House of Representatives) and the President ratified the 905-page Job Creation Bill into Law. However, the Legislative Body (Baleg) said that the 905-page draft was not the final draft, and it was still being finalized. There was also a 1035-page Job Creation Bill draft confirmed by DPR Secretary General as the final draft.

After examining the two drafts, it turned out 130 pages were added to the 905-page draft jointly approved by DPR and President on October 5, 2020, with some substantial changes. However, DPR Secretary General again stated that the 812-page draft was the latest revision made by DPR. That means that after the 905-page Job Creation Bill draft jointly approved by DPR and the President on October 5, 2020, there have been 2 (two) changes to the Job Creation Bill draft, i.e 1035 pages and then 812 pages. As the changes to Job Creation Bill draft were clearly and obviously not related to technical writing, but related to the material substance, it has violated Article 72 paragraph (2) of Law no. 12/2011 and its elucidation. (Nano Tresna A.)

SINGAPERBANGSA LABOR UNION FEDERATION CHALLENGED JOB CREATION LAW

THE preliminary hearing of Law Number 11 of 2020 concerning Job Creation against the 1945 Constitution was held on Wednesday, November 04, 2020 virtually. The petition registered with Number 87/PUU-XVIII/2020 was filed by Central Executive Board of Singaperbangsa Labor Union Federation (FSPS), represented by Deni Sunarya as General Chairman and Muhammad Hafidz as General Secretary, challenging Article 81 number 15, number 19, number 25, number 29, and 44 of Job Creation law.

In a virtual trial, Muhammad Hafidz said that the content in Article 81 numbers 15, 19, 25, 29, and 44 of the Job Creation Law potentially impaired the constitutional rights of the Petitioner's members and other laborers as stipulated in Article 28D Paragraph (1) and Paragraph (2)



of the 1945 Constitution. He emphasized that the Law has eliminated the term extension, the extension limit, and the extension and renewal of specific time work agreement. In addition, it has eliminated minimum wages and housing payment and medication care as components of termination

compensation. Furthermore, Hafidz explained that the material in Job Creation Law is not better and even beneath the Manpower Law.

Hafidz said Article 81 point 15 of Job Creation Law has changed the material contained in Article 59 of Law Number 13 of 2003 concerning Manpower. He mentioned that the arrangement of the specific time work agreement can only be made for a maximum of 2 (two) years and may only be extended 1 (one) time for a maximum period of 1 (one) year as regulated in Article 59 paragraph (4) Law 13/2003, thus provides legal certainty for implementation of particular work which according to the type and nature or activity of the work will be completed within a specific time (temporarily), predictable completion of the work, seasonal work or work related to new products, new activities, or additional product for trial or exploration.

Furthermore, he explained that Article 81 number 19 of the Job Creation Law has removed Article 65 of Law 13/2003 on limit requirements on work assigned by employer to worker/labor service provider company, thus providing room to the employer to assign all types of work to worker/labor service provider. In other words, all types of work can be outsourced. Moreover, work agreement between worker/labor and worker/labor service provider company can adopt specific time work agreement, thus resulting in worker/labor's exploitation for business benefit because it has severed the employer's responsibility in

employment of worker/labor. This in fact obscures the aspects of guarantee and protection for outsourced worker/labor.

Thus, in its *Petition*, the Petitioner requested the Constitutional Court to declare Article 81 number 15, number 19, number 25, number 29, and 44 of the Job Creation Law to be contradictory to the 1945 Constitution and to declare the word "or" in Article 88D paragraph (2) in Article 81 number 25 of the Job Creation Law to be contradictory to the 1945 Constitution insofar it is not interpreted as "and." The Petitioner also requested the Court to declare the phrase "at most" in Article 156 paragraph (2) and paragraph (3) in Article 81 number 44 of the Job Creation Law to be conditionally contradictory to the 1945 Constitution if it is not interpreted as at least, and to declare Article 156 paragraph (4) in Article 81 number 44 of Job Creation Law to be contradictory to the 1945 Constitution conditionally insofar as it does not mean the compensation of rights that should be received as referred to in paragraph (1) includes: (a) unexpired and untaken annual leave; (b) costs or fees for the worker/labor and his family to return to the place where the worker/labor is accepted to work; (c) housing compensation, as well as medication and treatment, shall be set at 15% of the severance pay and/or long service pay for those qualified; (d) other matters stipulated in the work agreement, company regulations or collective labor agreement.

JUDICIAL COMMISSION'S AUTHORITY TO PROPOSE AD HOC JUDGES CHALLENGED

THE Court held preliminary examination hearing on judicial review of Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning Judicial Commission virtually on Monday, November 9, 2020. The petition of case Number 92/PUU-XVIII/2020 was filed by Burhanudin, a lecturer who entered the selection of ad hoc judges at Corruption Criminal (Tipikor) Court in 2016. He challenged Article 13 letter a of Judicial Commission Law.

In the trial led by Constitutional Justice Saldi Isra, Zainal Arifin Hoesein, the petitioner's attorney, said that the petitioner felt that his rights were impaired by Article 13 letter a of Judicial Commission Law, particularly the phrase "and ad hoc judges." "The Petitioner's Constitutional Rights guaranteed by the Law have been violated by the enactment of Article 13. In addition, the provisions



in the *a quo* Law, which equate ad hoc judges with Supreme Justices, is constitutional violation of Article 24B paragraph (1) of the 1945 Constitution.

He believes ad hoc judges at the Supreme Court are not the same as the supreme justices, whether in status, function, and authority attached to their positions. Ad hoc judges, especially in Corruption Criminal Court, used to be selected by the Supreme Court under Corruption Criminal Court Law, before the enactment of the provision in Judicial Commission Law. The previous selection procedure provides

legal certainty to ad hoc judge candidates to enter selection relying on their competency in specific fields as the Supreme Court needs.

Article 13 letter a of the *a quo* Law indicates that the legislators clearly and expressly (*expressis verbis*) have expanded the Judicial Commission's authority, which initially

only propose the supreme justices into also propose ad hoc judges in the Supreme Court. Thus, the same selection procedure between prospective Supreme Court justices and ad hoc judges despite of the structural and status difference is violation of the value of justice. (Utami Argawati)



CONSTITUTIONAL JUSTICE MINIMUM AGE REQUIREMENT CHALLENGED

THE preliminary hearing for the judicial review of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning Constitutional Court was held on Tuesday, November 10, 2020. The petition Number 90/PUU-XVIII/2020 was filed by Allan Fatchan G.W., a lecturer at the Faculty of Law, Islamic University of Indonesia (UII). In this case, the Petitioner argued that Article 15 paragraph (2) letter d, Article 22, Article 23 paragraph (1) letter d, Article 26 paragraph (1) letter b, and Article 87 of the Constitutional Court Law are contrary to Article 1 paragraph (3), Article 24 paragraph (1), Article 28D paragraph (1), and Article 28D paragraph (3) of the 1945 Constitution.

Allan believes the Constitutional Court Law formation has formally violated and contradicted the provision related

to the procedures for law formation regulated in the Law on Establishment of Legislation as the implementing Law of Article 22A of the 1945 Constitution. Allan, who is also the Head of Constitutional Law Study Center (PSHK), Faculty of Law, UII explained, in Article 15 paragraph (2) letter d, which reads, "...at minimum of 55 (fifty five) years of age," changing from 47 years old to 55 years old. He believes this change has no actual urgency; even the reasons for raising the age requirement for constitutional justices are not stated in Academic Manuscript of the Constitutional Court Law. Moreover, continued Azhar, this is contrary to the Constitutional Court Decision Number 7/PUU-XI/2013.

Azhar also said that the article challenged contradicts Article 28D paragraph (3) of the 1945 Constitution, which principally requires constitutional justice to have integrity and impeccable, fair, a statesman that understands the constitution and state administration and is not a state official. Thus, despite of not meeting the provisions of the *a quo* article, a constitutional justice candidate should be interpreted as having constitutional rights to be appointed as a constitutional justice if he meets the requirements contained in Article 24C paragraph (5) of the 1945 Constitution.

For these legal reasons, the Petitioner requested the Constitutional Court to declare the formation of Law Number 7 of 2020 concerning Third Amendment to Law Number 24 of 2003 concerning Constitutional Court does not meet the provisions under the 1945 Constitution. (Sri Pujianti)

INDUSTRIAL RELATION COURT DEEMED TO INHIBIT JUDICIAL REVIEW

THE Constitutional Court (MK) held preliminary examination hearing of the judicial review of Law No. 2 of 2004 concerning Industrial Relation Dispute Settlement (PPHI Law) on Monday, November 9, 2020 afternoon. The petition of case number 89/PUU-XVIII/2020 was filed by Yok Sagita, director of a private company. The Petitioner challenged Article 55 of the PPHI Law, which states, "Industrial Relation Court is



a special court within the general court." The petitioner was a Director of PT Frina Lestari Nusantara, who has a working

period of about six years from October 19, 2010 - January 4, 2017 as Logistics manager and the latest as a director on robotics in the production.

Bernard Brando Yustisio, the Petitioner's attorney, emphasized that his client had lost his constitutional rights in Article 28D paragraph (1) and Article 28H paragraph (2) of the 1945 Constitution, because the Petitioner did not receive protection, legal certainty and justice when the company terminated his employment unilaterally and immediately without any legal process as regulated in Law no. 13/2003 concerning Manpower. During his work, the Petitioner has demonstrated good performance at the company, contributed in building and developing PT Frina Lestari Nusantara. As previously its factory in Sentul was caught fire and almost entirely burned. Then the company moved to Deltamas Industrial area, Bekasi Regency, and was able to rise and develop.

"Due to the enactment of Article 55 of PPHI Law that the industrial court in practice is interpreted as special court that does not allow any petitions for filing extraordinary legal remedy. Whereas on the other hand, special court can also be interpreted as labor court. Thus the Petitioner's constitutional rights have been violated because he cannot file for extraordinary legal remedy for judicial review in fighting for his rights as a worker. Therefore the Petitioner as a justice seeker did not receive fair recognition, guarantee, protection and legal certainty as referred to in Article 28D paragraph (1) of the 1945 Constitution, as well as did not receive ease and special treatment to obtain opportunities, and did not receive equal benefits for equality and justice as referred to in Article 28H paragraph (2) of the 1945 Constitution," said Bernard to the Panel of Justices of the Constitutional Court. (Nano Tresna A.)



APARTMENT BUYERS CHALLENGED PROVISION ON BANKRUPT DEVELOPER

THE Preliminary Examination Hearing of petition for judicial review of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Bankruptcy and PKPU Law) was held on Thursday, November 5, 2020. The petition of Number 88/PUU-XVIII/2020 was filed by Ashvin Bayudewa and 19 other Indonesian citizens. The Petitioners challenged the norms of Article 55 paragraph (1) of the Bankruptcy and PKPU Law, which states, "With due observance of the provisions as referred to in Article 56, Article 57, and Article 58, any Creditors holding lien, fiduciary security, security right, mortgage, or other collateral rights on property, may execute their rights as if no bankruptcy occurred."

The Petitioners bought units of Antasari 45 Apartment from developer PT Prospek Duta Sukses (PDS) since 2014

and based on agreement, the units would be handed over in 2017. However, by early 2020, the construction has not been completed as promised.

Fuad Abdullah, the Petitioner's attorney, in the trial led by Constitutional Justice Suhartoyo, said the Petitioners had been harmed by the Central Jakarta Commercial Court ruling that granted PT PDS's request for Postponement of Debt Payment Obligations (PKPU). With the enactment of Article 55 paragraph (1) of Law 37/2004, then it contradicted Article 1 Paragraph (3), Article 27 Paragraph (1), Article 28D Paragraph (1), Article 28E Paragraph (1), Article 28G Paragraph (1) Article 28H Paragraph (1), Article 28H Paragraph (2), Article 28H Paragraph (4), Article 28I Paragraph (2), Article 28I Paragraph (4), Article 28J Paragraph (1), Article 33 Paragraph (2) and Article 33 Paragraph (3) of the 1945 Constitution, and potentially create legal uncertainty, given the absence of a clear and firm interpretation of the clause 'other collateral rights on property' regarding the apartment buyers' position and standing.

In their petition, the Petitioners also explained that Article 55 paragraph (1) of the Bankruptcy and PKPU Law and what had transpired had harmed the Petitioners by placing them as concurrent creditor and the last party receiving even potentially not receiving any compensation or restitution if the developer goes bankrupt. By excluding the apartment/flats buyers as separatist creditors, if the company faces bankruptcy, the Petitioners may potentially lose the part or entire funds they have paid and the apartments they have purchased. (Utami Argawati)



TWO AD HOC JUDGES OF CORRUPTION CRIMINAL COURT CHALLENGED TERM OF OFFICE PROVISION

THE Constitutional Court (MK) held the preliminary hearing for judicial review of Law Number 46 of 2009 concerning Corruption Criminal Court on Monday, November 2, 2020 afternoon. Petition of Case Number 85/PUU-XVIII/2020 was filed by Sumali (Petitioner I) and Hartono (Petitioner II).

Sumali and Hartono, Ad Hoc Judges at Corruption Criminal Court of Denpasar District Court, Bali, challenged Article 10 paragraph (5) of the Corruption Criminal Court Law,

which states, "Ad Hoc Judge as referred to in paragraph (4) shall serve for a term of office of 5 (five) years and can be reappointed for 1 (one) term of office".

The Petitioners argued that their constitutional rights have been impaired by the enactment of this article, as the provision on term of office might threaten the judges' freedom and create problems in the appointment and dismissal of ad hoc judges in the corruption criminal court.

The limits on term of office of ad hoc judges for corruption to five years and can be reappointed for one term of office is very detrimental to the Petitioners because it contradicts the 1945 Constitution and Law Number 48 of 2009 concerning Judicial Power which regulates the judicial power in Indonesia. In the provisions of the law, there is no single article norm that regulates the limits on term of office of judges in the judiciary and Supreme Court of the Republic of Indonesia. Therefore the norm of the limits on term of office of ad hoc judges in the corruption criminal court is an actual loss for the Petitioners, as it goes beyond the basic rules which are the provisions of Article 24 Paragraph (1), Article 27 Paragraph (1) and Paragraph (2), and Article 28D Paragraph (1) of the 1945 Constitution. (Nano Tresna A.)

DEBTOR'S HEIR CHALLENGED THE LACK OF PROVISION IN MORTGAGE LAW

THE Constitutional Court (MK) held preliminary hearing for judicial review of Law No. 4 of 1996 on Mortgage over the Land and Appurtenances to Land (Mortgage Law) on Monday, November 2, 2020, in the Plenary Courtroom virtually led by Constitutional Justice Manahan M.P. Sitompul alongside Constitutional Justice Wahiduddin Adams and Saldi Isra.

The petition of case Number 84/PUU-XVIII/2020 was filed by Rosmanidar, represented by Mohammad Yusuf Hasibuan, Irfandi, and Afandi Arief to convey her constitutional rights impairment due to the enactment of Article 6 of the Mortgage Law.

Yusuf said that a concrete case raised this petition. The Petitioner is the heir of debtor Mardi Can, who did not get her rights due to the enactment of Article 6 of the Mortgage Law. There is no clarity upon the debtor's death, whether all the heirs shall be responsible for the debtor's debts or it is absolutely authorize to appoint a heir to be fully responsible for the debtor's obligations settlement, even if there are several heirs or not a single heir.



Furthermore, Yusri stated that in comparison to Article 16 paragraph (1) and paragraph (2) of the Mortgage Law that principally states that if the creditor dies or the receivables guaranteed by inheritance rights are transferred due to inheritance, then the mortgage rights will be transferred to a new creditor and must be registered with the land office. However, if the debtor dies, the legal transfer to the debtor's heirs is not strictly regulated by law to be registered with the Land Office to obtain legal certainty. This is very detrimental to the Petitioner's constitutional rights because, on the one hand, the creditor has legal certainty, while the Petitioner as the debtor's heir does not. (Sri Pujianti)



DEFENDANT CHARGED WITH GROWING MARIJUANA CHALLENGED THE WORD "TREE" IN NARCOTICS LAW

THE Constitutional Court held hearing for judicial review on Elucidation of Article 111 and Elucidation of Article 144 of Law Number 35 of 2009 concerning Narcotics on Monday, November 2, 2020. The case Number 86/PUU-XVIII/2020 was filed by Ardian Aldiano, defendant in criminal case at the Surabaya District Court. He was charged for growing 27 (twenty-seven) marijuana plants hydroponically for personal use by smoking to treat seizures he suffered, which then made him addicted. The Petitioner intended to recover from his addiction, proven by a photocopy of his medical records of Narcotics Assistance and Rehabilitation Garuda Gandrung Satria Foundation (GAGAS Foundation).

In the trial led by Constitutional Justice Suhartoyo, Singgih Tomi Gumilang, Petitioner's attorney, said that the Petitioner suffered constitutional impairment due to the enactment of the articles challenged, especially the right to get recognition, guarantee, protection, and legal certainty, due to the unclear definition of the word "tree" in the Elucidation of Article 111 and Elucidation of Article 114 of the Narcotics Law.

Singgih further explained, the difference between the definitions of herb, shrub, and tree has been clearly explained on website of Faculty of Forestry, Gadjah Mada University. It defines Tree as a plant that has clear roots, stems, and crowns with a minimum height of 5 meters [Dengler]; a woody plant that has a clear trunk and a clearly-shaped crown which is not less than 8 feet tall [Baker]; a woody

plant of several years with a single distinct trunk [Prosea].

The Petitioner believes the obscure definition of tree in Elucidation of Article 111 and Elucidation of Article 114 of the Narcotics Law has made the articles ambiguous and could worsen the image of law enforcement related to narcotics in Indonesia. Singgih continued that any Indonesian citizen who is undergoing a legal process of examination at the police station or National Narcotics Agency office at stage I, stage II examination at the Prosecutor's Office, and/or stage III criminal examination at the District Court, High Court (Appeal), and the Supreme Court (Cassation) will be disadvantaged by Elucidation of Article 111 and Elucidation of Article 114 of the Narcotics Law.

The Petitioner said the unclear definition of tree in Article 111, Article 114 paragraph 2, and Elucidation of Article 114 of the Narcotics Law has made the General Prosecutor of East Java High Prosecutor's charged the Petitioner with imprisonment of 9 (nine) years including pretrial detention without bail, and a fine of Rp1,000,000,000.00 (one billion rupiah) or 3 (three) months imprisonment.

The Petitioner also argued that the Elucidation of Article 111 and Elucidation of Article 114 of the Narcotics Law allegedly contradicts the 1945 Constitution. The Petitioner believes, in the Narcotics Law, Article 111 and Article 114 each consists of 2 (two) paragraphs. However, the Elucidation of Article 111 and Article 114 do not consist of 2 (two) paragraphs but it only reads "Self-explanatory," leading to multiple interpretations regarding the phrase "Self-explanatory." For this reason, in its petitem, the Petitioner requested that the Elucidation of Article 111 and Article 114 of the Narcotics Law be declared contrary to the 1945 Constitution and not legally binding. (Utami Argawati).



REVIEWING NATIONAL LEGALIZATION SYSTEM TO FREEDOM OF EXPRESSION

Constitutional Justice Enny Nurbaningsih delivered virtual public lecture to students of Master Program of State and Business Law Study, Faculty of Law, Gadjah Mada University (UGM), Saturday, November 28, Jakarta. (photo: illustration/PR of the Constitutional Court).

2020 will soon be over. In this quite challenging year, several countries in the world, including Indonesia, were shaken by non-natural disasters, the Covid-19 pandemic. However, this does not necessarily dampen the spirit of the constitutional justices to continue to share in their dedication to educate the nation's children. In limited face-to-face room, constitutional justices continue to strive to provide understanding on the law and constitutional rights of citizens in various discussions at webinars organized by various universities in Indonesia. Read the following justices' activities in public lectures and webinars with various interesting topics related to law and constitution.

Criticism to National Legislation System

Constitutional Justice Enny Nurbaningsih delivered virtual public lecture to students of the Master of State and Business Law Study Program, Faculty of Law, Gadjah Mada University (UGM) on Saturday, November 28, 2020, on "Legislation System in Indonesia Post the Enactment of Law no. 15 of 2019,"

Enny, as a lecturer in statutory law and in her practice experiences, said that the legislation is never formed instantly, if so, the goal of forming the Unitary State of the Republic of Indonesia will never be achieved.

"Therefore, every process of forming a law aims to achieve the state's goals. That is for sure. Only then, any shift in practice is of different

issue, for example related to the politics of law is of how the political struggles are related to the legislation formation," explained Enny.

However, Enny emphasized that every legislation formation philosophically always concerns the state's goals achievement, therefore, such matters cannot be made formalistic but something that must be done, as stated in the fourth paragraph of the Preamble to the 1945 Constitution.

Enny continued the state must observe statutory hierarchy in forming a law in the legislative system. The statutory hierarchy is not formalistic. Any laws that is not in line with the statutory hierarchy can be removed through judicial review system at the Constitutional Court or at the Supreme

Court for regulations under the law. "It is not formalistic, but it must be reflected in the material contained in the statutory regulations formed," said Enny.

Further Review

Enny asked online participant students to study and discuss further Article 8 of Law no. 12/2011. Through this norm, Enny asked students to think critically about the MPR's (People's Consultative Assembly) authority. Can MPR issue statutory regulations? Then, can DPR (House of Representative) issue statutory regulations other than the law? Likewise, can DPD (Regional Representative Council) also issue statutory regulations?

"As a student, try to study this matter, examine it one by one, make a paper about it. In this regard, you can see Article 1 number 2 Law no. 12 of 2011 which states that statutory regulation is written regulation that contain generally binding legal norms that is formed or determined by state institution or authorized official by the procedures stipulated in statutory regulations," explained Enny.

Then based on the meaning contained in Article 1, number 2 Law no. 12 of 2011, can MPR issue products other than those meant in Article 7 paragraph (1) of Law no. 12 of 2011, which is a type of statutory regulations? "You have to look at the functions, duties and powers of MPR. Are there any functions, duties and powers of MPR relating to statutory regulations? Can DPR issue statutory regulations other than the law which then become generally binding on continuous basis? Likewise DPD," said Enny.

Breath of Indonesian Law

In politics of law in Indonesia, laws are formed by DPR (House of Representatives) alongside the President. Before the amendment of the

1945 Constitution, the President used to propose the law, but afterward, Article 20 of the 1945 Constitution stipulates the Law is formed by DPR alongside the President, said Constitutional Justice Arief Hidayat in a public lecture on "Politics of Law in Indonesia" to Master Program Students of the Faculty of Law, Diponegoro University (Undip), on Saturday, November 28, 2020 virtually.

Arief explained that in the New Order era, the 1945 Constitution was

in 2001 and concluded by the fourth stage in 2002.

According to Arief, politics of law is law that applies to the future. Arief quoted the Chief Justice of the Constitutional Court of 2008-2013 Moh Mahfud MD, who emphasized that politics of law is how the law should be made and directed in national politics. "In addition, the efforts made to enforce its function," said Arief.



Constitutional Justice Arief Hidayat delivered online public lecture to students of Master Program of Faculty of Law, Diponegoro University Semarang, Saturday, November 28, in Jakarta. Photo: PR.

deemed sacred and could not be amended. However, in the Reformation Era, there were demands to amend the 1945 Constitution so as the government would not turn authoritarian. Arief further said that Amendments to the 1945 Constitution were carried out one time in 4 stages, the first stage in 1999, the second in 2000, the third

Regional Regulation on Cultural Heritage Protection is Needed

Indonesia is a country rich in culture, but much is as potentials as has not been fully explored. This in fact leaves much room for exploration by researchers. Therefore, researchers



Constitutional Justice Wahiduddin Adams as keynote speaker at the Seminar on Results of Research on Ancient Manuscripts of Ogan Komering Ilir, South Sumatra virtually, Saturday, November 28, in Jakarta. Photo: PR/Gani.

should not be busy on their own but must share tasks with the authorities, such as regional governments, to explore the existing cultural potentials, said by Constitutional Justice Wahiduddin Adams in his keynote speech at the Seminar on Results of Research on Ancient Manuscripts of Ogan Komering Ilir, South Sumatra on Saturday, November 28, 2020 morning. In this event with the theme “Religious Locality and Nationality in the Ancient Manuscripts of Ogan Komering Ilir, South Sumatra,” Wahiduddin delivered a lecture entitled “Roots of History”

Regarding the cultural heritage potentials, Wahiduddin said that it is human if people have emotional bond with their origins, because a human will be easier to understand his identity if he is related to his roots. Wahiduddin acknowledged that researchers’ findings on ancient manuscript was often unattractive and only seen as nostalgia.

From academic or philological perspective, this field is also unpopular. Wahiduddin continued that Bung Karno

once said in his speech, “Red Coat, never forget history.” Nevertheless, Wahiduddin believes that this rare field engaged by few people of great perseverance and interest will later affect the policies made by stakeholders. Therefore, regional regulation is needed to protect the cultural heritage and preserve the ancient manuscripts researched by local researchers.

Wahiduddin said that the Constitutional Court is positioned downstream regarding the protection of citizens’ constitutional rights related to this culture. Any provision in the law that violates the 1945 Constitution can be petitioned by the citizens in the Constitutional Court. Wahiduddin admitted that the law does not define regional culture, but there are derivative regulations on how to realize the law concretely.

“Therefore, regional leaders shall serve and protect the community related to local issues including promoting this activity and provide support to increase research and studies on the

potential of regional culture, especially ancient manuscripts,” said Wahiduddin, who delivered the lecture from the Constitutional Court Building, Jakarta.

Advocates Must Have Good Conduct and Honesty

Constitutional Justice Saldi Isra became resource person for Advocate Professional Special Education (PKPA) on “How to be a Good Lawyer.”, held virtually by the Faculty of Law, University of Andalas (Unand) in collaboration with the Branch Executive Board of Indonesian Advocates Association (DPC Peradi) Padang on Friday, December 4, 2020 afternoon.

Saldi started his presentation with famous quotes for a lawyer, among others, “Only lawyers and painters can change black to white.” The lawyer is described as someone so powerful as he can turn white to black or black to

white. "Some people view this positively. But some say the quote is sarcasm for lawyers. Because only a lawyer can turn something wrong into right and something right into wrong. Now, it depends on how we see it. The quote was made by a poet from Japan. He could criticize or appreciate lawyers. As we see, the compliance of Japanese society to court decisions is among the highest in the world," said Saldi.

Saldi elaborated further related to Law no. 18 of 2003 concerning Advocates stating that advocate is free, independent, and responsible in enforcing the law. Advocates are related to judicial power. "In that context, no matter how free an advocate is, no matter how independent an advocate is, his work ends in the law enforcement process," explained Saldi.

The Advocates Law states that advocate is a profession that provides legal services both inside and outside the court. Saldi says lawyer does not always have to appear in court, as their work may extend beyond the litigation. Advocates who only work non-litigation outside the court, are no less successful than lawyers at the trial.

The Advocates Law also regulates the services provided by advocates: providing consultation, legal assistance, exercising power, representing, accompanying, defending, taking legal action, and any other interests related to clients. Advocates must also have good conduct, be honest, responsible, fair, have high integrity. Before accompanying prospective clients, advocates should ask prospective clients to tell honestly, clearly about the case at hand. There should be no hidden legal facts. Upon examining the case, advocate may advise his client.



Importance of Understanding the Procedural Law of the Constitutional Court

Procedural law is fundamental law for advocates in fighting for client rights. Without understanding it, advocates will be unable to help justice seekers, said by Constitutional Justice Suhartoyo

Constitutional Justice Saldi Isra became resource person for the Advocate Professional Special Education (PKPA) virtually, Friday, December 4, in Padang. Photo: PR/Gani.

as resource person in Advocate Professional Special Education, Faculty of Law, Andalas University online on Friday, December 4, 2020 from the Constitutional Court Building.



Constitutional Justice Suhartoyo became resource person in Advocate Professional Special Education Faculty of Law, Andalas University virtually, Friday, December 4, in Jakarta. Photo: PR/Gani.

In this event, Suhartoyo presented material entitled "Litigating at the Constitutional Court" by focusing the discussion on judicial review, one of the authorities of the Constitutional Court mandated by the 1945 Constitution. Suhartoyo said there are formal and material judicial review. Formal judicial review is related to lawmaking procedure by the legislators, while material is related to the norms substance.

"However, in the Constitutional Court the Petitioner can file one and/or both of them. Taking note that formal judicial review petition is limited for 45 days since the law is promulgated in the state gazette," explained Suhartoyo in the event moderated by lecturer of Faculty of Law, Andalas University Beni Kharisma Arrasuli from Padang.

Suhartoyo then explained that one fundamentally differentiate the Constitutional Court from other courts in Indonesia is the Petitioner's attorney, which is not necessarily an advocate, however an advocate may become

attorney-in-fact in the Constitutional Court.

Furthermore, Suhartoyo discussed the requirement of perceived constitutional impairment of the Petitioner, including the existence of constitutional rights and/or authority granted by the 1945 Constitution; specific and actual constitutional impairment or at least potential one which according to rational reasoning will certainly occur; causal relationship between the perceived impairment and the enactment of norms. (Sri Pujianti/Lulu Anjarsari)

Freedom of Expression in Constitution

Constitutional Justice Wahiduddin Adams became resource person at National Seminar of the Sharia Faculty of UIN (State Islamic University) Sultan Maulana Hasanuddin Banten on Friday, December 11, 2020. He said that freedom of speech and expression applies to all kinds of ideas, even

offensive ones but such freedom come with responsibility and can be legally restricted by the Government. He said the Government must prohibit hate and inciting speech. Such restriction can be justified if it is made to protect certain public interests or the rights and reputation of others.

Wahiduddin believes, as a country, Indonesia must protect, promote, enforce and fulfill the right to freedom of speech and expression as a part of human rights, as mandated in Article 28I paragraph (4) of the 1945 Constitution. By referring to Article 28G of the 1945 Constitution, dignity is a constitutional right and therefore protected by the constitution.

In conclusion, both national and international law guarantee everyone's right to honor or reputation. Thus, freedom or rights cannot be unrestricted as to attack others' honor or reputation because it is against the 1945 Constitution and international law. ■

NUR ROSIHIN ANA/LULU ANJARSARI/UTAMI
ARGAWATI/SRI PUJIANI/NANO TRESNA ARFANA



Constitutional Justice Wahiduddin Adams became resource person for the National Seminar held by the Sharia Faculty of UIN Sultan Maulana Hasanuddin Banten, on Friday, December 11, at the Constitutional Court Building. Photo: PR/Panji.

TECHNICAL ASSISTANCE OF PROCEDURAL LAW ON 2020 REGIONAL HEAD ELECTION RESULT DISPUTE

At the end of 2020, several regions in Indonesia held national democratic party. This simultaneous regional head election is a mandate for the Constitutional Court. This judicial institution should actively provide understanding on procedural law in fighting for justice on voting disputes. The following are various online discussions and attended by various participants with direct and indirect interests in the implementation of Simultaneous Regional Head Election 2020 in Indonesia.

Technical Assistance for Indonesian Advocates

Congress

Public Participation in Regional Head Election as Form of People's Sovereignty

Chief Justice of the Constitutional Court (MK) Anwar Usman officially opened Technical Assistance on Procedural Law for 2020 Governor, Regent and Mayor Simultaneous Election Result Dispute for Indonesian Advocates Congress (KAI) on Tuesday,

November 24, 2020 night at Pancasila and Constitution Education Center, Cisarua, Bogor.

"Public participation in the regional head election is a form of people's sovereignty in democratic system. As the name implies, demos which means people and kratos which means government, then people's government is realized through direct elections by the people," said Anwar to the 400 KAI members attending online.

Anwar said that Regional Head Election is the delegation of people's



Chief Justice of the Constitutional Court Anwar Usman delivered keynote speech and opened Technical Assistance on Procedural Law for 2020 Governor, Regent and Mayor Simultaneous Election Result Dispute for Indonesian Advocates Congress (KAI), Tuesday, November 24, at the Constitutional Court Building. Photo: PR/Gani.



Constitutional Justice Saldi Isra and Manahan MP Sitompul delivered material on Technical Assistance on Procedural Law for 2020 Governor, Regent and Mayor Simultaneous Election Result Dispute for Indonesian Advocates Congress, Wednesday, November 25, at the Constitutional Court Building. Photo: PR/Ifa.

sovereignty to a person or pair of candidates to represent them in carrying out public policy. In order to maintain the purity of the people's voice, the election process must be transparent, accountable, and under tight supervision, so that the electability of regional heads will have strong legitimacy because the people choose them directly. (Nano Tresna Arfana/Nur R.)

Regional Head Election Dispute Procedural Law

The speakers delivered various materials on the second day of the Technical Assistance on Procedural Law for 2020 Governor, Regent and Mayor Simultaneous Election Result Dispute for Indonesian Advocates Congress (KAI) held virtually by the Constitutional Court on Wednesday, November 25, 2020. Constitutional Justice Saldi Isra and Constitutional Justice Manahan MP Sitompul presented the material on "Procedural Law for 2020 Governor, Regent and Mayor Election Result Dispute".

Constitutional Justice Saldi Isra explained the legal basis for regional head election (*pilkada*) result settlement, including Law no. 24/2003 concerning the Constitutional Court, Law no. 48/2009 concerning Judicial Power, Law no. 6/2020 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2020 concerning the Third Amendment to Law no. 1/2015 concerning Stipulation of Government Regulation in Lieu of Law No. 1/2014 concerning the Election of Governor, Regent and Mayor.

Saldi said the object of *pilkada* dispute is the Respondent Party (KPU-General Election Commission) Decision regarding the determination of votes acquisition in governor, regent, and mayor election, which is significant and can influence the determination of the elected candidates, namely the pairs of candidates for governor and deputy governor, regent and deputy regent, mayor and deputy mayor.

Meanwhile, Constitutional Justice Manahan MP Sitompul said that for trial on the 2020 Simultaneous *Pilkada*

dispute, the Constitutional Court has prepared two Constitutional Court regulation, namely the Constitutional Court Regulation (PMK) No. 4 and No. 5 of 2020. This means that in every regional head election, the Constitutional Court always updates the PMK.

Manahan said that the parties in the trial of 2020 Simultaneous *Pilkada* dispute includes the Petitioner, Respondent, Witness, and Related Party. The Petitioners are the pairs of candidates for governor and deputy governor, regent and deputy regent, mayor and deputy mayor. The Petitioners can also be election observers registered and accredited from Provincial/Regency/Municipal KPU/KIP (Independent Election Commission) for the election of the governor and deputy governor/regent and deputy regent/mayor and deputy mayor (for one pair of candidates) filing objections

to the Decision of Provincial or Regency/ Municipal KPU/KIP.

Meanwhile, the Respondent is Provincial/Regency/Municipal KPU/ KIP. The Witness is General Election Supervisory Agency (Bawaslu). The Related Party is the pairs of candidates for governor and deputy governor, regent and deputy regent, mayor and deputy mayor determined as winner by KPU in the regional head election.

The Related Party can also be election observers registered and accredited from Provincial/Regency/ Municipal KPU/KIP for the election of the governor and deputy governor/regent and deputy regent/mayor and deputy mayor (for one pair of candidates) with direct interest against the petition filed by the Petitioner.

Regional Head Election Dispute Trial Overview

Deputy Chief Justice of the Constitutional Court Aswanto officially ended the Technical Assistance on

Procedural Law for 2020 Governor, Regent and Mayor Simultaneous Election Result Dispute for Indonesian Advocates Congress (KAI) held virtually by the Constitutional Court on Thursday, November 26, 2020) afternoon. "We express our praises and gratitude for the grace of Allah SWT that we can be here today in healthy condition and attend the Technical Assistance on Procedural Law for Regional Head Election Result Dispute. Our gratitude to Acting Chief of Pancasila and Constitution Education Center and all its employees who organizing the technical assistance well, officials at the Registrar's Office and the Secretariat General of the Constitutional Court, the President of DPP (Central Executive Board) KAI and all others. The high appreciation also goes to the technical assistance participants regardless of attending by online," said Aswanto.

Aswanto said Article 158 of Law no. 10/2016 regulates the parties who can file petition on result dispute to the

Constitutional Court shall have vote difference percentage not exceeding what is stipulated in Article 158 of the *a quo* Law, which such percentage is currently changed in the Constitutional Court Regulation (PMK) No. 6 of 2020.

"We do not negate Article 158. The petition which does not fulfill the formal requirement of Article 158 will be ruled as unacceptable. Unlike the previous dispute handling that was resolved at the preliminary examination. We agree in determining whether the percentage determined by KPU is correct, we must thoroughly examine the evidence and arguments of the Petitioner, Respondent, Related Party and Bawaslu's statement. The Constitutional Court tries to provide substantive justice," said Aswanto.

What is stipulated in Article 158 of Law no. 10/2016 is the result because the Constitutional Court's authority is essentially dispute over the result. The Court emphasized that it will continue to examine the petition,



Deputy Chief Justice of the Constitutional Court Aswanto spoke and closed virtually the Technical Assistance on Procedural Law for 2020 Governor, Regent and Mayor Simultaneous Election Result Dispute for Indonesian Advocates Congress, Thursday, November 26 in Jakarta. Photo: PR/Gani.



even if the petition does not meet the percentage requirements for the vote differences stipulated in Article 158. The Constitutional Court is not Calculator Court. The Constitutional Court wants to provide substantive justice. "Therefore, we will examine everything related to the vote acquisition," said Aswanto.

Technical Assistance for Regional Head Candidate Pairs

Prevent National Conflicts

Chief Justice of the Constitutional Court (MK) Anwar Usman officially opened Technical Assistance on Procedural Law for Dispute over the Results of Governor, Regent and Mayor Election 2020 for Regional Head Candidates on Monday, November 30, 2020 night at Pancasila and Constitution Education Center, Cisarua, Bogor. "All candidates do not let Regional Head Election (*pilkada*) becoming conflict and discord among the nation's children. *pilkada* is a mean for the people to

directly choose their perceived best leader in respective regions. We have to believe that the one chosen is as intended by Allah SWT. For those who have not succeeded, it is not failure but delayed success," said Anwar, who delivered keynote lecture.

Anwar said that the public involvement in one government system is necessary and inevitable and it is implemented by democratic system known as general election. In democracy, people is the primary stakeholder or the highest sovereignty in the state administration system.

"Thus, people is the only one holding the authority to elect its representatives in legislative and executive. Therefore, to maintain democracy and protect diverse groups interests, Constitution as norms and common consensus is needed as restraint. This concept is what we know as nomocracy or norm sovereignty," explained Anwar.

In various countries and Indonesia, said Anwar, democracy and nomocracy are applied simultaneously to complement each other. Regardless

Chief Justice of the Constitutional Court, Anwar Usman, and Secretary-General of the Constitutional Court M Guntur Hamzah opened Technical Assistance on Procedural Law for 2020 Regional Head Election Result Dispute, Monday, November 30, at the Constitutional Court Building. Photo: PR/Ifa.

of any debates on regional head election as part of the general election regime or not, the regional head election process is part of implementation of democratic and nomocratic system, the paradigm of the Constitution. This paradigm has become the label for Indonesia as a democracy law-based country. The amendment to Article 1 Paragraph 2 of the 1945 Constitution returns the sovereignty to the people applied under the Constitution, which previously fully carried out by MPR (People's Representative Assembly).

"This paradigm shift returns the highest sovereignty to the people to elect the president and vice president directly. This change also affects the regional heads election by amendment of Article 18 Paragraph (4) of the 1945 Constitution, stating that governor,



Deputy Chief Justice of the Constitutional Court Aswanto and Constitutional Justice Wahiduddin Adams were resource persons for Technical Assistance on Procedural Law for 2020 Governor, Regent and Mayor Election for Regional Head Candidates, Tuesday, December 1, at the Constitutional Court Building. Photo: PR/Ganie.

regent, and mayor respectively as heads of provincial, regency, city government shall be elected democratically. Initially, DPRD (Regional House of Representatives) elected the governor, regent, and mayor in each region," said Anwar.

Procedural Law for Regional Head Election Result Dispute

Several speakers delivered material on the second day of Technical Assistance on Procedural Law for 2020 Governor, Regent and Mayor Election for Regional Head Candidates. Deputy Chief Justice of the Constitutional Court (MK) Aswanto and Constitutional Justice Wahiduddin Adams delivered the material on "Procedural Law for 2020 Governor, Regent and Mayor Election Result Dispute." Aswanto said the pair of candidates for regional head may

possibly become Petitioner or Related Party, although the Related Party's attorney and the Respondent's attorney are closely related.

"We often find that the statements submitted by Related Party are copied and pasted from the Respondent's statements. Hopefully this will not reoccur because adhering to the Constitutional Court Regulation, we not only want to provide procedural justice but also substantive," explained Aswanto.

Regarding some opinions that the Constitutional Court has negated Article 158 of the Regional Head Election Law, Aswanto said, "We emphasize that the Constitutional Court in carrying out its duties and functions will consistently adhere to the law on dispute over the results of presidential, legislative and regional head elections, while in judicial review, we adhere to the Constitution."

Wahiduddin said the legal basis for the procedural law in regional head election result dispute in the Constitutional Court, including Law no. 24/2003 concerning the Constitutional Court, Law no. 48/2009 concerning Judicial Power, Law no. 6/2020 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2020 concerning the Third Amendment to Law no. 1/2015 concerning Stipulation of Government Regulation in Lieu of Law No. 1/2014 concerning the Election of Governor, Regent and Mayor. And Constitutional Court Regulation (PMK) No. 6 of 2020 as improvement of PMK No. 5 of 2020. The improvement in PMK No. 6 of 2020 includes KPU (General Election Commission) holds the authority to accredit election observers, as regulated in Article 124 of Law No. 10 of 2016, whereas previously held by



Deputy Chief Justice of the Constitutional Court Aswanto closed the Technical Assistance on Procedural Law for 2020 Governor, Regent and Mayor Election for Regional Head Candidates, Wednesday, December 2 in Jakarta. Photo: PR/Ifa.

Bawaslu (General Election Supervisory Agency) as in PMK No. 5 of 2020.

Wahiduddin then explained that the participants in the regional head election means the pairs of candidates for governor and deputy governor, regent and deputy regent, mayor and deputy mayor. "The object in a dispute will be the Respondent's Decision as election organizer. In this case the Central KPU (General Election Commission), Provincial KPU, KPU and KIP (Independent Election Commission) in Aceh. The Respondent's decision is determination on the vote acquisition results of the Governor, Regent and Mayor election which can significantly influence the determination of the elected candidate," said Wahiduddin.

PMK Provides Comprehensive Understanding

Deputy Chief Justice of the Constitutional Court (MK) Aswanto emphasized that regional head candidate pairs as participants in 2020 Regional Head Election (*pilkada*) need to study the Constitutional Court Regulation Number 6 of 2020 to

have comprehensive understanding of various problems in *pilkada*. "Any unclear issues delivered by speaker in this Technical Assistance will refer to the norms listed in the Constitutional Court Regulation Number 6 of 2020," said Aswanto at the closing of the Technical Assistance on Procedural Law for 2020 Governor, Regent and Mayor Election for Regional Head Candidate on Wednesday, December 2, 2020 afternoon at Pancasila and Constitution Education Center, Cisarua, Bogor.

On the occasion, Aswanto conveyed some issues to be underlined, especially regarding the Constitutional Court who remains authorized to handle the *pilkada* result dispute. "The Constitutional Court's decision states that the authorized party to examine and adjudicate *pilkada* result dispute is special judicial body, however, in case of the absence of such special judiciary, the authority will be vested to the Constitutional Court," said Aswanto.

Aswanto said, the Constitutional Court's authority is limitative as stated in Article 24C of the 1945 Constitution, from the authority to examine the Law against the Constitution, to decide

on authority dispute among state institutions, to decide on dissolution of political parties, to decide on election dispute, and obliged to adjudicate on DPR opinion regarding alleged law violations by the President and/or the Vice President.

Aswanto highlighted the Constitutional Court's authority to decide election disputes. In the latest development, said Aswanto, Election Organizer Law states that the authority to organize elections is granted to KPU (General Election Commission), Bawaslu (General Election Supervisory Agency), and DKPP (Election Organizer Honorary Council). "So it is not wrongly said that *pilkada* is no longer regional government regime, but general election regime," said Aswanto.

Another thing and no less important, Aswanto emphasized that the *pilkada* result dispute settlement at the Constitutional Court cannot be interfered by any parties. Aswanto



Chief Justice of the Constitutional Court Anwar Usman opened Technical Assistance on Procedural Law for 2020 Regional Head Election Result Dispute for Indonesian Advocates Congress, Indonesian Christian Legal Professional Association, and Alumni Association of the Faculty of Law, Trisakti University, Wednesday, December 9, at the Constitutional Court Building. Photo: PR/Panji.

said, constitutional justices will decide according to conscience, sense of justice, and without power interference.

The Constitutional Court held Technical Assistance on Procedural Law for Governor, Regent and Mayor Election 2020 for Regional Head Candidate on Monday - Wednesday, November 30, - December 2, 2020, attended by 312 participants, by online from Pancasila and Constitution Education Center, Bogor. Participants received material on the Constitutional Court, its authorities and functions; the Constitutional Court procedural law; and petition drafting practice.

Technical Assistance for KAI, PPKHI, and Alumni Association of the Faculty of Law, Trisakti University

Regional Head Election, Implementation of Democratic and Nomenclature Values

The regional head election (*pilkada*) process is implementation of democratic and nomenclature values resulted from

amendment to the 1945 Constitution. As a democratic law-based country, the amendments to the 1945 Constitution return the highest sovereignty to the people by electing President/Vice President and even regional heads in direct democratic elections, said by Chief Justice of the Constitutional Court Anwar Usman opening the Technical Assistance on Procedural Law for 2020 Governor, Regent and Mayor Election Result Dispute for Indonesian Advocate Congress (KAI), Indonesian Christian Legal Profession Association (PPKHI), and Alumni Association of Faculty of Law, Trisakti University at Wednesday, December 9, 2020.

In democracy, Anwar further said that the people is the highest sovereignty in the state administration system and has the authority to elect representatives in the legislative and executive bodies. However, in the implementation, norms in the form of constitution or norm sovereignty serves as restraint in order to protect the public interests.

Anwar further said that as judicial institution, the Constitutional Court constantly prepares itself to carry

out the mandate to resolve the 2020 Simultaneous *Pilkada* Result Dispute. Thus, all parties of all professions, including academics and advocates, need to remind one another to be jointly responsible as nation's children to maintain, guard and enforce democratic values as mandated by Constitution in Simultaneous Regional Head Election 2020. Therefore, Anwar hopes that the technical assistance participants can oversee the process of democracy in regional election 2020 so as to be held in accordance with existing statutory regulations.

"By saying Bismillah, I officially open Technical Assistance on Procedural Law for 2020 Governor, Regent and Mayor Election Result Dispute for Indonesian Advocate Congress (KAI), Indonesian Christian Legal Profession Association (PPKHI), and Alumni Association of Faculty of Law, Trisakti University," Said Anwar.



Constitutional Justice Saldi Isra and Enny Nurbaningsih delivered material on Technical Assistance on Procedural Law for 2020 Governor, Regent and Mayor Election Result Dispute, Thursday, December 10, 2020 at the Constitutional Court Building Photo: PR/Ifa.

The President of Indonesian Advocates Congress (KAI) Tjoetjoe Sanjaja Hernanto in his remarks expressed his gratitude to the Constitutional Court because despite of limited situation during the pandemic, it still provided his party the opportunity to gain knowledge and understanding from experienced practitioners on procedural law in the Constitutional Court. Tjoetjoe hopes that every participant from KAI can participate well in the event, to gain better knowledge of the importance of understanding procedural law in the Constitutional Court on upcoming *pilkada* result disputes.

One-Time Petition

Constitutional Justice Enny Nurbaningsih and Constitutional Justice Saldi Isra presented the material "Procedural Law for 2020 Governor, Regent and Mayor Election Result Dispute." In her presentation, Enny Nurbaningsih emphasized the importance of all participants, including their attorneys, to read thoroughly all the provisions of the statutory regulations related to the procedural

law for regional head election (*pilkada*) result dispute settlement.

Enny also said that the party is the losing candidate pairs or registered election observers. The other parties are Respondent that is KPU (General Election Commission) or KIP (Independent Election Commission - Aceh), Bawaslu as witness, and Related Party that is the winning candidate pair or accredited election observers.

Enny continued that all parties need to understand that the one disputed is KPU or KIP's decision on the determination of the *pilkada* voting results, not the election report. The most important thing, said Enny, the petition can only be filed one time to the Constitutional Court. Enny also reminded about the authenticity of the signatures of the attorneys, either of the applicant, respondent, witness, or related party.

Enny said the petition can be filed by offline and online, as preferred by the party. The candidate pairs need to consider the time, as the petition shall be submitted no later than three working days from the announcement of

the *pilkada* voting result determination by KPU or KIP.

Voting Result

Constitutional Justice Saldi Isra commented on the quick counts on *pilkada* voting result in several regions on December 9, 2020, released by several media in collaboration with quick count providers. "From my tracking, several governor election [counts] run very fast. For example the governor election in West Sumatra, the percentage difference between candidate pairs is around 2-3 percent. South Kalimantan is even tighter, only zero point a few percent. Including Central Kalimantan. That is the picture of some very tight elections," said Saldi.

However, Saldi hopes that no *pilkada* dispute would be submitted to the Constitutional Court, to prevent the possibility of people gathering that could become the new cluster [of Covid] in the Constitutional Court. However, Saldi said

this hope slightly happened because many things should be done to resolve *pilkada* result issues. Thus factually and based on previous experiences, the Constitutional Court made some changes in *pilkada* dispute settlement. For example, preventing accumulated and repeated case registration, allowing Petitioner to have only one-time petition improvement, by prohibiting any improvement after registration, except for the language, such as typo etc., conveyed at trial or revision. "Any improvement on substantial matters will no longer be possible," said Saldi.

Technical Assistance for Legal Aid and People's Advocacy Agency

Regional Head Election Legal Basis

Constitutional Justice Daniel Yusmic Pancastaki Foekh became resource person in Technical Assistance for 2020 Simultaneous Regional Head Election Dispute Settlement, organized by Legal Aid and People's Advocacy Agency (BBHAR) DPD (Regional Executive Board) PDI Perjuangan East Java, virtually on Saturday, November 28 morning.

Daniel presented the material "Procedural Law for 2020 Governor, Regent and Mayor Election Result Dispute." Daniel stated that Simultaneous Regional Head Election 2020 has many legal basis that provide certainty in its implementation, including Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court, Law Number 48 of 2009 concerning Judicial Power, and Law Number 6 of 2020 concerning Stipulation of Government Regulation in Lieu of Law -Law Number 2 of 2020 concerning the Third Amendment to Law Number



Constitutional Justice Daniel Yusmic Pancastaki Foekh became resource person in the training for the Technical Assistance for Handling Disputes of Simultaneous Regional Head Election 2020 virtually, Saturday, November 28 in Jakarta. Photo: PR/Panji.

1 of 2015 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governor, Regent and Mayor Into Law.

"In addition, Law Number 10 of 2016 concerning the Election of Governor, Regent and Mayor, and Constitutional Court Regulation (PMK) Number 6 of 2020 concerning Procedural Law on Regional Head Election Result Dispute," he said.

Procedure for Filing Petition

Furthermore, Daniel explained that PMK No.6/2020 states that the petition can be filed by offline and online. "The detail filing procedure can be seen and read in Article 9, Article 10, and Article 11 of PMK No.6 of 2020," said Daniel.

Daniel then explained, after the petition is received and registered by the Constitutional Court, the petition will be put into preliminary examination trial, to convey the petitioner's main

petition, examine the completeness and clarity of the petition material, validate the applicant's evidence, and delivery of the related party determination on result. In short, Daniel reviewed the mechanism from examination hearing to verdict pronouncement.

Daniel said that the verdict or decision is announced in open trial. A copy of the Court's decision or determination is submitted to the applicant, respondent, related parties, Bawaslu, the Government, and the Regional House of Representatives within 3 (three) working days from the pronouncement of verdict or decision. "The copy of verdict or decision can be delivered electronically and the Court's verdict or decision is posted on the Court's website. So, the petitioner or the parties can download or view the verdict directly," said Daniel ending the presentation. ■

NUR ROSIHIN ANA/LULU ANJARSARI/UTAMI
ARGAWATI/SRI PUJIANI/NANO TRESNA ARFANA
BAMBANG PANJI ERAWAN/NUR R.



2020 CONSTITUTIONAL COURT WORKING MEETING

Work Meeting and Signing of Employee Integrity Pact

The Constitutional Court (MK) held Work Meeting and Signing of the Employee Integrity Pact on Saturday, December 5, 2020, with the theme "Realizing Constitutional Democracy in Simultaneous Regional Head Election (*pilkada*) 2020-2021 during the Covid-19 Pandemic" in the Ground Floor Hall of the Constitutional Court Building and attended virtually by Constitutional Court staff members from their respective residences.

Chief Justice of the Constitutional Court Anwar Usman opening this working meeting said that the work meeting is a means of evaluating performance during the current year and to discuss activities planning for the following year. Anwar said Indonesia had carried out the Simultaneous Election 2019, at that time the nation's political situation was full of dynamics,

including in the Constitutional Court in carrying out its duties. He said that to be noted, regardless of all shortcomings in handling the 2019 Election result dispute, the Constitutional Court in its efforts was able to complete the case well and timely.

"The Constitutional Court could not possibly satisfy all parties. Most importantly, everything has been done with good intentions, sincerity, earnestness, and for worship. As Rasulullah SAW advised in hadith, 'Actually charity depends on the intention,'" said Anwar in the event attended directly by Deputy Chief Justice of the Constitutional Court Aswanto, Constitutional Justice Wahiduddin Adams, Constitutional Justice Suhartoyo, Constitutional Justice Manahan MP Sitompul, Constitutional Justice Daniel Yusmic Pancastaki Foekh, and Secretary General of the Constitutional Court M. Guntur Hamzah, the Registrar of the Constitutional Court Muhidin, and other structural and functional officials of the Constitutional Court.

Secretary General of the Constitutional Court M Guntur Hamzah and Registrar of the Constitutional Court Muhidin signed the Employee Integrity Pact witnessed by Chief Justice of the Constitutional Court Anwar Usman and Deputy Chief Justice of the Constitutional Court Aswanto, Saturday, December 5, in the Hall of the Constitutional Court Building. Photo: PR/Ifa.

Work Meeting Discussion

Secretary General of the Constitutional Court M. Guntur Hamzah reported that the meeting was held for two days on Saturday to Sunday, December 5-6, 2020 in the Ground Floor Hall of the Constitutional Court Building and by online from the residence of each Constitutional Court staff members. Guntur acknowledged that the 2020 Work Meeting was full of challenges, but optimism has further strengthened the determination to continue carrying out the tasks and agenda that must be fulfilled for work optimization.

Guntur said that this meeting would discuss four main issues, namely the evaluation of 2018 Regional Head Election (*pilkada*) settlement, presentation on the Constitutional Court's performance in 2020, preparation for *pilkada* result dispute settlement in 2020, and action plan of Registrar's Office and Secretary General post 2020 *pilkada* settlement.

"To keep the discussion focused, materials and matters that require guidance from the justices have also been prepared. The meeting will be divided into several sessions so as to achieve optimal result, as abundant materials need to be discussed, especially those that require direction and responses from justices," explained Guntur in the activity guided by Fazlur El Islami as the Host of 2020 Constitutional Court Work Meeting. In this activity, Employee Integrity Pact was signed, represented by Secretary General of the Constitutional Court M. Guntur Hamzah and the Constitutional Court Registrar Muhidin and also signed by Chief Justice of the Constitutional Court Anwar Usman and Deputy Chief Justice of the Constitutional Court Aswanto

Direction for 2020 Regional Head Election Result Dispute Settlement

The Constitutional Justices provided directions regarding the preparation for the 2020 Regional Head Election (*pilkada*) Result Dispute settlement at the Constitutional Court Working Meeting led by Chief Justice of the Constitutional Court Anwar Usman on Saturday, December 5, 2020) afternoon, with the theme "Realizing Constitutional Democracy in Simultaneous Regional Head Election 2020-2021 during the Covid-19 Pandemic" held in the Ground Floor Hall of the Constitutional Court Building and attended by 320 Constitutional Court staffs virtually from their respective residences.

Deputy Chief Justice of the Constitutional Court Aswanto started with several notes relating to the mechanism and evaluation of *Pilkada* Result Dispute settlement, especially the Court's preparation for the 2020 *Pilkada* Result Dispute settlement, one of which concerned attendance in the trial.

"In the last meeting, we agreed that the Petitioner or his attorney, the Respondent or his attorney, the Related Parties or his attorney may attend the trial in person, while the Witnesses and Experts could only give testimony and information virtually," said Aswanto.

However, Aswanto said, only one person can enter the courtroom, while another stays in the lobby, as stated by the Court Registrar Muhidin in "Registrar's Work Report for 2020, Action Plan for 2021 and Preparation for Dispute Resolution on Election Results for Governor, Regent and Mayor."

"We need to reaffirm this matter whether only one person enters the courtroom and another stays in the lobby, as the Registrar certainly considers the health protocols. However, as consideration, for smooth trial, the Petitioner and his attorney can both enter the courtroom, such as during evidentiary trial," explained

Aswanto. He also responded that the witnesses in the trial need not to be reduced.

Meanwhile, Constitutional Justice Arief Hidayat proposed the scenario on the 2020 Constitutional Court Work Meeting. Arief said the issue conveyed by Deputy Chief Justice concerns Registrar's Office, while this meeting should discuss general matter. "Thus, what Deputy Chief Justice said should be specifically discussed in Justice Deliberation Meeting, attended by three panels handling *pilkada* result dispute," said Arief.

In addition, Arief asked the staffs in charge of *pilkada* result dispute settlement to work professionally, carefully writing the names of the litigating parties and doing copy-paste and so on. He also reminded IT staffs to prepare online trial well, to prevent any connection issues etc, considering that the *pilkada* dispute trial involves the public interest.



Deputy Chief Justice of the Constitutional Court Aswanto gave directions for the preparation for 2020 Regional Head Election Result Dispute Settlement at the Constitutional Court Working Meeting, Saturday, December 5 in the Hall of the Constitutional Court Building. Photo: PR/Ifa.

Spirit and Discipline

Next, Constitutional Justice Wahiduddin Adams emphasized that the material delivered by the Constitutional Court Justices in the Court's Technical Assistance on *pilkada* dispute resolution has to be consistently implemented, so as the Constitutional Court, election organizers and the litigants have common understanding. Wahiduddin also stressed the implementation of the 2020 *pilkada* dispute resolution amid the ongoing Covid-19 pandemic.

"For nine months we have served in pandemic situation and now we will handle the trials on *pilkada* result dispute amounting to around 270 cases. The success of *pilkada* depends on our spirit and discipline in carrying out our duties and following health protocols. The working hours during *pilkada* is predicted to reach 61 hours a week, from January to March 2021. We must consider this and maintain our health, such as by consuming vitamin and so on," said Wahiduddin.

Improving the Material

Next, Constitutional Justice Suhartoyo urged the Constitutional Court to continuously improve the material regarding the procedures in 2020 *pilkada* result dispute resolution, to achieve uniformity of perception between the Constitutional Court, election organizers and the litigating parties. In addition, said Suhartoyo, the Constitutional Court still has a lot of homework to be done regarding the case settlement in 2020.

"Can all the cases that have not been decided be read out this December? Case Decisions must be pronounced on 17 December and 29 December. We have to optimize the time left," added Suhartoyo.

Constitutional Justice Enny Nurbaningsih responded to questions, including those by several media, regarding the KPK (Corruption Eradication Commission) Law judicial review. "I think it is our common concern, actually before the government do lockdown related to Covid-19, we have agreed that at the latest by the end of December we will decide on cases including the 2019 case," said Enny.

Enny also reminded the technicalities need to be carried out by the Court in the trial of election result dispute during the Covid-19 pandemic. "For example, shall any extraordinary conditions unexpectedly required completing cases of judicial review and *pilkada*, for any worst condition, what should we do? This needs to be considered and prepared. How to ensure the health of all supporting teams not only inside but also outside the Constitutional Court, to and from the Constitutional Court," said Enny.

Worst Case

Constitutional Justice Saldi Isra reminded for working hours be not too late. "We try to calculate the time. If we start work at 8:00 a.m., we can stop work at 6:00 p.m. Due to pandemic situation, we need adequate rest. If possible, reconsider the evening session for *pilkada* settlement and we can start work earlier," said Saldi.

Regarding the worst case in *pilkada* dispute settlement, for example if any judge or employee is seriously ill, Saldi reminded the Registrar's Office or Secretariat General of the Court to inform everyone.

"Regarding the Court Justices become 8 in the hearing, has not yet been conveyed," said Saldi.

Meanwhile, Constitutional Justice Daniel Yusmic P. Foekh hopes that in the

next session, the Court Justices' input can be followed up and the input on the presentation from Secretary General of the Constitutional Court M. Guntur Hamzah and the Constitutional Court Registrar Muhidin can be synchronized.

"The working meeting participants, especially the Court staffs, are expected to provide input regarding the preparation for the 2020 *Pilkada* Result Dispute cases settlement," said Daniel.

In addition, Daniel suggested that the litigating parties in *pilkada* settlement can provide the swab test or rapid test results stating they are Covid-19 negative. The Court Judges and staff members in task force should also be Covid-19 free. Daniel hopes that the government can soon carry out the Covid-19 vaccination.

SOP for 2020 Regional Head Election Result Dispute Settlement Following Health Protocols

In the event that during 2020 Simultaneous Regional Head Election (*Pilkada*) Dispute settlement, any constitutional justices or staff members contact Covid-19, then standard operating procedure (SOP) has been prepared. Thus, all teams hopefully will focus on their respective duties because everything has been optimally prepared. This was conveyed by Secretary General of the Constitutional Court M. Guntur Hamzah in the second day of the "Constitutional Court Working Meeting and Employee Integrity Pact Signing" on Sunday, December 6, 2020.

Guntur said the justice's directions followed up with concrete concepts need to be carefully formulated together in the Panel Meeting of the 2020 Constitutional Court Work Meeting and the results are then reported to the constitutional justices. Guntur also

hopes that the Constitutional Court work program in 2021 after completion of *pilkada* dispute settlement can be discussed properly and thoroughly in this meeting.

Guntur stressed that for supporting 2020 *pilkada* dispute settlement, the Task Force needs to filter matters classified as cases and non-cases. Non-case related matters include e-SOP prepared for staff members for worst case scenario of Covid-19.

Guntur explained that strict health protocol will be implemented to the parties submitting petition and evidence, and in trial. At entry, the body temperature measurement and sterilization on evidence will be carried out. At trial, masks, gloves, and hand sanitizers will be provided for any parties entering the courtroom. "Each case file must be sterilized for 10 minutes in a container placed in front of the Constitutional Court building to eradicate all kinds of viruses. The file then can enter the Court. This initial measure will be implemented strictly," said Guntur.

Judicial Administration Support

Constitutional Justice Registrar Muhidin in his presentation on "Follow-up to Response, Input and Suggestion of the Court Justices on Judicial Administration Support in the Court Duty Implementation" outlined the principles in 2020 regional head election (*pilkada*) result dispute settlement at the Constitutional Court amid Covid-19. Muhidin asked each coordinator of the judicial administration to make anticipatory measure strategy.

"The interrelation communication needs to be improved to mutually support the optimal performance of each sector. Starting from the case load distribution by regions and serious cases, good trial scheduling, and others," explained Muhidin.

After the presentation, Staff Work Meeting was continued in the Panel Meeting room divided into three panels. Panel I consists of Registrar's Office, Registrar Administration and Legal Bureau, and Puslitka (Research and

Assessment Center). Panel II consists of Planning and Financial Bureau, General Bureau, ICT, and Education Center. Panel III consists of Public Relations and Protocol Bureau, HRO Bureau, and Inspectorate.

This meeting was held for two days, Saturday to Sunday, December 5-6, 2020 in the Ground Floor Hall of the Constitutional Court Building and online from the Court's staff members' residence, attended by constitutional justices, ethical boards, structural and functional officials, and all staff members of the Constitutional Court. This meeting discuss four main issues, namely the evaluation of *Pilkada* 2018 case settlement, presentation on the Constitutional Court's performance in 2020, preparation for *pilkada* result dispute settlement in 2020, and action plan of Registrar's Office and Secretary General Regional post *Pilkada* 2020 settlement.



SOP Penanganan PHP Kada 2020 Sesuai Prokes

Chief Justice of the Constitutional Court Praises the Implementation of 2020 Court Work Meeting

Chief Justice of the Constitutional Court (MK) Anwar Usman closed the Work Meeting and Signing of Employee Integrity Pact on Sunday, December 6, 2020 afternoon attended virtually by all the Court staffs. "We express our gratitude alhamdulillah that the implementation of the 2020 Constitutional Court Work Meeting activities including the closing ceremony went well," said Anwar.

Anwar mentioned the slight connection issue and inaudible sound during online events. Anwar reminded to anticipate this issue immediately and precisely during the trial for regional head election (*pilkada*) result disputes settlement.

"I imagine in *pilkada* dispute trial, if the sound is inaudible for short distance, how about the far," said Anwar. He said at the closing of the Constitutional Court Work Meeting, the atmosphere became more comfortable without disturbance

and the meeting went as expected.

Anwar assessed that overall the Constitutional Court Work Meeting went well and extraordinary, from the presentation by Secretary General of the Constitutional Court and the Constitutional Court Registrars to the Constitutional Justices providing directions and input in responding to the Court preparations for the 2020 *Pilkada* dispute case settlement trial, and even some critical input by Court's staffs.

Anwar said Covid-19 has transmitted to many people but those Covid-19 positive are not a disgrace. "I have principles, the more Allah SWT loves His servants, the greater the trials befall His servants. For me, those Covid-19 positive are not a disgrace. Even if they die, Allah SWT has promised them heaven. Because they are martyrs for fighting against disease," said Anwar.

Various Suggestions

The work meeting was divided into three panels. Each panel read out their opinions and suggestions regarding

the 2020 *PHP Kada* settlement. Panel I, represented by Junior Registrar I Triyono Edy Budhiarto, suggested for receiving the petition by shift 3x24 hours and determining the health protocol in 2020 *PHP Kada* settlement so as the task force members can work with no worries.

Panel II represented by General Bureau Head, Elisabeth, said the supporting facilities and infrastructure in *PHP Kada* settlement need to follow the health protocol, such as putting acrylic at the petition reception desk and work desk in the hall, disinfecting the courtroom before and after trial, making SOP related to file verification when submitting files.

Meanwhile, Head of Public Relations and Protocol Bureau, Heru Setiawan, representing Panel III, said that Public Service Advertisements (ILM) will be revised by adding the Covid-19 information following the Constitutional Justices direction and domestic and foreign cooperation will be held considering the Covid-19 situation. ■

NUR ROSIHIN ANA/LULU ANJARSARI/UTAMI
ARGAWATI/SRI PUJIANTI/NANO TRESNA ARFANA



The Chief Justice of the Constitutional Court, Anwar Usman, closed virtually the Work Meeting and Signing of Employee Integrity Pact, Sunday, December 6, in the Hall of the Constitutional Court Building. Photo: PR/ifa.



Deputy Chief Justice of the Constitutional Court Aswanto alongside Junior Registrar I Triyono Edy Budhiarto delivered material at Education and Training on 2020 Election Result Dispute Settlement for the Constitutional Court Staffs, Tuesday, December 8, at the Constitutional Court Building. Photo: PR/lfa.

EDUCATION AND TRAINING FOR PREPARATION ON REGIONAL HEAD ELECTION RESULT DISPUTE SETTLEMENT FOR THE CONSTITUTIONAL COURT STAFFS

Unify the Perception of Regional Head Election Participants

Secretary General of the Constitutional Court M. Guntur Hamzah opened the Education and Training (Diklat) for Preparation for the 2020 Governor, Regent and Mayor Election Result Dispute settlement for Civil Servants (PNS), Non-Civil Servant Government Employees (PPNPN) and Mancadaya Employees in the premises of the Constitutional Court (MK) virtually on Monday, December 7, 2020 afternoon.

"We need to appreciate and attend this activity well. This activity is to unify the perception between the regional head election (*pilkada*) participants and us as officers and public servants, in order to provide the best service to the public as justice seekers and the related parties in the Constitutional

Court. This activity also aims to improve our understanding regarding 2020 Regional Head Election Result Dispute settlement," said Guntur.

Guntur explained, the Constitutional Court will resolve 2020 *Pilkada* result dispute starting December 10, 2020 - April 10, 2021. Guntur asked all the Court staffs in the 2020 *Pilkada* result dispute task force to convey to their families that they are carrying out noble duty as a public servant.

"Despite we handle *pilkada* cases from December 10, 2020 - April 10, 2021, in case of any remaining *pilkada* cases, the entire task force will continue to carry out its duties until the completion of *pilkada* cases settlement in 2021," said Guntur.

BPK recommendation

Furthermore, Guntur emphasized that this *diklat* (education and training)

was in line with BPK (Supreme Audit Institution) recommendation to hold *diklat* before election or *pilkada* (regional head election) dispute settlement. The Constitutional Court used to hold workshops and technical assistance, not *diklat*. *Diklat* does not only deliver understanding at the cognitive level, knowledge on procedural law, but also the stages, procedures, attitude, behavior, conduct, and courtesy.

"All of us, as task force members at the Constitutional Court, should not only understand the case settlement, but also need to have good conducts as trusted judicial institution. The internal of the Constitutional Court must reflect justice so as naturally, the Constitutional Court can provide justice to the public, not artificial justice," said Guntur.

Procedure for Filing Petition

Deputy Chief Justice of the Constitutional Court Aswanto presented the material "Procedural Law for the 2020 Governor, Regent and Mayor Election", explaining the procedure to file petition of regional head election (*pilkada*) result disputes at the Constitutional Court by offline or online. "One of the differences, by offline, the Petitioner must submit four copies of petition, while by online, you only need one copy," said Aswanto.

The systematics of *pilkada* result dispute is similar to judicial review cases. "The Petitioner identity must be clear. Name, address and e-mail address need to be carefully checked. ID and Resident Identity Number must be included. If the Petitioner is represented by legal counsel, the legal counsel must include advocate membership card," said Aswanto.

Aswanto further talked about the Petitioner's evidence. The Petitioner challenging the voting results at TPS (Polling station) needs to present evidence of the recapitulation result at TPS level shown in C1 hologram or C1 Plano form. "That is what the Court accepts as evidence," explained Aswanto, who revealed that often in case settlement, some PPS (polling committee) opened ballot boxes, which constitutes a violation.

Integrity

Secretary General of the Constitutional Court M. Guntur Hamzah delivered "Implementation of Integrity in 2020 Governor, Regent and Mayor Election Cases Settlement" saying that integrity is a unity between thought, feelings, speech, and conduct in harmony with conscience and prevailing norms.

Guntur said that integrity includes courageous, caring, fair. A courageous person is not afraid to show truth and justice, bravely report the dishonesty and corruption around them. "We must have the courage to say no to gratification, especially to corruption. Be consistent, don't accept anything. If you dare to refuse, it means you have high integrity. If we can't refuse the gift, just

report it to the Gratification Control Unit. Everyone needs money. But we also have to respect ourselves," said Guntur.

Special Circumstances

Furthermore, the Constitutional Court Muhidin presented the material "Mechanisms, Stages and Activities of 2020 Governor, Regent and Mayor Election Result Dispute Settlement."

"2020 Regional Head Election (*pilkada*) Result Dispute settlement was carried out in special circumstances. I may say extraordinary. The Court is facing a challenge of simultaneous regional election result. We have been strategizing to keep the case settlement safe and to maintain our health. After the Court's accountable ruling, we are all healthy and safe and the parties are satisfied with the Court's decisions," said Muhidin.

Muhidin also said that the 2020 regional head elections were held in 270 electoral districts, consisting of 9 provinces, 224 regencies and 37 cities, with 739 eligible candidate pairs of 1323 male and 159 female, for governors and deputy governors, regents and deputy regents, mayors and deputy mayors election.

Issue on 2020 Regional Head Election

KPU (General Election Commission) Commissioner Hasyim Asy'ari and Bawaslu (General Election Supervisory Agency) Commissioner Fritz Edward Siregar presented "System of Implementation, Supervision, and Settlement on 2020 Governor, Regent and Mayor Election Result Dispute." Hasyim explained that in election, KPU is the Respondent, as the law states that KPU is the election organizer responsible to list citizens in Permanent Voters List (DPT), determine candidate pairs in the presidential and regional head elections, political parties participating in the elections and electoral districts.

Hasyim also said there are three types of election results, namely votes, seats, and determination of the elected candidates. In presidential election, DPD (Regional Representative Council) election, and regional head election, there are two election results, namely

votes and the elected candidates. "In the Constitutional Court Law, the Constitutional Court's authority concerns the dispute over *pilkada* results which affects the determination of the elected candidate. However, in its decisions, the Constitutional Court has discussed many issues other than votes, such as issues affecting the vote acquisition," explained Hasyim.

Meanwhile, Fritz Edward Siregar said, to support the 2020 Simultaneous *Pilkada*, Bawaslu has organized technical assistance for the Provincial Bawaslu, Regency/City Bawaslu in Jakarta to reinforce various materials delivered by the Constitutional Court in the technical assistance for *pilkada* settlement. This includes drafting written statement from Bawaslu, from the language, format, numbering of evidence and others. "We held 9 batches of technical assistance," said Fritz.

A communication practitioner, Ika H.P. Sastroebroto presented the material on "Excellent Service to the Parties". Why do you have to provide excellent service? "An intriguing question. Why everyone cares about excellent service? Because people want to have a good image, positive image as a professional institution. The Constitutional Court is professional institution. Then why should we need to pay attention to trivialities? As the wise says, men stumble over pebbles, never over mountains," said Ika.

Ika expressed her appreciation to the Court's officials for their concern on excellent service and the Court's mission to professionally guard the Constitution by modern and reliable judiciary. "People go to the Constitutional Court to find justice. At least, they believe that in the Court they will obtain justice," said Ika.

Regarding *pilkada* dispute, Ika said differences or disputes are positive things, as everyone desires good and justice. She said the common perception among Indonesian people, various stakeholders and the Constitutional Court is a strategic catalyst and key to the Indonesia development because it becomes the driving force in one goal, one rhythm, one mutual success. ■

NANO TRESNA ARFANA/LULU ANJARSARI



JUDICIAL INDEPENDENCE

The reform era is a new hope for independent judiciary free from government intervention. It was then contained in preamble that emphasized independent judiciary and separated the judicial and legislative functions. The judicial power is then exercised by Supreme Court and the judiciary under it as well as by the Constitutional Court (MK). This was stated by Chief Justice of the Constitutional Court Anwar Usman in the Constitutional Court Book Review held by Widyagama University Malang in collaboration with Raja Grafindo Persada on Friday, December 11, 2020.

In this presentation entitled "Indonesian Judiciary Independence", Anwar asked the participants to think about the efforts made to create and strengthen judicial power that is independent and free from intervention. He said that the enactment of Law No. 14 of 1970 resulted in the loss of the President's explicit role in intervening the judicial power. Subsequently, this law had been amended in 1999 by Law Number 35 of 1999, and then again amended to Law Number 4 of 2004 concerning Judicial Power. By such amendment during the reform era and based on Article 24 paragraph (2) of the

1945 Constitution, the Constitutional Court has four authorities and one obligation. This, he continued, gave new hope for the people for enforcement of law. He recalled that during the early days of the Constitutional Court inception, the people put new hopes for the return of justice.

"Judiciary independence is an absolute guarantee for democracy and law-based state," said Anwar who attended this event alongside the Court's Researcher Nallom Kurniawan who was also as the second Speaker and which also attended by the respondents, including Lecturer of Law Postgraduate Program of Widyagama University Malang Lukman Hakim and Lecturer of Law Postgraduate Program, Pancasila University, Jakarta.

Anwar said his book entitled "Judicial Power Post-Amendment to the 1945 Constitution of the Republic of Indonesia", talks about the efforts to maintain judicial power independence and impartiality in accordance with the constitution. The ideals of legal state can be realized, one of which is through the realization of judicial power institution in accordance with the constitution values.

Chief Justice of the Constitutional Court Anwar Usman in the Constitutional Court Book Review activity held by Widyagama University Malang in collaboration with Raja Grafindo Persada on Friday, December 11, 2020. Photo: PR/Hendy.

Evaluation of Criminal Procedure Law

Meanwhile, the Constitutional Court Researcher Nallom Kurniawan as the 2nd speaker presented the discussion entitled "Determination of Suspects and Pre-Trial and Comparison in Nine Countries." Nallom explained his book background that is inseparable from the principle of humanity, which is philosophical foundation for the Indonesia since the independence, as stated in the 2nd Precept of Pancasila.

Nallom believes the development in various sectors including law is inseparable from this precept values, as it contains the protection of human dignity. One concrete example of this legal development is the enactment of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) containing pretrial mechanism. Nallom conducted an in-depth study by comparing the implementation of this legal norm to that of similar norm in several countries.

The presentation was then followed by some response from the respondents attending online and question and answer session for discussion participants, both attending online and offline. ■

SRI PUJIANTI/LULU ANJARSARI



Secretary General of the Constitutional Court M Guntur Hamzah opened online event on Socialization on Prevention of the Spread of Covid-19, Friday, December 11, at the Constitutional Court Building. Photo: PR/lfa.

Stefanus Donny : Safety Amid Pandemic

THE Constitutional Court (MK) held a socialization on Prevention of the Spread of Covid-19 on Friday, December 11, 2020 virtually. Operational Coordinator of Wisma Atlet Emergency Hospital, Health and Medical Corps. Colonel Stefanus Donny in the discussion entitled "Prevention of the Spread of Covid-19", asked the 228 participants of the Court staffs, to understand the efforts to prevent the spread of

Covid-19 in workplaces, public places, and homes.

Donny said that Covid-19 is a pandemic with mild symptoms, but spreads rapidly, one of which through contact with objects. Therefore, people are recommended to wash their hands often and correctly as measures against the virus.

"To stay safe during the pandemic, during the trip to and from workplace, ensure you are in good health, use mask, and at workplace use your elbow to push the lift buttons, use mask, and keep minimum 1 meter distance to avoid droplet. In public area, apply 3M," said Donny in the event officially

opened by the Secretary General of the Constitutional Court M. Guntur Hamzah from the Constitutional Court.

Guntur said the Court has prepared various regulation against Covid-19, one of which Decree Number 97 of 2020 concerning Establishment of Covid-19 Mitigation Task Force, to protect the Court's staffs from Covid-19. Guntur said that Task Force has duty to mitigate the spread of Covid-19, one of which by SOP for Covid-19 mitigation for Constitutional Justices, Staffs, and Outsourced Employees. (Sri Pujiati/Lulu Anjarsari)



Constitutional Court staffs carried out simulation on the 2020 Regional Head Election result dispute settlement, on Friday, December 11, in the Hall of the Constitutional Court Building. Photo: PR/Ifa.

Simulation on 2020 Regional Head Election Result Dispute Settlement

THE Constitutional Court (MK) held simulation on the 2020 Regional Head Election (*pilkada*) Result Dispute settlement on Friday, December 11, 2020 in the main lobby of the Constitutional Court Building. Several officials of the Registrar's Office and the Secretariat General of the Constitutional Court, the Secretary General of the Constitutional Court M. Guntur Hamzah, the Constitutional Court Registrar Muhidin, the coordinators of 2020 *Pilkada* Dispute Task Force, and all staff in the administrative division oversaw the simulation. Guntur said that the escalating Covid-19 pandemic demanded the Court to

adapt combination of Work From Home and Work From Office for the 2020 *Pilkada* Dispute Task Force.

"The Constitutional Court apply WFO and WFH in handling *pilkada* dispute by implementing strict health protocols, such as use masks, wash hands, maintain safe distance, measure body temperature, to eliminate and stop the chain of Covid-19 transmission. The swab test results provide no guarantee on safety from Covid-19, as people are coming and going in and out of the Court during the *pilkada* case settlement," said Guntur Hamzah before opening the simulation activity.

Meanwhile, the Court's Registrar Muhidin said that the 2020 *Pilkada* Dispute settlement simulation was the Court's first step to provide optimal services to the litigating parties and to perform duty safely. The simulation shows the use of information technology devices from the Court's IT in the entire process of the 2020 *Pilkada* Dispute settlement at the Court, such as receiving petition and case files, to financial administration. Petition can be filed online or in person. (Nano Tresna Arfana/Lulu Anjarsari)



Secretary General of the Constitutional Court M Guntur Hamzah and Registrar of the Constitutional Court Muhidin held a virtual coordination meeting with the General Election Commission, Monday, December 7, at the Constitutional Court Building. Photo: PR/Iifa.

Constitutional Court - KPU Coordination Meeting on Preparation for 2020 Regional Head Election Dispute settlement

THE Coordination Meeting of the Constitutional Court (MK) and General Election Commission (KPU) was held virtually on Monday, December 7, 2020 afternoon. The Constitutional Court through the Secretary General of the Constitutional Court M. Guntur Hamzah conveyed several issues related to the Constitutional Court and KPU. "As we know, December 9 is regional head voting holiday. The Constitutional Court is ready, both in regulation and supporting infrastructure and facilities to implement strict health protocols in the Constitutional Court, as well as possible," explained Guntur.

Guntur explained, for the 2020 Regional Head Election (*Pilkada*) Dispute settlement, the Constitutional Court has prepared Constitutional Court Regulation

No. 6 of 2020 concerning Procedural Law for the 2020 Governor, Regent and Mayor Election Result Dispute.

Next, Guntur explained that the Constitutional Court has formed task force to handle the cases in Registrar's Office and Secretariat General of the Constitutional Court, with a total of 686 human resources, consisting of 9 Constitutional Justices, 3 Ethics Councils, 273 civil servants (PNS), Assistance Personnel, PPNPN (Non-PNS employees), and Outsourced Employees.

Registrar Muhidin added, "The *pilkada* result dispute settlement at the Constitutional Court, begins with the announcement of KPU's decision on the voting recapitulation at regency, city, and provincial level."

"KPU will announce the Decision on the voting recapitulation on December 13-23, 2020 for regency/city level. Petitioner can file petition on December 13-29, 2020 for regency/city level. The Petitioner then can complete and improve the petition on December 13, 2020 to January 4, 2021 for the regency/city level. Next, the Constitutional Court will prepare to register the petitions on January 6-15, 2021 to be officially recorded in e-BRPK (electronic constitutional case registration

book) on January 18, 2021, for the regent, mayor and governor election," Muhidin explained.

Muhidin said the Constitutional Court then sends copy of the registered petition to Respondent or its attorney through KPU no later than 1 (one) working day as of the petition recorded in e-BRPK and requires Respondent to submit response to the petition to the Court at predetermined time.

Meanwhile, KPU Commissioner Hasyim Asy'ari said that the 2020 *pilkada* would be held in 270 electoral districts, consisting of 9 provinces, 224 regencies and 37 cities. "There are 739 eligible candidate pairs in the 2020 election for governors and deputy governors, regents and deputy regents, mayors and deputy mayors," said Hasyim.

Hasyim also stated about the eligible single candidate pairs participating in the 2020 election across 25 regencies. Hasyim added KPU has prepared policy in *pilkada* during the Covid-19 pandemic, such as arrival arrangements, safe distance, no handshaking, wearing masks, gloves, face shields, using one's own stationery, and washing hands often. (Nano Tresna Arfana/Lulu Anjarsari)

Join The CONSTITUTIONAL COURT'S SOCIAL MEDIA



@officialMKRI
(Facebook)



mahkamahkonstitusi
(Instagram)



@officialMKRI
(Twitter)



Mahkamah Konstitusi RI
(Youtube)

Understand
Your
Constitutional
Rights

