

NO. 165 - November 2020 - ISSN: 1829 7692

E-MAGAZINE **KONSTITUSI**

# Political Parties in Papua' Special Autonomy



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## KONSTITUSI

Number 165 ■ November 2020

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Konstitusi Magazine November 2020 edition provides the latest information from the newsroom. The most recent is the preparation of Constitutional Court to hold Technical Assistance for trial of regional head election result disputes, because on December 9, 2020 Regional Head Elections will be held simultaneously. Inevitably, technical assistance on the procedural law for the regional head election case settlement is held every week.

However, the Covid-19 continues during the preparation by staff members of Constitutional Court for the 2020 Simultaneous Regional Head Election. As a result, the use of information technology is absolutely necessary, such as using Zoom, Clouds etc for online trial. However, the Panel of Judges of Constitutional Court, court officials and the litigants still attend the trial in person.

In November 2020, various important information appears from the courtroom and non-trial. The most phenomenal event was Bintang Mahaputera Adiprana and Bintang Mahaputera Utama awarded to the six constitutional justices at their term of office. This matter had led to pros and cons on a number of parties. However, the Chief Justice of Constitutional Court Anwar Usman emphasized that the award received by the six Constitutional Justices was the result of hard work and support from the entire family of Constitutional Court and other constitutional justices.

Meanwhile, from the courtroom, in November 2020 Constitutional Court made 14 judicial review decisions which is quite high number of cases. In addition, as usual, the editorial desk has provided information on the typical columns of Konstitusi Magazine, such as Editorial, Main Report, Talks, Brief Case, Action, Libraries, Minutes of Amendments and others.

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## LOCAL POLITICAL PARTIES ARE NOT INCLUDED IN THE SPECIFICITY OF PAPUA

United Papua Party (PPB- Partai Papua Bersatu) cannot participate in the 2019 Election. The reason is that no legal provisions explicitly regulate the existence of local political parties in Papua Province. Article 28 paragraph (1) of Papua Special Autonomy Law only mentions political parties and not local political parties. PPB therefore took legal steps for this provision review to the Constitutional Court. According to the Constitutional Court, local political parties are not included in the specificity provided by Papua Special Autonomy Law. However, legislators can make the formation of local political parties as part of the specificity of Papua by revising Papua Special Autonomy Law.



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## TALK ON JUDICIAL REVIEW TO THE WOMEN'S RIGHTS PROTECTION

## OATH

Based on the initial roots of practice and theory, the constitution is transformed into people collective agreement upheld as the supreme law of state. Firstly, the constitution is intended to limit the lust of power of the rulers in line with the obligation to protect the rights of the people. Therefore, the rulers are actually the main addressee of the constitution. Logically, the ruler is the one who should always be suspected and potentially misuse the power in his hands. Certainly, people are also subject to the constitution as law, but regardless of which, the people without power hope the authorities will earnestly carry out their obligations to provide protection and service to the people.

On this basis, when it is trusted to carry out the mandate of the people, the ruler must be bound and bind himself to an oath or promise regarding his readiness and ability to comply with the constitution mandate. This is tantamount to the obligation to pledge allegiance to the people. In practice, the oath is proclaimed through various editors and diction even though the goal is similar.

What does an oath actually mean? In "What is an Oath?", A.H. Sommerstein defines "oath" by referring to the short formulation made by Richard Janko. Janko stated, oath basically is asking for greater power beyond himself to uphold the truth of a statement, by condemning himself shall the statement be wrong. Sommerstein asserts that when God is mentioned and called to "testify" to the truth of a statement, this is a core feature of oath.

In the epic Greek mythology, all the features of oath are clearly seen in the oath that Medea demanded from Aegeus, King of Athens. When Aegeus arrived in Corinth, on his way from Delphi to Trozen, Medea asked him to grant him asylum. Previously, Medea had been ordered by King Creon to leave Corinth with the children before sunrise the next day. Medea promised Aegeus. In essence he was going to use his magical skills to ensure that Aegeus' long childless period would come to an end. Aegeus replied that he was willing to do it, as long as Medea came to Athens on her own terms.

Medea asked for guarantee, a word which, when applied is often an affirmation of a promise and refers to an oath. Aegeus, surprised and perhaps was even angry, asked if Medea didn't believe him. Medea said, if Aegeus was not bound by oaths, his enemies like King Creon highly possibly would later persuade or threaten Aegeus to get himself extradited. Aegeus understood and accepted the argument.

Medea asked Aegeus to state the gods name. Aegeus then asked, what should be done or not. Medea replied, "never throw me out of your land, and never give me up to my enemies who want to take me". Aegeus actually swore, use the performative verb referring to the gods prescribed by Medea and obey what he had heard from Medea. Inadequately, Medea asked Aegeus to state what he would like to suffer if he did not obey the oath. Aegeus answered, the *things that happen to those who are impious*. Shall there be no punishment that harms or hurts the person who swears,

then that oath is false. After that, Medea felt completely safe.

In the law and practice of taking oath of office, whatever the position, whatever the profession, in many countries, interesting facts are found. What is that? Some explicitly mention the name of God in their oaths. But some makes the oaths without calling on the name of God. There is no nuance of religious prayer. In Indonesia, oaths use the word "By Allah". Likewise, "...So help me God" is found in oaths in a number of countries. In Ireland, for example, there is a sentence at the end of the oath, "... May God direct and sustain me". In the United States, the phrase "So help me God" is in addition. Just a tradition.

There was an interesting incident during the inauguration of President Obama's oath. At that time, Chief Justice John Roberts stated the oath that was imitated by Obama. Incidentally, Roberts did not bring the text of the

oath, so he had to memorize the oath as written in the US Constitution. Unfortunately, Roberts made a mistake so the oath words were pronounced out of order. In fact, Roberts added the words "So help me, God". Obama imitated it. As a result, Obama imitated the wrong statement of the oath. The next day, Obama retook the oaths. It is important to note that the phrase "So help me, God" is not part of the oath. The words are only added frequently, one of which by Roberts, but again, it is just a tradition.

If the core feature of the oath, says Sommerstein, is that God is called to 'witness' the truth of a statement, then in the context of a divine state, we are at the forefront to prove it. Any oath of office, any profession in

this country always calls and involves the name of God. This means, as Sommerstein also stated, a person who takes an oath is doing 3 (three) things simultaneously. *Firstly*, making statements, whether about the present and the past, or for the future is nothing but a promise. *Secondly*, to establish explicitly or implicitly, the divine "super" power outside of himself as a witness to the statement of the truth of his statement. *Thirdly*, the willingness to be punished or condemned on him if the statement is untrue or (later) defaulted.

It's just that, very surprisingly someone who has ever taken oath loudly in the middle of his service or responsibility breaks his oath. Perhaps, this is an epic question about the morale of a nation. Perhaps, because God does not immediately punish him for breaking an oath. Or, even if someone experiences suffering, it is not necessarily proof of a breach of his oath. The extreme thing is, now it seems as if people no longer fear God. In fact, no one rejects or denies maxims: all human actions and behavior are not only judged by neighbors, but must be accounted for in the presence of the All-Knowing God.

Thus, cases of denial of oaths in the context of state administration are very ironic and painful. We all hope that, in the midst of the constitutionalism of this nation state, there will come an era when people will feel as confident and secure as Medea after hearing Aegeus' oath. Best Regard Konstitusi!



# LOCAL POLITICAL PARTIES ARE NOT INCLUDED IN THE SPECIFICITY OF PAPUA



Submission of registration documents for a local party called Papua Bersatu Party (PPB) to the Commissioner of Papua General Election Commission (KPU) Mr. Tarwinto at KPU office in Papua

## **United Papua Party (PPB- Partai Papua Bersatu) cannot participate in the 2019 Election.**

**The reason is that no legal provisions explicitly regulate the existence of local political parties in Papua Province. Article 28 paragraph (1) of Papua Special Autonomy Law only mentions political parties and not local political parties. PPB therefore took legal steps for this provision review to the Constitutional Court. According to the Constitutional Court, local political parties are not included in the specificity provided by Papua Special Autonomy Law. However, legislators can make the formation of local political parties as part of the specificity of Papua by revising Papua Special Autonomy Law.**



The Constitutional Court (MK) accepted a petition for review of Law Number 21 of 2001 concerning Special Autonomy for Papua Province (Papua Special Autonomy Law) against the 1945 Constitution of the Republic of Indonesia (UUD 1945). The petition was submitted by Krisman Dedi Awi Janui Fonataba (General Chairman of United Papua Party Central Executive Board) and Darius Nawipa (General Secretary of United Papua Party Central Executive Board). The petition was received by the Registrar's Office of Constitutional Court on May 29, 2019. After the petition was considered complete, the Registrar's Office of Constitutional Court registered the petition with number 41/PUU-XVII/2019 on August 26, 2019.

The material tested to the Constitutional Court was the phrase "Political Party" in Article 28 paragraph (1) and paragraph (2) of Papua Special Autonomy Law. The Petitioner argues that as Indonesian citizens, they have the constitutional right to participate, have the freedom to form local parties or Local Political Parties in Papua Province, which is guaranteed by Article 28 of the

1945 Constitution. However, the provisions in Article 28 paragraph (1) and paragraph (2) of this Special Autonomy Law was detrimental to the Petitioner.

According to the Petitioner, the phrase "Political Party" in Article 28 paragraph (1) and paragraph (2) of Law Number 21 of 2011 concerning Special Autonomy for Papua as amended by Law Number 35 of 2008 is multi-interpretative, thus preventing and violating the Petitioner's constitutional rights to establish a local political party in Papua and West Papua Provinces and to participate in local democracy parties in Indonesia.

As a result, Papua Provincial KPU (General Election Commission) and West Papua Provincial KPU and the RI KPU did not process the United Papua Party documents that had been registered in stages. Moreover, the Ministry of Law and Human Rights of the Republic of Indonesia revoked United Papua Party as a Legal entity.

In the main description of the petition, the Petitioner and his associates stated that they had established a local party in Jayapura City, Papua Province based on Notarial Deed Number 38, dated

## Article 28 paragraph (1) and paragraph (2):

- (1) Residents of the Papua Province may form political parties.
- (2) The procedure for the formation of political parties and participating in general elections shall be in accordance with statutory regulations.

Petitioner's attorney, during the preliminary examination hearing held at the Constitutional Court, on Monday, September 9, 2019.

Then, in order to participate in the 2019 legislative Election, the Petitioner as party administrator registered United Papua Party to Papua Provincial KPU on October 4, 2018. The Petitioner also visited the Governor of Papua Province, asking the governor to fight for United Papua Party to become a participant in the Legislative Election 2019.

However, all of the Petitioners' activities were collided with the provisions in Article 28 paragraph (1) and paragraph (2) of Law Number 21 of 2001 concerning Special Autonomy for Papua as amended by Law Number 35 of 2008. The Petitioner feels that his constitutional rights guaranteed by Article 28 of the 1945 Constitution have been impaired by these provisions. If the phrase "Political Party" in Article 28

October 29, 2014. Furthermore, the party establishment was ratified by a Decree of the Minister of Law and Human Rights dated November 17, 2014 under the name of United Papua Party. The party had carried out various internal and external activities. Internal activities in order to strengthen the institutional structure were carried out, among others, work meetings, inauguration of coordinators, extraordinary congresses, declarations and inaugurations of West Papua

DPW (Regional Executive Board). Meanwhile, external activities included submitting documents of United Papua Party to the Ministry of Law and Human Rights of the Republic of Indonesia, submitting documents and registering United Papua Party to Papua and West Papua Provincial KPUs.

"The Petitioner also registered or submitted documents to all regencies/cities in Papua, i.e in West Papua Province, as well as in Papua Province," said Habel Rumbiak, the



The Petitioner's Attorney Habel Rumbiak followed the judicial review hearing Law No. 21/2001 concerning Special Autonomy for Papua Province, Monday (28/10) in the courtroom of the Constitutional Court. Photo: PR/Ifa.



Listening to the witnesses' statements. Photo: PR/Ganie

paragraph (1) and paragraph (2) of Law Number 21 of 2001 concerning Special Autonomy for Papua as amended by Law Number 35 of 2008 is interpreted as a Local Political Party, the Petitioner's current losses could be eliminated.

"All these attempts were later rejected by the General Election Commission of Papua Province on the grounds that no legal provisions explicitly regulate the existence of local parties in Papua Province. Even more tragic, the Ministry of Law and Human Rights then unilaterally annulled the decree of the ratification of United Papua political party as a legal entity," explained Habel Rumbiak.

### **Papua Special Autonomy Bill**

The Petitioner also disclosed the Papua Special Autonomy Bill draft. Article 28 of the initial draft of the Bill relates to Local Political Parties in Papua. The aim is to protect the local population in Papua so that

they would be constantly represented in the legislative body in the Papua and West Papua Provinces.

The proposed draft of Papua Special Autonomy Bill, starting from drafts 8-14, consistently proposes the existence of a local party which aims to ensure that indigenous Papuans are consistently represented in both Regency DPRD (Regional House of Representatives) and Provincial DPRD. The draft was accepted by DPR RI in 2001 as a right to the proposed initiative of the Papuan community, namely to keep the phrase local political party in Article 25 of Papua Special Autonomy Bill.

"At the time Papua Special Autonomy Bill was drafted, there was mention of the existence of local political parties in Papua. Paragraph (1) to paragraph (4) Article 28 mentions local political parties in Papua," said Habel Rumbiak in front of the Panel of Constitutional Justices, Arief Hidayat as Chief of the Panel, together with two Panel

Members, namely Constitutional Justice Suhartoyo and Constitutional Justice I Dewa Gede Palguna.

Papua Province was finally granted special autonomy based on the Papua Special Autonomy Law. Certainly, the political party referred to in Papua Special Autonomy shall be local political party, apart from the fact its support is solely in Papua Province (residents in Papua), the main reason is that the legal basis is special in accordance with the legal principle "*lex specialis derogat legi generalis*".

### **Aceh and Papua Why are They Different**

The Petitioner considers that there is a dualism and discriminatory attitude from the legislators against the Papua Province residents and the Aceh Province residents. In formal terms, the two provinces are subject to special autonomy in accordance with the order of Decree of MPR RI Number IV/MPR/1999. However,



The follow-up hearing of judicial review on Papua's special authority, the Government stated that Papua Special Autonomy Law was a support act from the Central Government to Papua's citizens. Photo: PR/Dedy.

they differ materially in regulating the right to form political parties.

To residents in Aceh Province, legislators in detail, firmly and certainly regulate applicable local political parties, even complemented by government regulations on the formation of political parties in Aceh Province;

Meanwhile, for residents in Papua Province, the legislators only made general mention of the Papuan residents who could form political parties (without the addition of the word "local"). This is multi-interpretative because it can be interpreted grammatically as a political party in general (nationally) in accordance with Political Party Law. It can also be interpreted historically sociologically as a local political party in accordance with Papua Special Autonomy Law. This provision is also inapplicable and is not complemented by government

regulations on the formation of political parties in Papua Province. The Petitioner also revealed that in 2006, Papua Provincial DPR and Papuan People's Assembly submitted *Perdasus* (Special Regional Regulation) on Local Political Parties to the Ministry of Home Affairs. However, it has not been followed up to date.

According to the Petitioner, the discriminatory acts of the legislators are not in accordance with the provisions in Article 28D paragraph (1) of the 1945 Constitution. Therefore, the Papuan People's Assembly in its study of evaluating the implementation of the Special Autonomy Law in Papua 2013 found that the provisions in Article 28 Paragraph (1) and paragraph (2) cannot be implemented in Papua Province. This is because the provisions referred to are meant to be local political parties, but on

the other hand, these provisions are interpreted as national political parties.

Textually, the provisions of Article 28 paragraph (1) and paragraph (2) of Papua Special Autonomy Law as amended by Law Number 35 of 2008 must be interpreted or defined as a political party. However, contextually it can be interpreted as a local political party.

Contextually, what is meant by the phrase "Political Party" in Article 28 paragraph (1) and paragraph (2) shall be local political party, as evident from the background or history of the formation of Law Number 21 of 2001 which has been amended by Law Number 35 of 2008.

Therefore, in the petition, the Constitutional Court Petitioner stated the phrase "Political Party" in Article 28 paragraph (1) and paragraph (2) of Law Number 21 of 2001 concerning

Special Autonomy for Papua Province as amended by Law Number 35 of 2008 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2008 concerning Amendments to Law Number 21 of 2001 concerning Special Autonomy for Papua Province, is conditionally constitutional provided that it shall be interpreted as “local political party”.

“Or if the Court is of different opinion, please give the fairest verdict,” concluded Habel Rumbiak, conveying the main points of the Petitioner’s petition.

### **Specificity of Papua**

In its legal considerations, the Court stated, among other things, that Special Autonomy for the Papua Province was basically the granting of wider authority to the

Province and the people of Papua to regulate and manage themselves within the framework of the Republic of Indonesia. Wider authority also means greater responsibility for the Province and the people of Papua to administer the government and regulate the use of natural resources in the Papua Province for the greatest possible prosperity of the people of Papua as part of the Indonesian people in accordance with statutory regulations.

A region is designated as a special region if the region specificity related to political realities and needs and by its position and circumstances require the region to be granted a special status dissimilar to other regions. In other words, there is a background of formation and a real need behind the needs of specificity of the region concerned

as part of the Unitary State of the Republic of Indonesia. Therefore, determination of the type and scope of specificity based on the background of the formation and the real needs requiring specificity to a region is flexible in accordance with the real needs of the specificity granted to the region concerned. In the context of Papua, among others, to reduce the gap between Papua Province and other Provinces, and to improve the standard of living of the people in the Papua Province, as well as to provide opportunities for indigenous Papuans, it is necessary to have a special policy within the framework of the Unitary State of the Republic of Indonesia.

Based on the background of the formation and the real needs of Papua, the legislators through Law Number 21 of 2001 gave



The preliminary hearing of judicial review on Papua Special Autonomy Law on Tuesday (14/1) in the courtroom of the Constitutional Court. Photo: PR/Gani

specificity to Papua. For example, in government and politics sectors there are Papuan People's Assembly (MRP) which is a cultural representation of indigenous Papuans, Papuan House of Representatives (DPRP), the existence of Special Regional Regulation (*Perdasus*) in addition to the Provincial Regulation (*Perdasi*), differences in nomenclature, namely the existence of districts which are basically districts in another province, as well as candidates for governor and deputy governor must be indigenous Papuans.

"Therefore, based on this specificity, no content regulates the formation of local political parties in Papua as in Aceh Province as one of the specificity provided by legislators through Law Number 11 of 2006 concerning Aceh Governance," said Constitutional Justice Saldi Isra who read out the legal considerations for the Constitutional Court Decision Number 41/PUU-XVII/2019 on Monday (26/10/20). The trial was held virtually due to the existing Covid-19 pandemic.

Saldi continued, if Article 28 of Papua Special Autonomy Law is read comprehensively, actually the specificity on political parties in Papua is with regard to recruitment that prioritizes indigenous Papuans and is obliged to ask MRP for consideration. In contrast to Aceh, although it is granted the specificity of forming local political parties, the political party selection and recruitment mechanism is carried out independently by political parties. Therefore, although the two regions are granted specificity, the types and scope of specificity do not always have to be the same. This difference is based on the background and real

needs of each region granted special autonomy status by the legislators.

"Thus the *a quo* Article cannot be said to be discriminatory because it treats differently to things that are different," continued Saldi.

## Discussion on Papua Special Autonomy Bill

To better understand the background of the regulation of political parties in Papua Special Autonomy Law, it cannot be separated from the discussion process starting from Papua Special Autonomy Bill initiated by DPR. In the Bill, one of the material aspects discussed is the aspect of political representation, namely that the Papuan residents equal to all adult Indonesian residents, in accordance with statutory regulations, can form political parties.

Based on the minutes of discussion of Papua Special Autonomy Bill, the term "local political party" as the construction of the phrase "political party" in Papua Special Autonomy Bill has indeed appeared, but this opinion was expressed by a member of the Assistance Team for Papua Special Autonomy Bill. If traced further, the person concerned consistently mentioned the term "local political party" during the discussion process.

However, being read thoroughly, the opinions expressed by a number of DPR members in Special Committee for Papua Special Autonomy Bill, the said phrase "political party" is not a political party in the sense of "local political party". For example, the opinion of Marthina Meheu Wally from F-PG explicitly stated "requesting the draft of Papua Special Autonomy Bill to grant the

people of Papua province the right to form national political parties in the regions". Thus, what Marthina Meheu Wally meant was not the formation of local political parties. Likewise, Anthonius Rahail from F-KKI explicitly stated in Papua Special Autonomy Bill that his party did not mention the phrase "political party" as a local political party. Therefore, Anthonius Rahail also added that the idea of "political party" in Papua Special Autonomy Bill should be accommodated in the revision of the political party law.

Finally, after going through a series of stages, the results of the Special Committee discussion on Papua Special Autonomy Bill were reported to a plenary meeting in order to make a decision on Papua Special Autonomy Bill on October 22, 2001. The Chairman of the Special Committee for the Papua Special Autonomy Bill reported the results of the discussion on Papua Special Autonomy Bill, the final opinion of the factions, and the Government's response regarding the decision making on Papua Special Autonomy Bill, approval of Papua Special Autonomy Bill to become the Law on Special Autonomy for Papua Province. Regarding the arrangement of political parties in Papua Province, Chapter VII Political Parties Article 28 regulates that, "(1) The residents of Papua Province **can** form political parties; (2) The procedure for forming political parties and participating in general elections shall be in accordance with statutory regulations; (3) Political recruitment by political parties in Papua Province shall be carried out by prioritizing indigenous Papuans; (4) Political parties are obliged to

ask MRP for considerations in the selection and recruitment of their respective parties. “

### **Not Local Political Party**

In the discussion on Papua Special Autonomy Bill, the formulation of norms from “Residents of Papua Province shall **have the right** to form political parties” shifted substantively to “Residents of Papua Province **can** form political parties”. Normatively, the change in the words “have the right” to the word “can” causes the formulation pattern of the intended norm to shift from something close to being imperative to being facultative. The change in the formulation pattern of norms still maintains the norm construction of Article 28 paragraph (2) which states “the procedures for the formation of political parties and participating in general elections shall be in accordance with statutory regulations.”

Within the reasonable limits of reasoning, the phrase “in accordance with statutory regulations” as contained in Article 28 paragraph (2) *a quo* does not describe and show any characters as a local political party. Thus, the arrangement of political parties in Papua as stipulated in Article 28 of Papua Special Autonomy Law is not intended as a local political party because Papua Special Autonomy Law does not explicitly state the arrangement of political parties nor interpret as a local political party. Moreover, compared to Law 11/2006, the provisions of Article 1 number 14 Law 11/2006 explicitly mentions the existence of local political parties. Not only to mention, Law 11/2006 also describes in detail about local

political parties in a specific chapter, namely Chapter XI Article 75 to Article 95 of Law 11/2006, which regulates the Formation; Principles, Objectives and Functions; Rights and Obligations; Prohibition; Membership and Member Sovereignty; Finance; Sanctions; Requirements to Participate in DPRA/DPRK (Aceh House of Representatives/City House of Representatives) Members Election, Election for Governor/Deputy Governor, Regent/Deputy Regent and Mayor and Deputy Mayor; and Supervision of local political parties.

This means that if the legislators intended the phrase “political party” in Papua Special Autonomy Law as local political party, then the arrangement would be carried out in detail with regard to everything related to local political parties. In addition, local political parties are not included as the specificity provided by Papua Special Autonomy Law in the implementation of special autonomy in Papua.

The Court did not find convincing evidence that the phrase “political party” in Article 28 of Papua Special Autonomy Law is local political party. However, Papua in a position as one of the regions granted special autonomy status, in case of any opportunities to make changes to the political party law in the future, the legislators may provide special arrangements for the management of political parties in Papua that allow citizens who are residents of Papua to have a greater opportunity to be involved in managing the national political parties in Papua. In fact, as part of the democratization of political parties, this special arrangement may become a

model for the decentralization of management of national political parties in the regions. Within the limits of reasonable reasoning, wider opportunities to be involved in managing political parties will provide wider space for citizens who are residents of Papua to hold political positions as the result of political contestation involving political parties.

“However, if the formation of local political parties is to be made part of the specificity of Papua, legislators can do so by revising Law 21/2001 provided that the determination is provided in accordance with Papua’s background and real needs and shall remain intended as part of maintaining the integrality of the Unitary State of the Republic of Indonesia,” said Constitutional Justice Arief Hidayat reading the Court’s legal considerations.

Based on the description contained in legal considerations, the Court is of the opinion that the phrase “Political Party” in Article 28 paragraph (1) and paragraph (2) of Papua Special Autonomy Law applying conditionally constitutional insofar as it is interpreted as “Local Political Party” as intended by the Petitioner shall be groundless by law. As a result, in the verdict, the Court stated the entire petition.

“The verdict, the trial, rejected the Petitioner’s petition in its entirety,” said Chief Justice of the Constitutional Court Anwar Usman reading out the Decision Number 41/PUU-XVII/2019. ■

NUR ROSIHIN ANA.

The judicial review of Law Number 21 of 2001 regarding Special Autonomy for Papua Province (Papua Special Autonomy Law) was filled by various opinions from the parties. The Government and DPR RI (House of Representatives) conveyed their testimony orally during the hearing and in written statements as improvements. The Petitioner presented two experts namely, Prof. Dr. Melkias Hetharia, S.H., M.A., M.Hum, and Prof. Dr. H. Djohermansyah Djohan, M.A. In addition, the Court also presented three experts, namely, Fachry Ali, Bambang Purwoko, and Adriana Elisabeth.

## GOVERNMENT

### **Dynamics of Life between the People of Aceh and Papua are Different**

The provisions of Article 28 paragraph (1) and paragraph (2) of Papua Special Autonomy Law are a form of support from the central government for the Papuan people to utilize the democratic means available in a modern state such as political parties, general elections, and people's representative institutions so that they can deliver their aspirations properly with strong legality, and effective for the achievement of mature and responsible democratic life in accordance with the statutory regulations. Based on the provisions of Article 28 paragraph (3) and paragraph (4) of Papua Special Autonomy Law, national political parties that will open branches in Papua Province should prioritize indigenous Papuans as their members and ask MRP for consideration as a form of the realization of the special autonomy granted to Papua Province.

"The Papuan people without forming any local political parties can remain exercising their rights to determine their own fate by utilizing the political space provided by the central government through national political parties and the priorities of indigenous Papuans in the recruitment of members of national political parties, thus the aspirations conveyed really come from Papuan people, so that they can realize all the wishes of the Papuan people within the framework of the Unitary State of the Republic of Indonesia," said the Head of Legal Bureau of the Ministry of Home Affairs, R. Gani Muhammad, while delivering the Government's statement at the trial held at the Constitutional Court on Monday, October 7, 2019).

The Government also responded to the Petitioner's argument regarding the dualism and discriminatory attitude of the legislators against the Papua Province residents and the Aceh Province residents. Responding to this, the Government quoted a legal principle which states that "different things cannot be applied to the same things, and the same cannot be applied to different things". Based on this, the Government recognizes that the status of Aceh Province with Papua and West Papua Provinces is both special. However, it needs to be mutually understood that the dynamics of law and aspects of community life in the said Provinces are different. It is these differences that cause the existing policies in the provinces to be different. Considering the current legal dynamics and living conditions in Papua, the Government is of the opinion that at this time it is not possible to form local political parties.

The current empirical fact is that even without the existence of any local political parties, the government has been very intensive and serious in advancing the economy and maintaining customs and development in all aspects of life in Papua. Without the existence of local political party, the government has recognized and strengthened special autonomy for Papua and West Papua Provinces, in order to respect their specificities and accommodate the aspirations and wishes of the majority of the people.

However, if the aim of forming local political parties is oriented towards achieving independence, the Government firmly states that it refuses the existence of local political parties. If observed thoroughly, in Papua there are efforts from certain parties who intend and fight for Papuan independence through various actions both at domestic/abroad and by

separatist movements. Including what is currently being carried out is the review of Papua Special Autonomy Law at the Constitutional Court.

According to the Government, the article being tried is not discriminatory because it does not contain any regulations that discriminate people based on religion, race, ethnicity, language, gender, political beliefs, or other certain social status. This characteristic is not contained in the provisions of the Law applied for review in the petition.

Although local political parties have not/are not regulated in Papua Special Autonomy Law, this does not mean that the Petitioner loses his constitutional right to participate in general elections, as guaranteed by Article 22E of the 1945 Constitution. Elections to elect president and vice president, members of the DPR, DPD (Regional Representative Council) members, as well as DPRD members are held based on the principles of being direct, general, free, confidential, honest and fair every five years.

“Or in other words, although there is no regulation regarding local political parties in Papua Special Autonomy Law, the Petitioner can still exercise the right to vote and the right to be elected in the general election,” said R. Gani Muhammad.

## **DPR RI Petitioner May File Legislative Review**

House of Representatives (DPR) in a written statement received at the Court’s Registrar’s Office on January 27, 2020 stated that Article 28 of Papua Special Autonomy Law did not reduce and did not violate in any way the Petitioners’ rights to assemble, unite and express opinions. The provisions of this article actually provide opportunities for residents of Papua and West Papua Provinces to be able to assemble, unite and express opinions by forming a political party. The article regulation is in line with the provisions of Article 28C

Paragraph (2), Article 28D Paragraph (1), and Article 28E Paragraph (3) of the 1945 NRI Constitution.

The Petitioner cannot simply equate the specificity arrangements between one province and another because each province has different characteristics and historical political backgrounds. Each statutory regulation has different philosophical, sociological and juridical foundations. The provisions in the Papua Special Autonomy Law constitute the legal policy for the formulation of the law in the form of specificities granted to Papua and West Papua Provinces in accordance with the historical political background in these regions. Moreover, the provisions of Article 28 paragraph (3) of the Papua Special Autonomy Law have provided priority to indigenous Papuans in the recruitment of political parties formed by the Papuan people.

In fact, the phrase “political party” in the article provisions has provided freedom to the residents of Papua and West Papua Provinces in forming political parties. If the article provisions merely regulate on local political parties, it will limit the space for the people of Papua and West Papua Provinces to unite and assemble by forming political parties. With the phrase “political party” in the Papua Special Autonomy Law, legislators open the widest possible opportunity for indigenous Papuans to participate in democracy and development so that they can participate in voicing their regional interests. If the Petitioners intend to change the formulation on the phrase “political party” in the provisions of the articles of Papua Special Autonomy Law, the Petitioners can submit a legislative review of the *a quo* Law to the legislators.

DPR also responded to the Petitioners’ argument which stated that the ratification of United Papua Party as a legal entity was annulled/revoked due to the validity of the provisions of these articles. DPR RI is of the view that this does not indicate that these articles are unconstitutional to the 1945 NRI Constitution. In addition, the issues raised by the Petitioners are issues in implementing the provisions of the articles of the Papua Special Autonomy Law (concrete

cases) which are not within the authority of the Constitutional Court to decide the issue.

**PROF. DR. MELKIAS HETHARIA, S.H., M.A., M. HUM.**  
(Expert in Legal Philosophy and Human Rights)  
**Indigenous Papuans Want Local Political Parties**

At the beginning of the reformation in 1998, the demands of the Papuan people to become independent and separate themselves from the Unitary State of the Republic of Indonesia were getting stronger. This demand was channeled through the Irian Jaya Community Reconciliation Forum (FORERI), which then by Team 100 led by Tom Beanal conveyed these aspirations to President Habibie, followed by Free Aspirations Movement (GERASEM) in 1999.

Responding to this socio-political situation, the Government has granted special autonomy status to Papua Province starting from the state policy contained in the MPR Decree Number IV/MPR/1999 and MPR Decree Number IV/MPR/2000 which have granted special autonomy status to Aceh Province and Irian Jaya/Papua Province which needs to be regulated in Law. The Papua Special Autonomy Bill, which was drafted for approximately a month by the Papua Governor Formation Team where the expert is also one of the team members, was completed in an atmosphere of intense socio-political pressure.

In Draft 9 dated March 23, 2001 to draft 14 dated April 4, 2001, the Special Autonomy Bill discussed the need for local political parties, and was ratified by the Papua Provincial DPRD which was later accepted by DPR RI and ratified as the right of the Council's proposed initiatives which in the draft Local Political Parties Article 25 were still accepted. The title in Chapter VII of the Special Autonomy Bill reads "Local and National Political Parties. Article 25 reads: (1) Residents of the Papua Province shall have the right to form Local Political Party; (2) Local Political Party and National Political Party shall have the same rights and obligations and receive the same treatment from the Provincial Government; (3) The procedure

for the formation of Local Political Party shall be stipulated in Basic Regulation (read: Special Regional Regulation/*Perdasus*); (4) The procedure for the participation of Local and National Political Parties in the Election in Papua Province shall be stipulated in the Basic Regulations.

"The articles in the Bill reflect the wishes, needs and interests of indigenous Papuans, including Article 25, which is now Article 28 of the Special Autonomy Law on Political Party," said Melkias Hetharia when delivering his statement as Expert of Petitioner at the trial held at the Constitutional Court, on Wednesday, October 16, 2019.

Papuan residents, especially indigenous Papuans themselves want to form Local Political Party to channel their aspirations democratically within the Unitary State of the Republic of Indonesia that it is formulated in Special Autonomy Bill Article 25. However, the Bill, which is the proposed initiative of DPR and enacted into Law by the Government, has changed as stated in Article 28 where Local Political Party becomes Political Party.

"The issue is, what is the urgency for the National Political Party to be regulated in the Papua Special Autonomy Law which is based on the principles of asymmetric decentralization and affirmative action? This is something illogical," he said.

One of the goals of the establishment of local political party as in Article 25 of Special Autonomy Bill is to create peace in the Land of Papua, on the premise that the Government needs to provide a forum for Papuan brothers, including those in forests, mountains and valleys who have diverse thoughts so that they no longer fight for this idea through armed struggle, that they "come down the mountain" and rejoin the community, and indigenous Papuans in general are able to form such a political party which must be based on Pancasila and the 1945 Constitution.

"Thus these aspirations will not stagnate and lead to unconstitutional actions. It is different from national political parties which do voice national interests according to party platforms and tend to ignore local interests," he explained.

In comparison with Aceh, the concept of a local political

party was originally an original concept from the Papuan people which was then studied by the Aceh Government which revised Law Number 18 of 2001 to Law Number 11 of 2006 concerning Aceh Governance in Article 75 to Article 95 in which it mentions local political parties. The Aceh Local Political Party has participated in the General Election 3 times and this has made the Papuan people feel that they have lost their political right to participate in the General Election which should be accommodated by interpretation of Article 28 of Law Number 21 of 2001, which was long conceived before the 2006 Aceh Government Law.

"The expert is of the opinion that the formulation of Article 28 paragraph (1) and paragraph (2) of Law Number 21 of 2001 concerning Special Autonomy for Papua Province, especially the phrase "political party" must be interpreted as "local political party" so that the article is in accordance with the values, principles, fundamentals and objectives, as well as in line with the status of the Province granted Special Autonomy which regulates special matters in the Land of Papua," he stressed.

**PROF. DR. H. DJOHERMANSYAH DJOHAN, M.A.**  
(Local Political and Regional Autonomy Expert)  
**Local Political Party as Conflict Resolution Solutions**

"I am very concerned about the unresolved issues of local political parties in Papua, such as for United Papua Party not being recognized and not allowed to participate in election and regional head elections. Regardless the fact that the regional government of Papua Province holds special autonomy status under Law Number 21/2001 which according to the constitution (Article 18B paragraph (1) of the 1945 Constitution) is recognized and respected by the state," said Djohermansyah Djohan starting his presentation as expert on Petitioner in a trial held at the Constitutional Court, on Tuesday, December 17, 2019.

The protracted resolution on local political parties issues in Papua is certainly not good. This could add to the distrust of the Papuan people in the government/state. Furthermore, it has the potential to ignite the spirit to separate from the Unitary State of the Republic of Indonesia. Why? Because "Jakarta" is often labeled inconsistent in implementing the Special Autonomy Law. For example, regional expansion was allowed but put in the moratorium. Regional flag was allowed but torpedoed under Government Regulation No.77/2007. Regional Head Election was set to be through DPRD/DPRD, but then set to be performed in direct manner by issuing Law no. 35/2008. MRP was formed in Papua Province, but afterwards MRP was also formed in the expansion province.

"And last but not least the people of Papua (read: local people) can form a political party (read: local political party) but to date it has been 18 years that it remains to be "ping-pong" to the right and left, running away and unsettled, frustrating people," he said.

If we examine the issue of political parties formed by the local people, the problem is closely related to the purpose of granting special autonomy to Papua Province, which is none other than conflict resolution. In Aceh it is arguably "workable", the conflict is over. GAM was transformed into Aceh Party. Papua, even though it was the first to propose a local political party, remains the homework for the state. The conflict is not over yet, in fact it has become more and more intense.

"The existence of local political parties is not only intended to resolve conflicts with separatist groups, but also has great benefits for the development of local democracy, and at the same time can strengthen national democracy," he explained.

In the context of developing local democracy, the existence of political parties in Papua will be beneficial to nourish and nurture the democracy life based on local culture. Groups from diverse ethnic groups that are numerous in Papua can unite to form local political parties.

In conclusion, if the formation of local political parties in Papua is permitted in constitutional legal manner, *firstly*, the separatism central-regional conflict will gradually disappear. *Secondly*, it will nourish and nurture local democracy which provides more space for indigenous Papuan (OAP). *Thirdly*, it will further strengthen national democracy.

"Finally, the expert came to the opinion that regarding the phrase local political party in Article 28 paragraph (1) and paragraph (2) of Law no. 21/2001 concerning Special Autonomy for Papua Province as amended by Law no. 35/2008, the Constitutional Court shall decide it as conditionally constitutional insofar as it is interpreted as a local political party, because it provides more benefits than harms in improving the quality of democracy in this country," he concluded.

## FACHRY ALI

### Local Parties in Aceh Integrate Opposing Groups

The story of the emergence of local party in Aceh should be linked to the Helsinki Agreement between the Government of the Republic of Indonesia (hereinafter referred to as Jakarta) and Free Aceh Movement (GAM) on August 15, 2005. Conceptually, this agreement, in a political context, is decisive. This is mainly because leading up to the December 2004 Tsunami, which meant that prior to the Helsinki Agreement, GAM's military position was weakening.

Without the Helsinki Agreement, there would be no legal basis for the establishment of local party in Aceh. Therefore, regardless of the various shortcomings listed in which prompted protests from several groups in Aceh, insofar as concerning the Aceh government especially the local party establishment, the Aceh Governance Law proposed by the government and then ratified by DPR on July 11, 2006 "fully" adopted what has been formulated in Helsinki Agreement.

"The Helsinki agreement, thus, is a new milestone in Indonesian political history," said Fachry Ali in his capacity as an Expert presented by the Constitutional Court at the hearing on Thursday, January 30, 2020.

Local party issue in Aceh teaches two lessons. *Firstly*, the idea of democracy is trying to be applied. Every Indonesian

citizen in Aceh has the right to establish local party without being hindered by anything and any party. *Secondly*, those who previously participated in GAM have the same rights in establishing local party. Thus, the accommodation of the idea of establishment and formulation of local party originating from the Helsinki Agreement and accommodated in the Aceh Governance Law, is essentially an effort to integrate groups previously opposed to the Republic of Indonesia.

"The Helsinki agreement which accommodates the local party establishment, in my phrase, is the affirmation of former GAM citizenship by the collective power of the Indonesian nation," explained Fachry.

Viewed in a broader context, both the Helsinki Agreement and the 2006 Aceh Government Law and the 2007 Government Regulation are "complete" models of national integration in the political field. It is said as "complete" model because Jakarta's political accommodation of the local party idea in Aceh has created political calm in areas that were previously latent with upheaval.

The main actor in the Helsinki Agreement that gave birth to the local party in Aceh was the Indonesian President and Vice President 2004 to 2009, Susilo Bambang Yudhoyono and Jusuf Kalla. The post-Helsinki establishment and articulation of local party in Aceh has shown how the state voluntarily changes its style of performance and especially its character: from arrogant and non-dialogical to friendly and dialogic. With various adjustments, this state new style, performance and character, theoretically, could become a model to be applied throughout Indonesia.

State management that was not dialogical and hierarchical in the past will cause present and future problems, resulting in the emergence of GAM and independent Papua. Therefore power management at the national level must be restructured which can only be carried out by the Court.

Local party in Aceh highly benefits because it integrate the previously opposing groups and maintain their trust. Local parties produce leaders from Indonesian citizens in Papua.

## **BAMBANG PURWOKO**

### **Implementation of Asymmetric Decentralization Must Be Emphasized**

The reduction and limitation of some special powers in the Papua Special Autonomy Law is viewed as the government's lack of seriousness in implementing the asymmetric decentralization policy towards Papua. As if there is a fear that a strong region would cause the Center to become weak.

"Strengthening politics and governance in the regions precisely must be done to build a strong country. Therefore, the implementation of asymmetric decentralization by granting special powers to certain regions including Papua must be strengthened by clear and straightforward policy instruments, for example by reinforcing the regulations in the Law," said Bambang Purwoko in his capacity as an Expert presented by the Constitutional Court at the trial on Thursday, January 30, 2020.

The affirmation of the existence of local political party and the rearrangement of the election/regional head election design that is contextually in accordance with the conditions of Papua is one of asymmetric decentralization in the political field." The creation of space and opportunities for the formation of local political parties in Papua can also be understood as one of the steps to protect OAP political citizenship rights," he explained.

This affirmation can be done by reinterpreting the phrase "political party" and its following explanation as stated in the articles in Law 21 of 2001, or even by making improvements to the Law. The Government can take this step to create political structure that allows the political participation of citizens to take place. However, the creation of structure and space for political participation should be followed by a special policy instrumentation that provides protection and affirmation for OAP to be the political representation (and government) in their own region.

## **ADRIANA ELISABETH**

### **Implementation of the Papua Special Autonomy Law Is Not Optimal**

Asymmetric decentralization (DA) is implemented in many countries, including OECD (Organization for Economic Cooperation and Development) countries. All the time, DA has been implemented in three main categories: political, administrative and management, and fiscal. This implementation is adjusted to the region capacity (subnational governments), either structurally and fiscal or revenue, income and expenditure.

Papua local political parties are associated with the political authority and constitutional rights of indigenous Papuans (OAP). The stigma of Papua as a conflict area, is even one of the intra-state conflicts in the world, therefore the formation of Papua local political parties is not only part of the implementation of Law Number 21 of 2001 concerning Special Autonomy for Papua, Article 28 paragraph 1, but is also projected as a peaceful resolution for Papua.

"So, this is not only about us, about Indonesia, but it has also become the world concern with the Papua conflict included in the list of domestic conflicts in a country," said Adriana Elisabeth as an Expert presented by the Constitutional Court at the hearing on Thursday, January 30, 2020.

The non-optimal implementation of the Papua/West Papua Special Autonomy Law is related to the absence of the formation of local parties. The formation of Aceh local political parties can be a reference for Papua, such as granting amnesty to GAM members and the restoration of their political, economic and social rights.



## FINANCING COMPANY'S INTERNAL DEBT COLLECTOR FILES JUDICIAL REVIEW ON THE FIDUCIARY SECURITY LAW

THE Constitutional Court (MK) held a judicial review trial of Law Number 42 of 1999 concerning Fiduciary Security (Fiduciary Law), on Wednesday, September 30, 2020 in the Plenary Courtroom. The trial of the case registered with Number 79/PUU-XVIII/2020 was conducted virtually. The petition was submitted by Joshua Michael Djami, an employee at a financing company as Internal Collector with professional certification in collection. The Petitioner challenges Article 15 paragraph (2) and the Elucidation of Article 15 paragraph (2) of the Fiduciary Law against Article 1 Paragraph (3), Article 27 Paragraph (2), Article 28D Paragraph (1), Article 28J Paragraph (2) of the 1945 Constitution.

In the trial led by Constitutional Justice Enny Nurbaningsih, the Petitioner's attorney, Almas Rioga Pratama, said that the prevailing provision on fiduciary execution stipulated in Article 15 paragraph (2) of the Fiduciary Law has led to the absence of fair legal protection as guaranteed by Article 28D paragraph (1) of the 1945 Constitution due to unequal treatment between the two parties in that creditors have to take the case to court while debtors are not required to do so.

According to him, the provision of fiduciary execution contradicts the principle of a legal state because it provides a loophole allowing debtors to delay the time and commit the crime of carrying away their property. In addition, the enactment has also destroyed the collecting and financing profession, which the Constitutional Court has acknowledged to be legal according to Decision No. 19/PUU-XVIII/2020. This has led to loss of income and decent living for the Petitioner.

Based on the arguments, the Petitioner requested that the Constitutional Court declare the tried article not legally binding insofar as not interpreted as "the Fiduciary Security certificate as referred to in paragraph (1) has the same executorial power as that of a court decision that has permanent legal force," and declare the phrase "object to transfer voluntarily the object of fiduciary security" not be interpreted as "voluntarily when signing the Fiduciary agreement." (Utami Argawati)



## MINERAL AND COAL MINING LAW ALLEGEDLY REDUCES BUMN AND BUMD'S ROLES OVER SPECIAL MINING BUSINESS LICENSE

LAW Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining was challenged once again at the Constitutional Court (MK). This time, the petition was submitted by Benidiktus Papa, Karlianus Poasa, Felix Martuah Purba, Oktavianus Alfianus Aha, Alboin Cristoveri Samosir, and Servarius Sarti Jemorang. The Petitioners challenged Article 35 paragraph (1), Article 169A paragraph (1) letter a and letter b of the Mineral and Coal Mining Law.

The preliminary hearing of the case registered with Number 80/PUU-XVIII/2020 was held at the Constitutional Court on Tuesday, October 6, 2020. In the hearing led by

Constitutional Justice Enny Nurbaningsih, Alboin Cristoveri Samosir argued that the extension of Contract of Work (KK) or Coal Mining Work Agreement (PKP2B) in Article 169A paragraph (1a) and paragraph (1b) along the word, "guaranteed" is considered eliminate the roles of State-Owned Enterprises (BUMN) and Regional Government-Owned Enterprises (BUMD) over Special Mining Business License (IUPK) resulting from the extension of KK/PPK2B. Where previously, Mining Business License (IUP) application must go through tender mechanism as regulated in Law Number 4 of 2009 concerning Mineral and Coal Mining.

According to the Petitioners, the regulation regarding the provisions in Article 169A paragraph (1a) and paragraph (1b) of the Mineral and Coal Mining Law which in essence regulates the extension of KK/PPK2B clearly and in fact is an unconstitutional rule because it in fact contradicts Article 33 Paragraph (2) and Paragraph (3) of the 1945 Constitution. In the petition, the Petitioners requested the Constitutional Court to declare the word "guaranteed" in the provision of Article 169A paragraph (1a) and paragraph (1b), either directly or indirectly contradicting the principles of the state's right to control as stipulated in Article 33 Paragraph (2) and Paragraph (3) of the 1945 Constitution. The Petitioners also asked the Constitutional Court to declare Article 169A paragraph (1a) and paragraph (1b) of the Mineral and Coal Mining Law to be unconstitutional as it indirectly hinders and reduce the state involvement through BUMN or BUMD. (Utami Argawati)

## BEING BLOCKED, SUARA PAPUA EDITOR AND AJI CHALLENGE EIT LAW

PAPUA website blocking on November 4-6, 2016 had far-reaching consequences. Regarding the blocking, Arnoldus Belau, Editor-in-Chief of Suara Papua and Alliance of Independent Journalists (AJI), submitted a material judicial review of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (EIT Law) to the Constitutional Court (MK). The first trial of Case Number 81/PUU-XVIII/2020 was held virtually on Monday, October 12, 2020.

In the trial led by Constitutional Justice Daniel Yusmic F. Foekh, attorney Ade Wahyudin said, the Petitioners felt harmed due to the Government's authority as stipulated in Article 40 paragraph (2b) of the EIT Law. According to the Petitioner, Article 40 paragraph (2b) provides the Government immense authority to exercise what used to be the Court's authority to enforce law and justice to examine, adjudicate and rule on the interpretation of allegedly unlawful electronic information and/or documents.

In addition, the Petitioners believe that if the tried articles were left to be ambiguous and unclear regarding the unlawfulness of electronic information and/or documents,



the Government would have the absolute authority to control and monopolize access to information. This will keep the public from receiving and expressing information to monitor the Government through the court. For those reasons, the Petitioners requested that the Constitutional Court declare Article 40 paragraph (2b) of Law Number 19 of 2016 to be unconstitutional and not legally binding. (Utami Argawati)



## FEELING VICTIMIZED, DEFENDANT OF PORN VIDEO CASE FILES JUDICIAL REVIEW ON PORNOGRAPHY OBJECT

THE Constitutional Court (MK) held the preliminary judicial review hearing of Law Number 44 of 2008 concerning Pornography on Monday, October 12, 2020 in the Plenary Courtroom of the Constitutional Court. The case registered with Number 82/PUU-XVIII/2020 was filed by Pina Aprilianti, a woman from Garut who is currently serving a detention period.

Pina Aprilianti, through one of her attorneys Asri Vidya Dewi, argued that Article 8 of the Pornography Law, which reads, "Every person is prohibited to deliberately or with his/her consent become an object or model of pornographic content," contradicts Article 28D paragraph (1) and Article 28G paragraph (1) of the 1945 Constitution.

At the time of submitting the petition, Asri revealed a concrete case that due to the enactment of the *a quo* article, the Petitioner was convicted and sentenced to three years of imprisonment for being deemed to have volunteered or participated as an "object or model" in a porn video. Asri told that this happened when the Petitioner was about to report to the authorities on porn video distributed and even traded

by the Petitioner's husband on social networks without her consent. The Petitioner was 16 years old when she entered into unregistered marriage with him, who is 14 years her senior and is indicated to have sexual deviance.

Petitioner believes Article 8 of the Pornography Law has subjected anyone who agrees to be an "object or model" of pornographic content to abuse of power and ambiguity. As happened to the Petitioner, she was a victim of the criminal act of person trading, but after reporting the crime, instead of receiving legal protection, she was charged with deliberately or with her consent committing such an action. This norm's ambiguity potentially leads to other cases and victims. Thus, anyone can potentially become a violator whether for personal reasons or under force, threats and deception.

On Wednesday, November 25, 2020, the Constitutional Court rejected the Petitioners' petition. The Constitutional Court viewed that protection of the citizens' rights, especially women, has been guaranteed in Article 8 of the Pornography Law. The Court believes that this norm has firmly stated that one of the objectives of this provision construction is to provide legal certainty and protection for citizens from pornography, especially for children and women. This is a form of state response in addressing the phenomenon in society that places women as the main target in many immoral cases. The existence of this norm is none other than to protect all people regardless of specific gender.

"Therefore, regardless of the concrete cases experienced, law enforcers shall carefully and thoroughly implement Article 8 of Law 44/2008 in determining the status of perpetrators or victims of criminal acts of pornography," explained Constitutional Justice Arief Hidayat, in the hearing led by the Chief Justice of the Constitutional Court Anwar Usman in the Plenary Courtroom. (Sri Pujianti)



## ADVOCATE'S AGE LIMIT CHALLENGED

THE Constitutional Court (MK) held a preliminary judicial review hearing of Law Number 18 of 2003 concerning Advocates on Wednesday, October 21, 2020 in the Plenary Courtroom of the Constitutional Court. The petition registered with Number 83/PUU-XVIII/2020 was filed by advocate intern Wenro Haloho. Dora Nina Lumban Gaol, one of the Petitioners' attorneys stated, Article 3 paragraph (1) letter d of the Advocate Law which reads, "at least 25 (twenty five) years of age" is contrary to Article 27 Paragraph

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

He believes the *a quo* norm potentially harms him as it has restricted him from being an advocate due to the requirement of minimum age of 25 years old. To become an advocate, the Petitioner has been interning continuously at an advocate office since February 23, 2019, but until his internship ends on February 23, 2021, he will not have reached the minimum age required by the *a quo* norm.

"The Petitioner will only reach 25 years of age on November 29, 2021 to be able to become an advocate, so he will be unemployed for 9 months," explained Nina to Panel led by Constitutional Justice Daniel Yusmic P. Foekh alongside Constitutional Justice Wahiduddin Adams and Manahan MP Sitompul as members.

Thus, the Petitioner requested that the Court declare Article 3 paragraph (1) letter d of Law Number 18 of 2003 concerning Advocates contrary to Article 27 paragraph (1) and paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution and not legally binding. (Sri Pujianti)

## PETITION OF PROVISIONS ON CONCURRENT POSITIONS OF DEPUTY MINISTER UNACCEPTABLE

THE Constitutional Court (MK) decided the judicial review petition of Law Number 39 of 2008 concerning State Ministry to be unacceptable. The Constitutional Court held the ruling hearing on Monday, October 26, 2020 in the Plenary Courtroom. The petition registered with Number 76/PUU-XVIII/2020 was filed by advocate Viktor Santoso Tandiasa. Previously, the petitioner challenged the constitutionality of Article 23 of the State Ministry Law.

In the legal considerations read out by Constitutional Justice Suhartoyo, the Court was of the opinion that the Petitioner in essence only elaborated his perceived constitutional impairment due to the Government's implementation of the Constitutional Court Decision Number 80/PUU-XVII/2019 which prohibits deputy ministers from holding concurrent positions, even though he challenged Article 23 of Law No. 39 of 2008.

"According to the Court, the Petitioner's elaboration of the perceived constitutional impairment was not specifically and factually, or at least potentially, caused by the enactment of Article 23 of Law 39/2008. The Petitioner

only detailed a general loss due to the enactment of the *a quo* article but not the actual loss that he suffered," said Suhartoyo.

Therefore, continued Suhartoyo, the Court did not find any causal relationship between the enactment of Article 23 of the State Ministry Law and the Petitioner's loss of constitutional right as stipulated in the 1945 Constitution. The Court was of the opinion that the Petitioner's status as an influencer that provide the public with constitutional understanding through Youtube and other social media doesn't mean that he necessarily has the legal standing in any judicial review petition. (Utami Argawati)



## NO CONSTITUTIONAL LOSS, PETITION ON REGIONAL ELECTION LAW UNACCEPTABLE

THE ruling hearing of the judicial review of Law Number 6 of 2020 concerning Stipulation of Government Regulations in Lieu of Law Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning Election of Governor, Regent and Mayor into a Law (Regional Head Election Law) was held by the Constitutional Court (MK) on Monday, October 26, 2020. The Chief Justice of the Constitutional Court Anwar Usman declared that the petition filed by the Community Association of Solo People for Election (PWSPP) could not be accepted.

In the legal consideration of Decision Number 69/PUU-XVIII/2020, Constitutional Justice Saldi Isra stated that the Petitioner challenged the provision on the regional head election which of Petitioner's opinion is closely related to the Petitioner's activity as an institution in helping the people fight for their rights, accepting complaints relating to the right to vote and be voted in elections, as well as assisting or representing in election dispute resolution through mediation, arbitration, conciliation, and/or legal proceedings.

Regarding this matter, Saldi stated that it was not enough to prove the correlation between the *a quo* norm and the Petitioner's constitutional rights by explaining



the purpose of the organization establishment, but by elaborating on its activities relating to the constitutionality of the norm. The Court in the Preliminary Hearing on September 8, 2020 has provided advice regarding this matter to Petitioner for the petition improvement. However, after reexamining the Petitioner's explanation of its legal standing and all the evidence attached, the Court found no proof that the Petitioner's had been carrying out the activities relating to the constitutionality of the norm petitioned.

In other words, the Petitioner was unable to prove itself as an institution carrying out such activities. Therefore, the Petitioner didn't suffer any direct or indirect loss due to the enactment of the *a quo* norm and there was no causal relationship between the Petitioner's perceived constitutional impairment and the enactment of the *a quo* norm. (Sri Pujianti)

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## PETITION ON SUPREME AUDIT AGENCY'S AUTHORITY FOR SPECIAL PURPOSE AUDIT (PDTT) UNACCEPTABLE

THE Constitutional Court (MK) decided the judicial review petition on Supreme Audit Agency's (BPK) authority for Special Purposes Audit (PDTT) in Law Number 15 of 2006 concerning the Supreme Audit Agency (BPK Law) and Law Number 15 of 2004 concerning Audit on Management and Accountability of State Finances (Law on State Financial Management) to be unacceptable. Chief Justice of the Constitutional Court Anwar Usman alongside eight judges read the Decision Number 54/PUU-XVII/2019 on Monday, October 26, 2020.

The Court stated that as the Petitioners' professions as lecturers at tertiary institutions and students were not related to the state financial management, there was no causal relationship between the perceived constitutional impairment and the *a quo* norm enactment. Meanwhile, explained Arief, as Petitioner I and Petitioner II stated that they were taxpayers, the Court believes this special purpose audit (PDTT) factually provides protection to Petitioner I

and Petitioner II as taxpayers. Therefore, this has further supported the absence of causal relationship between the perceived constitutional loss and the *a quo* norm enactment argued by Petitioner I and Petitioner II.

In connection with the Petitioners' argument, Arief stated that the Court believes the institutions/agencies administering state financial management should be the one factually or potentially harmed by the norms enactment. Thus, the Petitioners as university lecturers and students are not qualified to incur any losses of constitutional rights. "Therefore the Petitioners in this qualification do not have any legal position in the *a quo* petition," said Arief regarding the registered case Number 54/PUU-XVII/2019. (Sri Pujianti)





# AWARDING OF BINTANG MAHAPUTERA TO CONSTITUTIONAL JUSTICES FROM TIME TO TIME

The date November 11, 2020 was not the first time Bintang Mahaputera awarded to constitutional justices. In history, President had awarded Bintang Mahaputera to 12 constitutional justices.

Quoted from Article 1 number 3 of Law Number 20 of 2009 concerning Titles, Service Signs, and Honorary Signs, Honorary Signs means a state award granted by the President to any natural person, entity, government institution, or organization for outstanding service and loyalty to the nation and country. Awarding the honorary sign is intended to appreciate the services of any natural person, entity, government institution, or organization that has dedicated themselves and made great contributions in various fields of life of the people and nation; to foster the spirit of heroism, patriotism and the strive for the advancement and glory of the nation and state; and to foster exemplary attitudes for everyone and promote the spirit to produce the best work for the progress of the nation and state.

Since the establishment of the Constitutional Court in 2003, a number of constitutional justices have been awarded civil star honors, namely Bintang Mahaputera Adipradana and Bintang Mahaputera Utama. Bintang Mahaputera has been awarded to a number of constitutional justices as follows.



## IMAGE OF JUSTICES AWARDEES OF BINTANG MAHAPUTERA



**PROF. DR. LAICA MARZUKI, S.H., M.H.**  
(Wakil Ketua MK periode 2008 – 2009)

Bintang Mahaputera Utama  
(Keppres No. 041/TK/TH. 2009)  
Penganugerahan pada 9 Agustus 2009



**LETJEN TNI (PURN.) ACHMAD ROESTANDI, S.H.**  
(Hakim Konstitusi periode 2003 – 2008)

Bintang Mahaputera Utama  
(Keppres No. 041/TK/TH. 2009)  
Penganugerahan pada 9 Agustus 2009



**SUDARSONO, S.H.**  
(Hakim Konstitusi periode 2003 – 2008)

Bintang Mahaputera Utama  
(Keppres No. 041/TK/TH. 2009)  
Penganugerahan pada 9 Agustus 2009



**DR. I DEWA GEDE PALGUNA, S.H.,  
M.HUM.**

(Hakim Konstitusi periode 2003 – 2008)

**Bintang Mahaputera Utama**  
(Keppres No. 041/TK/TH. 2009)  
Penganugerahan pada 9 Agustus 2009



**PROF. ABDUL MUKTHIE FADJAR,  
S.H., M.S.**

(Wakil Ketua MK periode 2008 – 2009 dan  
Hakim Konstitusi periode 2008 - 2013)

**Bintang Mahaputera Utama**  
(Keppres No. 36/TK/TH. 2010)  
Penganugerahan pada 10 Agustus 2010



**DR. MARUARAR SIAHAAN, S.H.**  
(Hakim Konstitusi periode 2003 – 2008  
dan 2008 – 2013)

**Bintang Mahaputera Utama**  
(Keppres No. 036/TK/TH. 2010)  
Penganugerahan pada 10 Agustus 2010



**PROF. DR. MAHFUD MD, S.H., S.U..**  
(Ketua Mahkamah Konstitusi  
periode 2008 - 2013)

**Bintang Mahaputera Adipradana**  
(Keppres No. 57/TK/TH. 2013)  
Penganugerahan pada 10 Agustus 2013



**DR. HAMDAN ZOELVA, S.H., M.H.**  
(Ketua Mahkamah Konstitusi  
periode 2013 – 2015)

**Bintang Mahaputera Adipradana**  
(Keppres No 083/TK/TH. 2015)  
Penganugerahan pada 7 Agustus 2015



**DR. MUHAMMAD ALIM, S.H., M. HUM.**  
(Hakim Konstitusi periode 2008 – 2013)

**Bintang Mahaputera Utama**  
(Keppres No 083/TK/TH. 2015)  
Penganugerahan pada 7 Agustus 2015



**PROF. DR. ACHMAD SODIKI, S.H..**  
(Wakil Ketua MK periode 2010 - 2013)

**Bintang Mahaputera Utama**  
(Keppres No.0 83/TK/TH. 2015)  
Penganugerahan pada 7 Agustus 2015



**DR. H. HARJONO, S.H., MCL.**  
(Hakim Konstitusi periode 2003 – 2008 dan  
2008 – 2013)

**Bintang Mahaputera Utama**  
(Keppres No 083/TK/TH. 2015)  
Penganugerahan pada 7 Agustus 2015



**DR. H. AHMAD FADLIL SUMADI, S.H.,  
M. HUM.**

(Hakim Konstitusi periode 2010 - 2015)  
**Bintang Mahaputera Utama**  
(Keppres No. 083/TK/TH. 2015)  
Penganugerahan pada 7 Agustus 2015

\*) sumber: Kementerian Sekretariat Negara RI





MAHKAMAH KONSTITUSI

## ANWAR USMAN

***“We could not possibly forfeit our accountability to Allah SWT, God Almighty, only for wordly award.” (Anwar Usman)***

Stated by the Chief Justice of the Constitutional Court Anwar Usman responding Bintang Mahaputera Adipradana award he received on Wednesday, November 11, 2020. He considered the award as the state appreciation for hard work, not only for himself and the five other constitutional judges, but for the entire Registrar’s Office and the Secretariat General of the Constitutional Court.

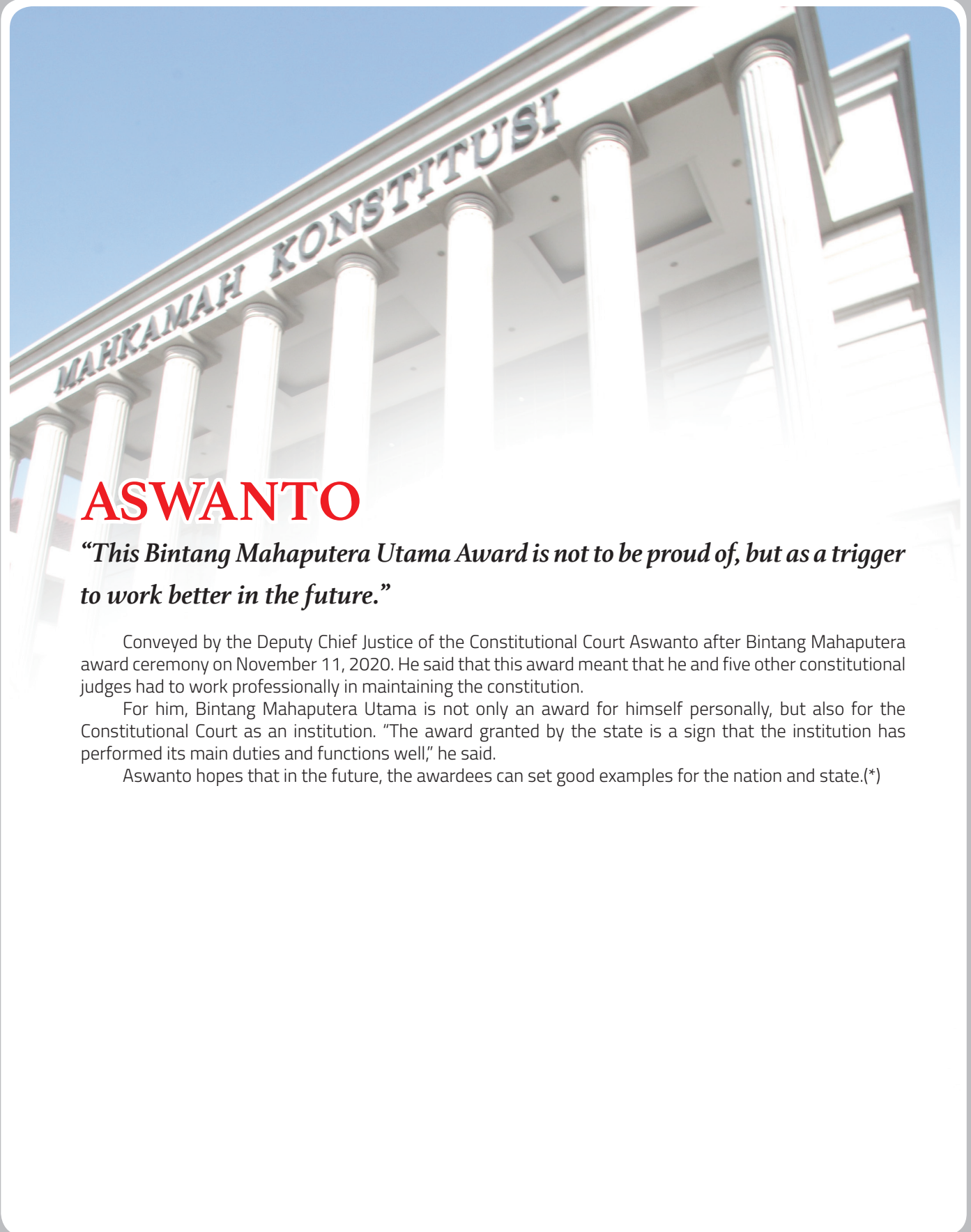
“This award goes to all of us, the big family of the Constitutional Court, both the constitutional justices and all staff members within the Registrar’s Office and the Secretariat General,” explained Anwar.

In addition, Anwar said that his focus and goal in work was to worship. Never came to his mind that the state would reward by granting him Bintang Mahaputera Adipradana. “I work to worship. Wherever and whenever for me devotion is devotion to Allah,” he said.

Anwar also emphasized that the award would not affect the independence of the Constitutional Court. He said the constitutional justices maintained their independence and integrity in examining existing cases. Despite of the opinions that the award was granted at an inappropriate time, Anwar said that the Panel of Constitutional Justices would not be affected, moreover the Constitutional Court exercised its authority for judicial review throughout the year.

“On this occasion I convey that this award has no association with the ongoing judicial review. We are sworn in according to our respective religions and when we make a verdict it must begin with the sentence: ‘For the Sake of Justice under the One Almighty God. This means that we have to be accountable for every decision to Almighty God, apart from the nation and the state. So, how tragic if only for an award, we have to sacrifice law and justice. Not to mention the accountability to Allah, the Almighty God in the afterlife,” he said. (\*)





## ASWANTO

*“This Bintang Mahaputera Utama Award is not to be proud of, but as a trigger to work better in the future.”*

Conveyed by the Deputy Chief Justice of the Constitutional Court Aswanto after Bintang Mahaputera award ceremony on November 11, 2020. He said that this award meant that he and five other constitutional judges had to work professionally in maintaining the constitution.

For him, Bintang Mahaputera Utama is not only an award for himself personally, but also for the Constitutional Court as an institution. “The award granted by the state is a sign that the institution has performed its main duties and functions well,” he said.

Aswanto hopes that in the future, the awardees can set good examples for the nation and state.(\*)

BINTANG MAHAPUTERA





## ARIEF HIDAYAT

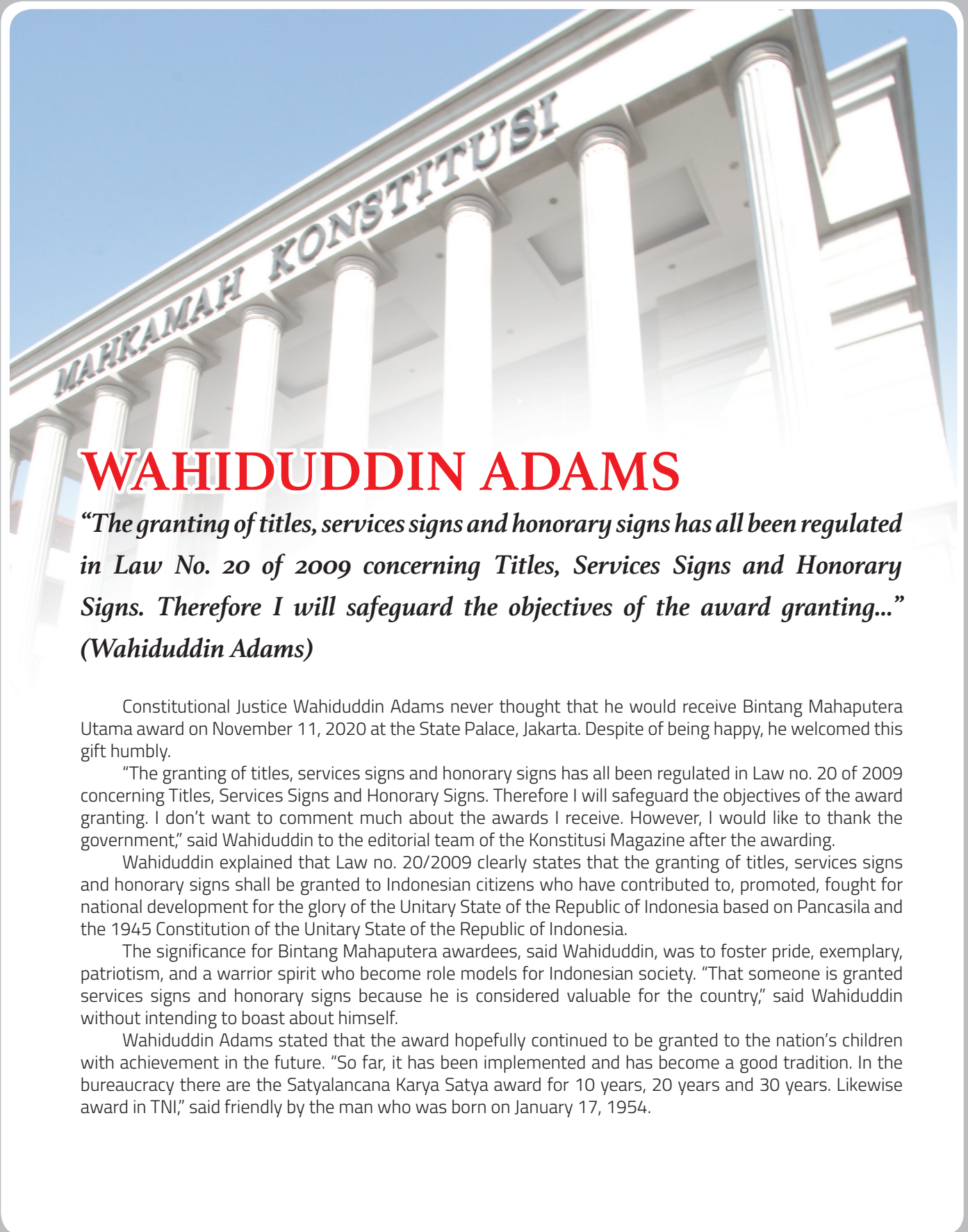
*“This award cannot sway the people of integrity. [We] must uphold this award, but [we] must keep integrity and walk in the respective corridors in maintaining independence and impartiality.”*

Constitutional Justice Arief Hidayat received the Bintang Mahaputera Adipradana award on November 11, 2020. Apart from serving as a constitutional justice, he was Deputy Chief Justice of the Constitutional Court (November 6, 2013 - January 12, 2015) and Chief Justice of the Constitutional Court for two terms. For Arief, this award is an appreciation of his performance. “The extraordinary award we receive is because the state has given recognition alongside with consequences and a mandate that must be maintained,” said Arief met after the embedding event.

Arief said that with this award, the Constitutional Court must improve the quality of service to the country. “As a state institution, this award shows that the Constitutional Court is on the right track as intended by Article 24C of the 1945 Constitution,” he said.

In addition, Arief said that both himself and the Constitutional Court must also be more enthusiastic in maintaining the Constitution and Pancasila as the state ideology. “Moreover, at this time an extraordinary influence from transnational ideology intends to influence Pancasila. I hope to guard the Pancasila ideology and be able to implement it,” he said. (\*)





## WAHIDUDDIN ADAMS

*“The granting of titles, services signs and honorary signs has all been regulated in Law No. 20 of 2009 concerning Titles, Services Signs and Honorary Signs. Therefore I will safeguard the objectives of the award granting...”*  
(Wahiduddin Adams)

Constitutional Justice Wahiduddin Adams never thought that he would receive Bintang Mahaputera Utama award on November 11, 2020 at the State Palace, Jakarta. Despite of being happy, he welcomed this gift humbly.

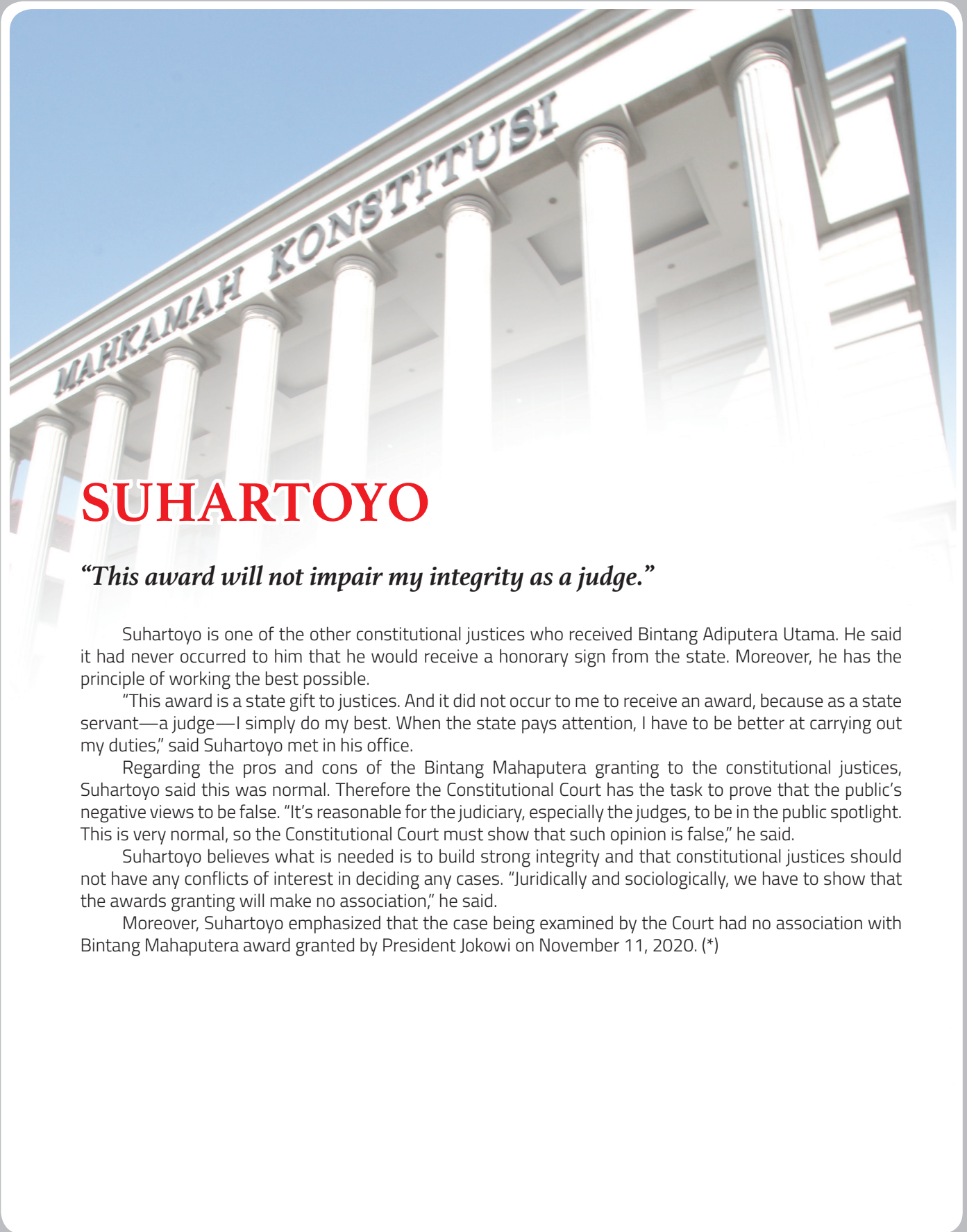
“The granting of titles, services signs and honorary signs has all been regulated in Law no. 20 of 2009 concerning Titles, Services Signs and Honorary Signs. Therefore I will safeguard the objectives of the award granting. I don’t want to comment much about the awards I receive. However, I would like to thank the government,” said Wahiduddin to the editorial team of the Konstitusi Magazine after the awarding.

Wahiduddin explained that Law no. 20/2009 clearly states that the granting of titles, services signs and honorary signs shall be granted to Indonesian citizens who have contributed to, promoted, fought for national development for the glory of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Unitary State of the Republic of Indonesia.

The significance for Bintang Mahaputera awardees, said Wahiduddin, was to foster pride, exemplary, patriotism, and a warrior spirit who become role models for Indonesian society. “That someone is granted services signs and honorary signs because he is considered valuable for the country,” said Wahiduddin without intending to boast about himself.

Wahiduddin Adams stated that the award hopefully continued to be granted to the nation’s children with achievement in the future. “So far, it has been implemented and has become a good tradition. In the bureaucracy there are the Satyalancana Karya Satya award for 10 years, 20 years and 30 years. Likewise award in TNI,” said friendly by the man who was born on January 17, 1954.





# SUHARTOYO

*“This award will not impair my integrity as a judge.”*

Suhartoyo is one of the other constitutional justices who received Bintang Adiputera Utama. He said it had never occurred to him that he would receive a honorary sign from the state. Moreover, he has the principle of working the best possible.

“This award is a state gift to justices. And it did not occur to me to receive an award, because as a state servant—a judge—I simply do my best. When the state pays attention, I have to be better at carrying out my duties,” said Suhartoyo met in his office.

Regarding the pros and cons of the Bintang Mahaputera granting to the constitutional justices, Suhartoyo said this was normal. Therefore the Constitutional Court has the task to prove that the public’s negative views to be false. “It’s reasonable for the judiciary, especially the judges, to be in the public spotlight. This is very normal, so the Constitutional Court must show that such opinion is false,” he said.

Suhartoyo believes what is needed is to build strong integrity and that constitutional justices should not have any conflicts of interest in deciding any cases. “Juridically and sociologically, we have to show that the awards granting will make no association,” he said.

Moreover, Suhartoyo emphasized that the case being examined by the Court had no association with Bintang Mahaputera award granted by President Jokowi on November 11, 2020. (\*)





## MANAHAN M.P. SITOMPUL

*“The award (Bintang Mahaputera) is granted because the state appreciates the dedication of staff members, for example one’s leadership makes the institution become respected and well-led. This is worthy of respect and where integrity is valued.”*

For Constitutional Justice Manahan M.P. Sitompul, Bintang Mahaputera Utama award he received became his own motivation to improve his performance, especially as a constitutional justice.

“At first I asked whether I was able and had the right? However, I feel that if I receive (an award) it will boost the spirit to perform even better in the Constitutional Court. That becomes my foundation. I am motivated to be better,” said Manahan.

Manahan also said he was determined to enforce the justice. “Moreover, nowadays more petitions come from any groups, and many petitions come from labor, worker, and I am determined to uphold justice for them. That’s my motivation,” he said. (\*)



## TALK ON JUDICIAL REVIEW TO THE WOMEN'S RIGHTS PROTECTION

From the end of October to November 2020, the Constitutional Justices became the speakers in several activities held virtually. Despite the limited space for direct interaction, the Constitutional Justices still enthusiastically shared their knowledge with students, academics, and practitioners in the field of law. The topics discussed were increasingly diverse, ranging from the issue of judicial review, one of the Constitutional Court's authority under the constitution, to discussions on the protection of women's rights in the constitution.

### Judicial Review in Pancasila Spirit

Constitutional Justice Arief Hidayat became the keynote speaker of the Tegal Regency Youth gathering organized by the Regional Executive Board of the Indonesian Youth National Committee (KNPI) with the theme "Judicial Review Mechanism with the Spirit of Pancasila in Realizing Supremacy of Constitutional Law", on Saturday, October 24, 2020, at noon virtually.

At the event, Arief started by saying that the current condition was different from the previous one, because currently technology advance took place where everything can be exposed quickly, causing news confusion.

"Meanwhile we are technology illiterate. We receive one news of which the truth we haven't checked. This is what makes this country in turmoil, either in political, legal, economic and other social life, including in other fields of technology," said Arief. Thus, he advised the younger generation to be cautious in doing everything.

In addition, Arief also explained that if law and democracy were not based on and under Pancasila and the 1945 Constitution, a democratic law would be formed in contrary to Indonesian cosmology, and would even be in the form of transnational democracy, both left and right ideologies. For example, continued Arief, the uproar in Indonesia must be observed on any indications not only the internal but also the external factors. "How the interventions of

Constitutional Justice Arief Hidayat was the keynote speaker of the Tegal Regency Youth gathering held by the Regional Executive Board of the Indonesian Youth National Committee (KNPI) with the theme "Judicial Review Mechanism with the Spirit of Pancasila in Realizing Supremacy of Constitutional Law", on Saturday, October 24, 2020, at noon virtually. Photo: PR/Bayu.

transnational Indonesian ideologies are extraordinary. Whereas such ideologies impair the national life of Indonesia plus the external factors," he explained.

Arief further said that the 1945 Constitution only consisted of two, namely the preamble and the articles. The preamble states the fundamental things in which the fourth paragraph explicitly states the national goals. As constitutional justices, Arief admitted to realize a national vision and mission based on Pancasila. However, in carrying out their respective duties, they must not intervene with and influence one another.

Arief continued that Indonesia adheres to the nomocratic system of God Almighty. This also applies to nine constitutional justices in deciding any cases under divine principles. Therefore all judges are responsible for the decision. Arief said that constitutional justices are not only accountable to the state but also to God Almighty. ■

UTAMI ARGAWATI/LULU ANJARSARI



## JUSTICE-ORIENTED PANCASILA LEGAL SYSTEM

Chief Justice of the Constitutional Court Anwar Usman gave a key lecture virtually at the Diponegoro National Seminar Law Fair 2020 held by the Faculty of Law, Diponegoro University, Sunday, October 25 at the Constitutional Court Building. Photo: PR/lfa.

In the Pancasila legal system, law must be dimensionless and oriented towards justice. Law should not be understood to be absolute, but must be filled with moral and conscientious touch. That is what then becomes the essence of law enforcement in the constitutional state of Pancasila. That is the quote from a key lecture delivered by the Chief Justice of the Constitutional Court (MK) Anwar Usman at the Diponegoro National Seminar Law Fair 2020 organized by the Faculty of Law, Diponegoro University on Sunday, October 25, 2020 virtually.

In his lecture entitled "The Existence of Pancasila as the Indonesian State Ideology", Anwar firmly stated that Pancasila is the ideal of Indonesian law because it contains the idealized legal objectives. In its position, Pancasila is none other than the principal principle of

the nation which guides the formation of national law.

"Therefore, all legal products are aimed at realizing the ideas that exist in Pancasila. That Pancasila is the source of all laws and the starting and goal point of Indonesian law," explained Anwar.

As known, continued Anwar, there are two characteristics of legal state that controls countries in the world, namely *rechtsstaat* and rule of law. Even though they are both interpreted as a rule of law, the two terms have different backgrounds and legal bases, and at the same time similar in recognition of the principles of human rights through the establishment of free and impartial judiciary.

Furthermore, Anwar stated that in the history of legal state, the concept of *rechtsstaat* was adopted by Continental Europe being identical with

a country with civil law legal system. Meanwhile, the concept of rule of law is widely adopted by Anglo Saxon countries with common law system. In its implementation, it prioritizes the principle that provides freedom to judges to create laws for justice.

Meanwhile, in Indonesian context, its concept of legal state is contained in the Preamble of the 1945 Constitution. Then in its development and implementation, it is adjusted to existing developments while remains to contain legal certainty with the principle of justice. "Indonesia in its distinctive legal system has accommodated the two existing legal concepts in the *rechtsstaat* and the rule of law conception. Apart from that, it also includes other legal systems, namely customary and religious laws," explained Anwar. ■

SRI PUJIANTI/NUR R



## YOUNG GENERATION ROLE

The Chief Justice of the Constitutional Court Anwar Usman gave a welcome speech and simultaneously opened a web seminar event held by SMP Tunas Bangsa Bintan, Tuesday, November 3, at the Constitutional Court Building. Photo: PR/Gani.

To maintain the sustainability of the nation, regeneration must be carried out properly. One of them is through character education for students in learning activities. As is well known, Indonesia is a great nation and country, from its area, population, cultural heritage, and various other gifts in land of Indonesia. For that, the Indonesian nation must always be grateful for the plural life lived to date. Thus, the welcome speech delivered by the Chief Justice of the Constitutional Court Anwar Usman in a web seminar organized by SMP Tunas Bangsa, Bintan, on Tuesday, November 3, 2020.

In the activity with the theme "Interpreting the Youth Pledge with the Spirit of Mutual Cooperation for the Young Generation", Anwar invited the students to review the young generation achievement in the nation's historical record. The nation's students and youth, from the movement era, the struggle for independence, to the

democracy life today, continuously show their achievement in various sectors. Youth always take the opportunity and role according to their era and time. As a concrete illustration, Anwar tells of youth organizations such as Boedi Oetomo and the various youth movement groups born in the next era and later achieved independence until the formation of the Indonesian state government. Anwar said moreover, the youth is also a critical and objective group along with the people in observing the running of the government.

"The process of state transition has also been spearheaded by the young generation, for example as we know, the '66 Generation or '98 Activists. So it is important for us to look further into the youth role, which is in fact tremendously big in the nation history, as the identity and character of the youth to always fight and serve the nation. This historical record must be preserved and passed on to the children

to motivate them to continue to fight for future lives," explained Anwar at the event which was also attended by the Chairman of the Bintan Resorts Aditya Laksamana Foundation, the Principal of Tunas Bangsa School Susilawati, as well as teachers of SMP and SMA Tunas Bangsa in the activities on Interpreting the 92nd Youth Pledge Day.

In front of 216 participants, Anwar stated that the Commemoration of Youth Pledge Day every October 28 can be a means of fostering a spirit of love for the country and increasingly valuing diversity as a nation. In fact, Youth Pledge Day has clearly told the young people assembling from diverse groups at a youth congress. Regardless of the ethnic differences, they are bound by a sense of togetherness and mutual cooperation which delivered the unity in the name of the nation. ■

SRI PUJIANTI/LULU ANJARSARI



## DIFFERENT FROM OTHER JUDICIARY

Constitutional Justice Suhartoyo became the resource person for the webinar on the Advocate Professional Special Education activity held by the West Jakarta Branch Executive Board of Peradi, Thursday, November 5, at the Constitutional Court Building. Photo: PR/Ifa.

Constitutional Justice Suhartoyo was a resource person for the Advocate Professional Special Education (PKPA) activity, organized by the West Jakarta Branch Executive Board of Indonesian Advocates Association (Peradi), on Thursday, November 5, 2020 in the afternoon virtually.

In this activity, Suhartoyo said that proceeding at the Constitutional Court (MK) is different from proceeding at the general court or other courts. "Why do I say that, because of differences in the proceedings related to the authority of the Constitutional Court," Suhartoyo said to the PKPA participants.

Suhartoyo also emphasized that the Constitutional Court perform the function of examining the Law against the Constitution in accordance with its authority, which is also its first authority. The other authorities, continued Suhartoyo, are to decide on disputes over the constitutional authority of state institutions, the dissolution of political

parties, election results and the last on election disputes. Meanwhile, the obligation of the Constitutional Court is to adjudicate on DPR opinion regarding alleged violations by the President and/or the Vice President according to the Constitution.

According to Suhartoyo, each authority of the Constitutional Court itself has different procedural law. When the Constitutional Court examined the Law against the Constitution, later known as judicial review, the nature of the case was no disputes over the interests of the parties. "When the Constitutional Court performs the judicial review function, the content of the case is not a dispute over the interests of the parties, but as petition. It is different from the procedural law when the Constitutional Court exercises its other authorities," explained Suhartoyo.

In exercising the authority of judicial review, Suhartoyo explained that there are formal and/or material judicial

review. Formal judicial review is related to the lawmaking process. "Means that the Law issuance does not fulfill the formal requirements," said Suhartoyo. Meanwhile, the material judicial review is related to the substance of the Law i.e. the articles, paragraphs or thereof. In formal judicial review, continued Suhartoyo, if the petition is granted, the law will be invalid because it is not legally binding.

An advocate must be familiar with procedural law, especially when representing the principal in submitting the petition for judicial review. Then, to submit the petition for judicial review requires the existence of the argued constitutional impairment. Constitutional impairment is a right granted by the 1945 Constitution which is deemed to have been impaired by the enactment of a law. "So every citizen has constitutional rights," he said. ■

UTAMI ARGAWATI/NUR R



Constitutional Justice Saldi Isra giving a virtual public lecture held by the Faculty of Law, Taman Siswa Palembang University, on Friday, November 6, 2020 morning, at the Constitutional Court Building. Photo: PR/Ifa.

## GOVERNMENT SYSTEM

People often interpret the government system, form of state and form of government as the same thing. In fact, these three things have different meanings. The government system is a system in a country that describes the relationship between the executive power holders and the legislative power holders.

"Meanwhile, the form of state is related to the relationship between the center and the regions in federalism and unitaryism concepts. Then what is meant by the form of government consists of the republic, the monarchy

and so on," said Constitutional Justice Saldi Isra while giving a virtual public lecture to 100 students of the Faculty of Law, Tamansiswa University Palembang on Friday, November 6, 2020 morning.

Saldi explained, there are several models of government systems, i.e. the parliamentary system, presidential system, as well as combination of the parliamentary and presidential system. In parliamentary system, the focus of power lies in the parliament, the election is to elect the parliament members and the executive is determined based on parliamentary elections. The parliament members election results will determine

the government composition. In parliamentary system, there is never prime ministerial election. Because the prime minister will be from the political parties winning the most seats from the parliamentary election results. Meanwhile, the presidential system, continued Saldi, put power in two institutions, legislature and executive. Therefore, elections in the presidential system are always carried out jointly or separately, to elect parliament members and the president. ■

NANO TRESNA ARFANA/NUR R



HUMAS MKRBAYU

# REQUIREMENTS TO FILE PETITION IN THE CONSTITUTIONAL COURT

Constitutional Justice Suhartoyo became resource person on the Advocate Professional Special Education activity organized by Peradi in collaboration with the Faculty of Law, Bung Karno University, Friday, November 6, at the Constitutional Court Building. Photo: PR/lfa.

Everyone can submit petition either an individual Indonesian citizen or a group of people with the same interest. Constitutional Justice Suhartoyo conveyed when he became resource person at the Advocate Professional Special Education (PKPA) activity virtually, on Friday, November 6, 2020) afternoon, organized by the Indonesian Advocates Association (Peradi) in collaboration with Bung Karno University.

Suhartoyo continued, apart from individual Indonesian citizens, the existing customary law community unit that is in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia regulated in law can submit petition. "Public legal entities or private legal entities, or state institutions can also submit petitions at the Constitutional Court," he said.

Both the petitioner and/or the respondent may grant power of attorney for representation in proceedings at the Constitutional Court to an attorney. Suhartoyo said an attorney at the Constitutional Court is not necessarily an advocate. However, he continued, an advocate must understand procedural law, specifically when submitting petition for judicial review to represent the principal. In addition to appointing an attorney, the petitioner and/or respondent can receive assistance.

Suhartoyo further said, in the judicial review of the Constitutional Court the term used was "petition" not "lawsuit". Because in essence there is only one party as the petitioner. Meanwhile, the President/Government and DPR and other institutions are not the respondent party but only provide information. According to him, the term "petition" indicates that judicial review is not factually a dispute between the interests of the parties.

And the Constitutional Court's decision is erga omnes (applies towards all), regardless of being filed by natural person/individuals, the decision is valid generally and affects the law in Indonesia.

Then regarding the requirement of "perceived" constitutional impairment, Suhartoyo explained that in order to be able to file petition for judicial review against the 1945 Constitution, it requires the existence of argued constitutional impairment. "Constitutional impairment is a right and/or authority granted by the 1945 Constitution which is deemed to have been impaired by the enactment of a Law. So every citizen has constitutional rights," he said. The constitutional impairment, continued Suhartoyo, must be specific (special) and actual or at least potential which, according to logical reasoning, will certainly occur. ■

UTAMI ARGAWATI/LULU ANJARSARI



Chief Justice of the Constitutional Court Anwar Usman Scientific Oration at the Graduation Ceremony of 2019/2020 of the Muhammadiyah Bima School of Law virtually, Saturday, November 7, at the Constitutional Court Building. Photo: PR/Gani.

## NON-COMPLIANCE WOULD MAKE THE STATE FOUNDATION TO BE FRAGILE

**A**mendments to the 1945 Constitution that occurred in Indonesia in 1999 - 2002 gave birth to a Constitutional Court. This is the right momentum to build Indonesian civilization and state administration towards a constitutional legal state. Chief Justice of the Constitutional Court Anwar Usman conveyed in a Scientific Oration at the Graduation Ceremony of 2019/2020 Muhammadiyah School of Law with the theme "The Role of the Constitutional Court in Building Indonesia's Future

Civilization and State Administration as a Constitutional Legal State" on Saturday, July 11, 2020) virtually.

Anwar said that the Constitution as the supreme law of the land must be the foundation and guideline for all elements of the state in running the wheels of state organization. There should be no excuses in obeying the constitution. If the constitution is not complied, the country's foundation will be fragile.

"Given that the constitution is the supreme law of the land. On the other

hand, if the constitution becomes a firm grip on state administration, then the nation's foundation will be firm. Without a constitution, a civilization, civility, and order of state governance would be impossibly realized. Because the constitution is the rule of the game for state administration," explained Anwar in front of the graduates who had to carry out this activity virtually due to the Covid-19 pandemic. ■

UTAMI ARGAWATI/LULU ANJARSARI

# ARIEF HIDAYAT BELIEVES THAT AMENDMENTS TO THE 1945 CONSTITUTION ARE CURRENTLY NOT NECESSARY

The discourse on amendment on the 1945 Constitution appeared in the Webinar “Discourse on the Fifth Amendment of the 1945 Constitution” organized by the Student Executive Board of the Faculty of Law, Diponegoro University (BEM FH Undip) on Saturday, November 7, 2020) afternoon.

“Is the fifth amendment of the 1945 Constitution urgently required now? Is the momentum right from all aspects? Indeed, the 1945 Constitution has some weaknesses but not fundamental. With the existence of the Constitutional Court, such weaknesses can actually be addressed through what is known as The Living Constitution,” said Constitutional Justice Arief Hidayat, who was the speaker of this webinar.

Arief said that the Constitutional Court was provided the authority to

guard the Constitution and functioned as the highest interpreter of the Constitution. Thus, the Constitutional Court can carry out the tasks related to the potential weaknesses in the 1945 Constitution. “Even the Constitutional Court is the Guardian of the Nation’s Ideology. Therefore, if we view from that position, is it urgent to amend the 1945 Constitution? I don’t think it’s urgent,” said Arief.

Arief suggested academics in the field of law at Diponegoro University to read the writings of the Law Maestro Prof. Satjipto Rahardjo who reviewed the 1945 Constitution from a general law perspective. “Students majoring in law must read the writing, so the theme of this afternoon’s webinar has been refuted. Prof. Satjipto wrote that the Constitution regulates very fundamental

matters. Even in the midst of extremely liberal society, it is very difficult to change the Constitution and it is not easy,” said Arief.

Arief observed that the legal products under the Constitution have not been amended and have not been adjusted to the Constitution of the Republic of Indonesia. According to Arief, many legal products under the 1945 Constitution have not been amended, changed according to the intention of the 1945 Constitution. Arief asked the public to file judicial review petition for any weaknesses in the 1945 Constitution to the Constitutional Court to adjust to the times through the authority of the Constitutional Court as the highest interpreter of the Constitution. ■

NANO TRESNA ARFANA/LULU ANJARSARI



Constitutional Justice Arief Hidayat became the speaker in the Webinar “Discourse on the Fifth Amendment of the 1945 Constitution” held by the Student Executive Board of the Faculty of Law, Diponegoro University (BEM FH Undip) on Saturday, November 7, 2020) afternoon. Photo: PR/Hamdi.



## FREEDOM OF EXPRESSION AMIDST THE ENACTMENT OF THE EIT LAW

Constitutional Justice Daniel Yusmic P. Foekh became a resource person in the National Webinar held online by the Student Executive Board of the Faculty of Law, Muhammadiyah University of Surakarta (BEM FH UMS), Saturday, November 7, in the Plenary Meeting Room of the Constitutional Court Building. Photo: PR/Gani.

Constitutional Justice Daniel Yusmic P. Foekh became the resource person for the National Webinar “Polemic on Freedom of Expression Amidst the Implementation of the Ambiguous Articles of the EIT Law”, organized by the Student Executive Board of the Faculty of Law, Muhammadiyah University of Surakarta (BEM FH UMS) online on Saturday, November 7, 2020 morning.

“Law Number 11 of 2008 concerning Electronic Information and Transactions (EIT Law) has been amended to Law Number 19 of 2016. One of the reasons for the EIT Law amendment is related to the Constitutional Court Decision as the basis for the amendments,” Daniel said in front of high-ranking officials,

lecturers and students of the Faculty of Law UMS.

Daniel continued, there are several important notes related to the EIT Law, namely the provisions of Article 27, with amendment in the elucidation of paragraph (1), paragraph (3), and paragraph (4) therefore the elucidation of Article 27 becomes as stipulated in Law Number 19 of 2016. However, the provision of Article 28 remains and the provision of Article 45 are amended. In addition, two new articles are inserted between Article 45 and Article 46 in Law Number 19 of 2016.

Daniel said the Constitutional Court had ruled 11 decisions on the judicial review of EIT Law. From a number of Constitutional Court decisions related to EIT Law, Daniel

discussed legal considerations from the Court on the Constitutional Court Decision Number 50/PUU-VI/2008. In the view of the Court, continued Daniel, internet activity, regardless of being fully operated virtually, in fact involve people who live in the real world. Therefore, as in the real world, human activities and behavior in cyberspace cannot be exempted from regulation and restriction by law. The regulation and restriction by law is set because every person has obligations towards his community and each person in exercising his rights and powers can only be limited by law which solely guarantees proper recognition and respect for rights and freedoms of other people. ■

NANO TRESNA ARFANA/NUR R

# INDEPENDENT RELATIONSHIP

Constitutional Justice Saldi Isra became resource person at the seminar organized by the Max Planck Foundation (MPF) with the Maldives Supreme Court virtually on Tuesday, November 10, 2020. In this activity, Saldi delivered material in two sessions. In the first session, Saldi delivered the material "Respecting and Protecting Independence within the Judiciary". Meanwhile in the second session Saldi discussed "Judicial Independence and Impartiality as Manifestations of the Separation of Powers: The Experience of The Indonesian Constitutional Court."

Saldi started by stating that the appointment of Indonesian Constitutional Justices used a selection model carried out by the executive, legislative and judiciary. The Constitutional Court of the Republic of

Indonesia has nine Constitutional Justices appointed by the President, each three nominated respectively by Supreme Court, House of Representatives, and President. Constitutional Justices are recruited or selected by institutions outside the Constitutional Court.

"My experience of 43 months as a Constitutional Justice (sworn in as constitutional justice on 11 April 2017), the justices have independent relationship one another in carrying out their duties and authorities as a Constitutional Justice," he explained.

Saldi believes the independence of justices will be easily realized in practice if a justice has knowledge, insight and integrity. Specifically integrity, continued Saldi, a justice who has and at the same time maintains his integrity, will not influence other justices and will not be influenced by other justices.

Such affirmation has been stated in the Preamble to the Code of Ethics and Conduct of Constitutional Justices. It emphasizes that the judiciary image and the public's trust in an independent judicial power, as the last bastion in law enforcement and justice efforts, are very much determined by the personal integrity, competence and behavior of the constitutional justices in carrying out the mandate to examine, adjudicate and decide cases.

With regard to the intra-justice relationship related to cases, he continued, case discussion before being decided, in practice to date, is always carried out in plenary meeting of justices. This meeting is attended by all constitutional justices or in certain situations at least seven of the nine constitutional justices. ■

UTAMI ARGAWATI/NUR R



Constitutional Justice Saldi Isra, accompanied by Senior Constitutional Court Researcher Pan Mohamad Faiz, became resource persons in a seminar held by the Max Planck Foundation and the Maldives Supreme Court virtually, on Tuesday, November 10, at the Constitutional Court Building. Photo: PR/lfa.



HUMAS MKPHANDI

## PERADI STUDIED THE PROCEDURAL LAW OF CONSTITUTIONAL COURT

Constitutional Justice Suhartoyo became resource person for the Advocate Professional Education (PKPA) virtually, Thursday, November 12 at the Constitutional Court Building. Photo: PR/Gani.

Constitutional Justice Suhartoyo became resource person for the Advocate Professional Education (PKPA) virtually, on Thursday, November 12, 2020 afternoon in activity organized by the Faculty of Law (FH) Galuh Ciamis University in collaboration with the National Executive Board of Indonesian Advocates Association (Peradi). The Constitutional Court (MK) has the authority derived from the Constitution, in accordance with Article 24C Paragraph (1) and Paragraph (2) of the 1945 Constitution and Law No. 24 of 2003 concerning the Constitutional Court and Law no. 48 of 2009 concerning Judicial Power.

"Apart from that the Constitutional Court has the authority in adjudicating regional election results disputes which are not derived from the Constitution, but from Article 157 of Law No. 10

of 2016 concerning Regional Head Elections. This authority is temporary until the establishment of special election court," said Suhartoyo, who presented material on "Proceeding at the Constitutional Court".

Suhartoyo explained that the Constitutional Court's Procedural Law is closely related to the four authorities of the Constitutional Court, namely judicial review, deciding on disputes over the constitutional authority of state institutions, the dissolution of political parties, election results disputes and the obligation of the Constitutional Court to decide the DPR's opinion regarding alleged violations by the President and/or Vice President according to the 1945 Constitution.

"Each of the authorities and obligations of the Constitutional Court has different procedural laws. There

are only Petitioner in judicial review, no Respondent," explained Suhartoyo.

In the implementation of its authority, continued Suhartoyo, the Constitutional Court stated Article 50 of Law no. 24 of 2003 contradicts the 1945 Constitution. Article 50 contains provisions stating that laws that can be tried in the Constitutional Court shall be the laws promulgated after the Amendment to the 1945 Constitution. This article is declared unconstitutional based on Decision No. 066/PUU-II/2004 (Judicial Review of Law No. 1 of 1987 concerning Chambers of Commerce and Industry). In addition, said Suhartoyo, the Constitutional Court also has the authority to examine Government Regulations in Lieu of Laws, considering that the same creates new legal norms with the same legal force as laws. ■

NANO TRESNA ARFANA/LULU ANJARSARI



Aswanto became resource person at the National Webinar organized by the South Sulawesi Family Harmony Central Board (BPP KKSS), Saturday, November 14, in Jakarta. Photo: PR/Gani.

## LEGAL STATE REQUIREMENTS

**T**he state of Indonesia is a legal state. There are two principles known in legal state. First is the concept of rule of law developed in Anglo Saxon countries with the common law system. Second, the concept of the rechtsstaat state which is popular in continental countries with civil law systems.

"These two principles are in fact broadly the same despite of some differences. But in principle, when talking about the rule of law and rechtsstaat, we understand that some basic elements in these two principles must be fulfilled for a country to be declared using the concept of rule of law or rechtsstaat," said Professor of the Faculty of Law, Hasanuddin University, Aswanto in the National Webinar "The Role of KKSS Legal Practitioners in Law Enforcement in Indonesia" on Saturday, November 14, 2020 afternoon organized by the South Sulawesi Family Harmony Central Board (BPP KKSS).

In the context of rechtsstaat, legal expert Julius Stahl said that the

requirement to be called as legal state is that the state must truly protect human rights. Aswanto said, there are three constitutions that have ever been in effect in Indonesia, namely the 1945 Constitution of the Republic of Indonesia, 1949 RIS Constitution, the 1950 Provisional Constitution.

"Why did the first-period 1945 Constitution become RIS Constitution? Because the norms in the first-period 1945 Constitution have not maximally guaranteed human rights. However, the norms in the RIS Constitution are considered to be inadequate, specifically in regulating and protecting human rights. That is the emergence of 1950 Provisional Constitution which is very good in regulating and protecting human rights. That is the first requirement to be called legal state," explained Aswanto, Deputy Chief Justice of the Constitutional Court.

In Indonesia, after the amendment of the 1945 Constitution, the guarantee of human rights is much more comprehensive. Apart

from guaranteeing human rights, said Aswanto, the second requirement as legal state is power division within the state. There is legislative power as norm maker. The 1945 Constitution asserts DPR and government have the authority to make laws. Then there is the executive power, apart from being the executor of the government, also having legislative authority along with DPR. Next, there is the judiciary power as stipulated in Article 24 of the 1945 Constitution related to the judicial system in Indonesia. This refers to the Constitutional Court and Supreme Court and judiciary under them.

Aswanto continued, the third requirement as legal state is must be under law. Human rights can be negated in certain contexts, insofar as they are negated by law. "So only laws can negate human rights. Even though philosophically, some human rights should not be ruled out," said Aswanto who mentioned the existence of free judicial as the fourth requirement as legal state.

Then according to another legal expert, AV Dicey explained the principles of the rule of law. According to Dicey, to be called a legal state, firstly there must be the rule of law, that law is above everything. Not development over law, but law over development. Secondly, equality before the law, all citizens can take part in law and government without exception. Thirdly, a legal process, a judicial process that is truly just, as the embodiment of all the people. ■

NANO TRESNA ARFANA/LULU ANJARSARI



## PETITION AT THE CONSTITUTIONAL COURT PRIORITIZES SUBSTANCE

The Deputy Chief Justice of the Constitutional Court Aswanto became the speaker at Advocate Professional Special Education Batch XI held by the Faculty of Sharia and Law at the Alauddin State Islamic University in Makassar virtually, Saturday, November 14, in Jakarta. Photo: PR/Gani.

In the presentation of the material entitled “Proceeding at the Constitutional Court of the Republic of Indonesia”, Aswanto said that although it was simple, many petitions, especially judicial review (PUU) still were not aware of the importance of the existence of the Petitioners’ legal standing. This part becomes the starting gate for the Court to proceed to the petition principal issue. “Incomprehensive description results in many of the Petitioners’ petitions not accepted or failed due to this matter,” explained Aswanto in an activity held in collaboration with the Indonesian Advocates Association (Peradi).

Aswanto also said the next part of the petition that must be observed is *Posita* or the petition reason. In this section, the Petitioner is also allowed to describe the legal standing by building arguments based on juridical, philosophical and sociological theories to clearly explain the cause and effect and the connection to the Petitioner legal standing.

Next, Aswanto explained the differences in judicial review which consisted of material and formal review. Material judicial review concerns the material content in paragraphs, articles and/or parts of laws deemed to be contrary to the 1945 Constitution.

Meanwhile, formal judicial review concerns the process of constituting laws. Formal judicial review application has time limit of 45 days after the law published in the state gazette.

Aswanto also stated that the Constitutional Court’s decision must be published because it is binding for all parties, not only for the parties in litigation. “Therefore, as a court that adjudicates at the first and last levels, the nature of the Constitutional Court’s decision is final and *erga omnes* (applies towards all),” Aswanto explained. ■

SRI PUJANTI/NUR R



The Chief Justice of the Constitutional Court Anwar Usman Delivered Key Speech at the Jambi Law Fair 2020 on Friday, November 20, 2020 Virtually. Photo: PR/Bayu.

## CONSTITUTION IS THE SUPREME LAW OF THE LAND

Chief Justice of the Constitutional Court (MK) Anwar Usman delivered a key lecture at the Jambi Law Fair 2020, on Friday, November 20, 2020 virtually, organized by Jambi University. In this activity, Anwar delivered material with the theme “Looking to the Future of Law in Indonesia Post-COVID-19 Pandemic”. Anwar started by conveying that the amendments to the 1945 Constitution in Indonesia in 1999 – 2002 are the right foundation for building Indonesian civilization and state administration towards a constitutional legal state. He said that the Constitution as the supreme law of the land must be the foundation and guideline for all elements of the state in running the wheels of state organization.

Anwar said, as the COVID-19 pandemic hit the country, and worldwide, every state administrator must uphold the Constitution, the supreme law, as guideline. In fact, in the midst of the COVID-19 pandemic, the attention and intention of state administrators must increasingly uphold the constitution as the supreme law. “Because in the COVID-19 pandemic conditions, the people need protection from state officials, for the outbreak not causing greater casualties and losses,” he said.

Furthermore, Anwar emphasized that one of the main content in the constitution as the supreme law of the land is the protection of the citizens’ constitutional rights. Thus, in the COVID-19 pandemic conditions, in fact many constitutional rights of

citizens must be protected. The main and first component to protect the citizens’ constitutional rights is the state administrators. The fourth paragraph of the Preamble to the 1945 Constitution clearly states it that the ideal and objective of the establishment of state government, is to protect the whole people of Indonesia, and all regions of Indonesia. “This means that the purpose of establishing a government of a country has no interpretation other than intended to protect every citizen under any circumstances, and against anyone who can harm their constitutional rights as citizens,” he explained. ■

UTAMI ARGAWATI/LULU ANJARSARI



Constitutional Justice Saldi Isra Became Resource Person for the National Webinar at the Faculty of Law, Sriwijaya University, Saturday, November 21, 2020 virtually. Photo: Humas/Bayu.

## PREPARATION IN HANDLING REGIONAL ELECTION DISPUTE 2020

Constitutional Justice Saldi Isra became resource person in the National Webinar with the theme “Phenomenon of the Increasing Number of Single Candidates in Regional Elections in Indonesia”, on Saturday, November 21, 2020 morning, organized virtually by the Faculty of Law, Sriwijaya University.

Saldi said there is no fundamental difference between resolving single and non-single candidate election disputes. However, being examined, the petitioner

for the empty box is different, namely verified election observers.

“Due to no one representing the empty box, thus [observer] officially represents the empty box. In the dispute resolution in Makassar, when the empty box is the winner, the related party is also the observer,” Saldi said to around 500 online participants.

Furthermore, Saldi said, the Constitutional Court had prepared everything related to the potential dispute petition following the vote

in December. According to him, the first thing the Constitutional Court did was to provide training to any parties who might be involved in disputes resolution at the Court. “So we, the Constitutional Court, have and are conducting technical assistance with KPU (General Election Commission), Bawaslu (Election Supervisory Agency), political parties, advocates,” he said. ■

UTAMI ARGAWATI/LULU ANJARSARI



Constitutional Justice Saldi Isra delivered material virtually during Public Lecture held by the Faculty of Law, Lambung Mangkurat University, Saturday, November 21 in Jakarta. Photo: PR/Bayu.

## STATE INSTITUTIONS

Several questions arose after Constitutional Justice Saldi Isra delivered material online in "Expert Lecture Prof. Dr. Saldi Isra, S.H.", organized by the Law Faculty of Lambung Mangkurat University on Saturday, November 21, 2020. The discussion theme is raised from Saldi's book entitled "State Institutions, Concepts, History, Authority, and Constitutional Dynamics" on Saturday, November 21, 2020 afternoon.

In his initial presentation, Saldi reviewed Prof. Jimly Asshiddiqie who make division into the two major groups based on the hierarchy, central and regional level state institutions. "Central state institutions are formed respectively under the order of the Constitution, the law and the statutory regulations under the law. The same is in regions. State institutions are formed respectively under the order of the Constitution, the law and the

statutory regulations under the law," explained Saldi.

In addition, continued Saldi, some experts divide state institutions based on the functions. "The function of the presidential institution, representative institution, the judiciary power and others. Thus, only its function is described. Why? Before the amendment to the 1945 Constitution, we were somewhat trapped in defining state institutions. There were the state highest institutions and state high institutions. The mentioning itself is wrong. It should be the highest state institution, not the state highest institution, it has a different speech. Because in the past, MPR was positioned as the highest state institution that held the people's sovereignty and it was everything. That was one of the corrections in the amendments to the 1945 Constitution," said Saldi.

Saldi said that his book seeks to explain a number of authorities of state institutions related to the Constitutional Court decisions. Regardless of awareness, the Constitutional Court's decision has influenced the state institutions. The Constitutional Court once ruled and stated that DPR's authority to elect candidates for supreme justice from the candidates proposed by the Judicial Commission is unconstitutional. Another example, the Constitutional Court provided interpretation of the relationship between DPR and DPD in the legislative formation process. Or, the Constitutional Court's decision stated that the interim replacement of BPK members is unconstitutional. As part of the design of the checks and balances mechanism, the Constitutional Court decision presents a separate constitutional dynamic of relations between state institutions. ■

NANO TRESNA ARFANA/NUR R



Constitutional Justice Enny Nurbaningsih became a resource person in online activity of the Sebelas Maret Law Festival organized by the Indonesian Law Student Forum, Sebelas Maret University, Saturday, November 21, in Jakarta. Photo: PR/Yogi Jatmika.

## PROTECTION OF WOMEN'S RIGHTS

The State of Indonesia was established to protect the whole people of Indonesia, including women, in obtaining freedom from any threats of sexual crime and violence. The Article 28G Paragraph (1) of the 1945 Constitution guarantees the rights to sense of security. These women's rights mandate the state to guarantee the enjoyment of rights without gender discrimination. In line with this, the Government ratified international conventions and made efforts to eradicate crimes and violence against women.

This opening sentence is said Constitutional Justice Enny Nurbaningsih at "Sebelas Maret Law Festival" organized virtually on Saturday, November 21, 2020, by the Indonesian Law Student Forum from Sebelas Maret University (UNS) on the theme "Quo Vadis Human Rights Enforcement in the Eradication of Sexual Crimes in Indonesia."

Related to this theme, Enny said that the protection of women's rights, specifically related to the eradication of sexual crimes, is very important, as it concerns the protection of victims of sexual violence, mostly women and children.

"Based on records of Komnas Perempuan (National Commission on Violence against Women), each year violence and crimes against vulnerable groups, women and children increases," said Enny in the activity which was also attended by several speakers, including UNS Faculty of Law Dean Djatmiko Anom, YLBHI (Indonesian Legal Aid Foundation) Director Asfinawati, Komnas Perempuan Chairman Andy Yentriyani, and Member of Commission VII DPR RI Diah Pitaloka.

Furthermore, Enny said, the Constitutional Court (MK) is an institution that protects the citizen's constitutional rights, including women's

rights. Through its authority, since 2003–2020 the Constitutional Court has contributed a lot, including to women's rights through its several decisions. One of which is Decision Number 22/PUU-XV/2017 concerning minimum marriage age.

The marriageable age has been an issue of discussions in Indonesia and worldwide. Article 7 paragraph (1) of the Marriage Law has incurred sex or gender discrimination leading to the failure in fulfillment of the rights of girls despite being part of human rights guaranteed by the 1945 Constitution. Enny stated that the Decision Number 22/PUU-XV/2017 ordered legislators to amend the norms to provide legal certainty and eliminate discrimination it had caused.

"This decision has an implication that [marriage at] the age of 16 is classified as child marriage. Thus, the Constitutional Court provides protection to women's constitutional rights because women are treated discriminately. Child marriage has impacts on children's health because the children's reproductive health isn't developed yet and children are also vulnerable to sexual violence," said Enny in an activity attended by delegates of the Indonesian Law Student Forum from various universities in Indonesia. ■

(SRI PUJANTI/NUR R.)



# LAWYERS AND BAWASLU ATTENDED TECHNICAL ASSISTANCE OF REGIONAL HEAD ELECTION

Chief Justice of the Constitutional Court Anwar Usman and Secretary General of the Constitutional Court M Guntur Hamzah opened the Technical Assistance on Procedural Law in Dispute over the Results of Governor, Regent and Mayor Election 2020 for the Constitutional Lawyers Forum, Tuesday, November 3, at the Constitutional Court Building. Photo: PR/Ifa.

The simultaneous regional head elections in 2020 is just a matter of days. The Constitutional Court as a judicial institution granted additional authority to handle this regional election result dispute, makes efforts to provide various materials related to procedural law in the Constitutional Court. From the end of October to November, lawyers, members of the People's Consultative Assembly, Islamic women organizations and Election Supervisory Agency, participated in materials delivery from various experts on technical assistance, held online and offline by Pancasila and Constitution Education Center of the Constitutional Court.

## Technical Assistance for the Constitutional Lawyers Forum

### *Dilemma on Regional Head Election 2020*

Chief Justice of the Constitutional Court Anwar Usman officially opened the Technical Assistance on Procedural Law in Dispute over the Results of Governor, Regent and Mayor Election 2020 for the Constitutional Lawyers Forum on Tuesday, November 3, 2020, evening, which was organized by the Pancasila and Constitution Education Center in Cisarua, Bogor, attended by participants both online and offline.

"The paradigm shift that MPR (People's Consultative Assembly) is no longer the state highest institution and the President is not the mandate of MPR, brings implications on the process of regional head elections. Initially, DPRD

elected governors, regents and mayors at each level. Since the Amendment to the 1945 Constitution, particularly Article 18 Paragraph (4) which reads, 'Governor, Regent and Mayor respectively as heads of provincial, regency and municipal governments shall be elected democratically'. The direct regional head election is inevitable. The phrase "elected democratically" in the Amendment to Article 18 Paragraph (4) of the 1945 Constitution opens wide space for direct regional head elections," said Anwar Usman in the opening of this technical assistance.

The discourse on direct regional head elections found momentum after the passing of Law no. 32 of 2004 concerning Regional Government. "State is obligated to fulfill the people's



democratic rights despite of constant diverse tests and challenges. We have indeed had experience since 2005 to carry out direct regional head elections and simultaneous regional elections from 2015 to 2018," said Anwar.

However, said Anwar, the implementation of the simultaneous regional elections in 2020 faces an unusual challenge, the Covid-19 pandemic experienced not only by Indonesia but also other countries. At present, implementing the simultaneous regional elections 2020 amidst the Covid-19 pandemic is certainly not an easy feat. On the one hand, the state must fulfill the democratic rights of citizens. On the other hand, the country must implement health protocols to prevent the Covid-19 spread.

"The health protocol implementation is also the fulfillment of public health rights in accordance with the Constitution mandate. The challenges and choices in implementing the simultaneous regional elections in 2020 indeed feel heavy. In fact, the simultaneous regional elections originally to be held on September 23, 2020 has been postponed to December 9, 2020. The decision to hold

simultaneous regional elections in 2020 was determined by the government and DPR. Therefore, the implementation of simultaneous regional elections in 2020 must adhere to health protocols, with many adjustments in each implementation stages, including the dispute resolution on regional head election result in the Constitutional Court," said Anwar conveying that three countries had successfully held elections during the Covid-19 pandemic, namely South Korea, Mongolia, and Sri Lanka.

#### ***Prepare the Latest Constitutional Court Regulation***

The speakers delivered various materials virtually on the second day of Technical Assistance on Procedural Law in Dispute over the Results of Governor, Regent and Mayor Simultaneous Election 2020 for the Constitutional Lawyers Forum organized by the Constitutional Court's (MK) Pancasila and Constitution Education Center on Wednesday, November 4, 2020, online and offline.

Deputy Chief Justice of the Constitutional Court Aswanto and Constitutional Justice Enny Nurbaningsih presented the material "Procedural Law

Deputy Chief Justice of the Constitutional Court Aswanto and Constitutional Justice Enny Nurbaningsih as speakers in the Technical Assistance on Procedural Law in Dispute over the Results of Governor, Regent and Mayor Election 2020 for the Constitutional Lawyers Forum virtually, Wednesday, November 4, at the Constitutional Court Building. Photo: PR/Gani.

on Result Dispute over Governor, Regent and Mayor Simultaneous Election 2020". Aswanto explained that the latest PMK for handling Dispute over the Result of Governor, Regent and Mayor Election 2020 is Constitutional Court Regulation (PMK) No. 6 of 2020. "PMK No. 6 of 2020 which is different from and as the improvement of the previous PMK, hopefully will prevent [you], Ladies and Gentlemen from any technical errors," said Aswanto to the technical assistance participants.

Improvement in PMK No. 6 of 2020, continued Aswanto, includes KPU holding authority to accredit election observers, as regulated in Article 124 of Law No. 10 of 2016 (Regional Head Election Law). Previously, PMK No. 5 of 2020 regulates Bawaslu (Election Supervisory Agency) who holds the authority to accredit election observers. Aswanto also mentioned

the use of Article 158 of the Regional Head Election Law, which in previous experiences, lawyers handling the election result dispute often interpreted a norm according to their position.

Meanwhile, Constitutional Justice Enny Nurbaningsih hopes that the technical assistance participants fully understand the Regional Head Election Law, PMK related to the Constitutional Court Procedure Law both technically and in application to prevent any impediment during the trial of election result dispute, unclear and vague petitions, and so forth. "Regarding election result dispute, the core issue is the decision of KPU and KIP (Independent Election Commission) related to the election vote result determination by the election organizer. That is the main point. This is important because it will then be related to *petitum*, argued by the election participants, in this case the candidate pairs of governor and deputy governor, regent and deputy regent, mayor and deputy mayor. This is what

I said is important. Because in fact the object of election result dispute shall be the KPU or KIP decision," said Enny.

### **History of the Institutional Court**

Head of the Public Relations and KSDN of the Constitutional Court, Fajar Laksono Soeroso, described the historical perspective of the Constitutional Court. "In my view, when talking about the historical perspective of the Constitutional Court, I imply that we can put four historical milestones in their respective positions related to the Constitutional Court position today," said Fajar.

Fajar explained the historical milestone of the Constitutional Court is the major decision in the Marbury vs Madison Case (1803) in the United States. "As historical milestone, for the first time, the idea of a constitutional judicial review which means judicial review is carried out by the court emerges and the touchstone is the Constitution as the highest supreme law

in our nation," said Fajar, who presented material on "The Constitutional Court in the Indonesian State Administration System".

### **Simultaneous Regional Election Stages**

Furthermore, Junior Registrar I of the Constitutional Court Triyono Edy Budhiarto presented the material "Stages and Mechanisms for Result Dispute of Governor, Regent and Mayor Simultaneous Election 2020". "Proceeding Stage of Dispute over the Result of Governor, Regent and Mayor Simultaneous Election 2020 starts with submitting the Petitioners' petition, then completing and correcting the Petitioner's petition. Then, the completeness and revision of the Petitioner's petition will be examined," said Triyono Edy Budhiarto.

Triyono Edy said that the examination result of the completeness and revision of the Petitioner's petition will be announced, followed by recording the Petitioner's petition in e-BRPK



Deputy Chief Justice of the Constitutional Court Aswanto delivered keynote lecture as well as closed the technical assistance for the Constitutional Lawyers Forum virtually, Thursday, November 5, at the Constitutional Court Building. Photo: PR/Gani.

(Constitutional Case Registration Book). Afterwards, submit a copy of the petition to Respondent and Bawaslu. Then, file the petition as Related Party and the trial to be informed to the parties. The next stage, hold preliminary hearing, evidentiary hearing and Justice Consultative Meeting. Then finally, the decision/ruling is pronounced as well as delivery and submission of a copy of the decision/ruling.

As the closing of the second day of the event, Substitute Registrar of the Constitutional Court Syaiful Anwar delivered the material "Techniques and Discussions on Preparation of Petitioner's Petition and Statement of Related Party of Dispute over the Result on Governor, Regent and Mayor Simultaneous Election 2020". "Article 157 paragraph (5) of Regional Head Election Law in conjunction with Article 7 paragraph (2) PMK 5/2020, states that the Petition shall be submitted no later than 3 (three) working days from the announcement of the election vote result determination by Respondent. Last, the petition must contain the petition reason and *petitum*," said Syaiful.

### **Not Calculator Court**

Deputy Chief Justice of the Constitutional Court Aswanto dismissed the opinion that the Constitutional Court (MK) is Calculator Court. Looking at the facts developing in the Constitutional Court related to election dispute

handling, the Court does not refer solely to the figures stated in the evidence presented by litigants, but also examine the figures.

"Maybe there's manipulation. Because manipulation often occurs during regional head election. For example, at TPS (polling station) level, a pair of candidates received 100 votes, then at PPK (District Election Committee) level had 10 votes, then at the regency/city level only 1 vote was left. Constitutional Court is not Calculator Court. Through the trial process, the Constitutional Court will inquire whether the numbers specified in the evidence presented by the litigants are real or manipulated figures," said Aswanto in keynote lecture at the closing of Technical Assistance on Procedural Law in Dispute over the Results of Governor, Regent and Mayor Simultaneous Election 2020 for the Constitutional Lawyers Forum on Thursday, November 5, 2020 afternoon virtually from the 14th floor of the Constitutional Court Building.

Apart from that, continued Aswanto, the Constitutional Court attempted not to become a stamp for the results determined by the election organizers. The said stamp is the formal requirement for filing result dispute as regulated in Article 158 of the Regional Head Election Law, in this case the percentage limit. "If the Court agrees directly with what is stated in the

decision that is the difference in vote acquisition which is then converted into a percentage, that means we become a stamp institution," said Aswanto.

Aswanto said, the Constitutional Court firmly stated that it no longer wanted to be a stamp institution. The Court wishes, intends and endeavors to provide substantive justice. Thus, there are changes related to Article 158 of the Pillkada Law in the trial of election result dispute. "We examine Article 158 of Regional Head Election Law not at the beginning, but at later time. Although we consistently enforce the norms in Article 158 of Regional Head Election Law, the enforcement is not at the beginning but at the end," said Aswanto.

On the last day of the event, Thursday, November 5, 2020, the participants received material "Practices of Preparation of Petitioner's Petition and Statement of Related Party of Dispute over the Result of Governor, Regent and Mayor Simultaneous Election 2020" and "Electronic Case Handling Information System" and "Evaluation of the Result on Preparation of Petitioner's Petition and Statement of Related Party of Dispute over the Result of Governor, Regent and Mayor Simultaneous Election 2020". ■

NANO TRESNA ARFANA/LULU ANJARSARI



Chief Justice of the Constitutional Court Anwar Usman alongside Secretary General of the Constitutional Court M Guntur Hamzah delivered keynote lecture and opened Technical Assistance on Procedural Law in Dispute over the Results of Governor, Regent and Mayor Election 2020 for Indonesian Advocates Association (Peradi), Tuesday, November 10, in the Constitutional Court Building. Photo: PR/Gani.

## TECHNICAL ASSISTANCE FOR PERADI

### *Democratic State Results of Constitutional Paradigm*

Chief Justice of the Constitutional Court (MK) Anwar Usman said a legal democratic state results from the democratic and nomocratic constitutional paradigm. The alignment of these principles balances the concepts of democracy and law. “Law without democracy will result in authoritarianism. Democracy without law will result in anarchy,” he said when delivering the keynote lecture in the opening of Technical Assistance on Procedural Law in Dispute over the Results of Governor, Regent and Mayor Election 2020 on Tuesday, November 10, virtually. The participants are Indonesian Advocates Association (Peradi).

Before 363 participants, the Chief Justice explained that the Amendment to the 1945 Constitution had overarching impacts in the democratic and state administration system of Indonesia. As

a result of the Amendment to the 1945 Constitution, specifically in Article 1 of the 1945 Constitution, MPR (People’s Consultative Assembly), used to be the highest state institution, is now equal to the others. The highest sovereignty is returned to the people, especially in direct presidential elections. The amendment also affected regional head election. Heads of regions used to be elected by DPRD (Regional House of Representatives), but now are elected by the people directly.

“This system then allowed for the direct regional head election, which began in 2005, with various challenges in fulfilling the citizens’ democratic rights,” explained Anwar delivering a lecture alongside Secretary General M. Guntur Hamzah from the Constitutional Court Building and it was attended by the Chairman of Peradi National Executive Board, Otto Hasibuan and the Secretary General of the Peradi National Executive Board, Hermansyah Dulaimi.

Anwar said that even though the Regional Head Election and its case settlement had started in 2005, Regional Head Election 2020 is unusual because of the ongoing Covid-19 pandemic. Anwar recognized that this condition make the state has the obligation to fulfill the people’s democratic right and their right to health according to the constitution mandate. Therefore, the Constitutional Court, as judicial institution mandated with settling election result dispute, continues to strive to prepare itself for the success of this national agenda.

### *Enthusiastic Participants*

Chairman of Peradi National Executive Board Otto Hasibuan in his welcome speech said that despite the quota of 400 participants allotted for Peradi, 48 members of Peradi Branch Executive Board couldn’t attend. Otto said that on the first day the Constitutional Court informed Peradi about the event, the quota was filled one hour afterwards. “The interest and enthusiasm of the participants from Peradi about the event held by the Constitutional Court were extraordinary,”



Constitutional Justice Suhartoyo and Constitutional Justice Daniel Yusmic delivered material at the Technical Assistance on Procedure Law of 2020 Regional Head Election Result Dispute for Peradi virtually, Wednesday, November 11, at the Constitutional Court Building. Photo: PR/Ifa.

Otto said. He revealed that 60,000 lawyers from Sabang to Merauke are currently registered with Peradi.

### **Equip Technical Assistance Participants**

The resource persons delivered various materials virtually on the second day of Technical Assistance on Procedural Law in Dispute over the Results of Governor, Regent and Mayor Election 2020 for Indonesian Advocates Association (Peradi) on Wednesday, November 11, 2020, organized by Pancasila and Constitution Education Center of the Constitutional Court (MK) online and offline.

Constitutional Justice Daniel Yusmic P. Foekh and Constitutional Justice Suhartoyo presented the material "Procedural Law in Dispute over the Results of Governor, Regent and Mayor Simultaneous Election 2020". Daniel said governor, regent and mayor election result dispute was based on the decision issued by KPU (General Election Commission) or KIP (Independent Election Commission)

regarding the election vote results determined by KPU, as the election organizer, KIP at the provincial, regency and city levels. Meanwhile, the party submitting the petition is the regional head candidate pair.

Furthermore, Daniel explained, advocates can represent any parties, either the petitioner, respondent, Bawaslu (Election Supervisory Agency), and related parties. The petitioner, respondent and related parties can be represented by legal counsel or accompanied by special assistance. The special power of attorney, continued Daniel, is made in accordance with the legislation and is signed by the principal and attorney-in-fact. Likewise with a companion certificate.

The petition shall be submitted in 3 working days after the respondent announces the election vote result determination, in writing in the Indonesian language, and signed by the petitioner or the petitioner's attorney-in-fact in 12 copies. The petition must also contain clear description of one of the Constitutional Court's authorities, accompanied by evidence, and the soft copy of petition and a list of evidence in Microsoft Word format be attached. Then, it is submitted directly to the

Registrar's Office of the Constitutional Court or can be filed online. Daniel emphasized that the proceedings will be free of court fees.

Meanwhile, Constitutional Justice Suhartoyo said that filing a case at the Constitutional Court is known as "petition", not "lawsuit" as in civil procedural law practice because it is of the public interest and does not contain contentious interests disputes. The petition was submitted to the Constitutional Court because of the constitutional impairment experienced by the petitioner with the enactment of a statutory norm.

Suhartoyo added that constitutional impairment must be specific and actual or at least a potential which, according to logical reasoning, will certainly occur and must have causal relationship (causal verband) between the said impairment and the enactment of the law filed. In addition, the grant of the petition will possibly cause the constitutional impairment argued to be not or no longer occur.

### **Electronic Petition**

On the third day of Technical Assistance, the Constitutional Court's IT Team namely Mazmur Alexander

Manik and Rudi Kurniawan in their presentation entitled "Utilization of ICT in Handling Governor, Regent, and Mayor Election Result Dispute" introduced the information system for handling cases of Regional Election Result Dispute 2020 designed by the Constitutional Court. Furthermore, Alexander said, various applications made by the Constitutional Court hopefully can be used by the parties when litigating at the Court.

Afterwards, Rudi continued his presentation by inviting Technical Assistance participants to practice directly remotely using several applications made by the Constitutional Court, such as the Simultaneous Regional Head Election Handling Info portal and creating an account on the [simpl.mkri.id](http://simpl.mkri.id) page. Thus, with this direct guide, all participants assuredly understand the maximum use of the features on the Constitutional Court's page to easily submit cases for the upcoming Regional Head Election 2020.

### ***Essence of Election Result Dispute***

In fact, the meaning of winning and losing in regional head elections

is a matter of obtaining votes for candidate pairs determined by the election organizer. This difference in vote acquisition then becomes the case substance in dispute resolution at the Constitutional Court (MK). Therefore, the essence of the regional head election result dispute is the vote. Thus, the Constitutional Court in settling the case of the Simultaneous Regional Head Election Result Dispute (PHP Kada) 2020 through the Constitutional Court Regulation Number 6 of 2020 places an implicit meaning regarding the percentage of votes acquired.

This was conveyed by the Deputy Chief Justice of the Constitutional Court Aswanto at the closing of the Technical Assistance of Procedural Law in Dispute over the Results of Governor, Regent and Mayor Election 2020 for Indonesian Advocates Association (Peradi) on Thursday, November 12, 2020, held virtually by the Pancasila and Constitution Education Center of the Constitutional Court (MK) for 400 participants throughout Indonesia.

Aswanto further conveyed that the Constitutional Court settles the 2020 Election Result Dispute by

adhering to the provisions of Article 158 of the Regional Head Election Law, but not as the main determinant of case settlement, which means the Constitutional Court will further examine to decide the difference in votes determined by the election organizer.

"Thus all case will be adjudicated on the merits of the case, except [those that] has passed the deadline will be decided in an interim decision because it does not fulfill the formal requirements. However, the Court will further investigate if the case is still within the time limit," said Aswanto in the closing ceremony of the Technical Assistant event attended virtually by the Secretary General of Peradi National Executive Board Hermansyah Dulaimi and Plt. Kapusdik (Education Center Acting-Head) of Constitutional Court Imam Margono. ■

SRI PUJIANTI/NUR R



Deputy Chief Justice of the Constitutional Court Aswanto closed virtually the Technical Assistance on Procedure Law of 2020 Regional Head Election Dispute Result for Peradi, Thursday, November 12, in Jakarta. Photo: PR/Ifa.



Chief Justice of the Constitutional Court Anwar Usman and Secretary General of the Constitutional Court M Guntur Hamzah delivered keynote lectures and opened the Socialization of 4 Pillars of the People's Consultative Assembly of the Republic of Indonesia (MPR RI) and the Improvement of Citizens' Constitutional Rights for Muslimat Nahdatul Ulama (NU), Aisyiah, and Islamic Syarikat Women, Tuesday, November 17, at the Constitutional Court Building. Photo: PR/Gani.

## TECHNICAL ASSISTANCE FOR MPR AND ISLAMIC WOMEN ORGANIZATION

### ***Guarantee of Citizens' Constitutional Rights***

Chief Justice of the Constitutional Court Anwar Usman opened and delivered keynote lecture at the Socialization of 4 Pillars of the People's Consultative Assembly of the Republic of Indonesia (MPR RI) and the Improvement of Citizens' Constitutional Rights for Muslimat Nahdatul Ulama (NU), Aisyiah, and Islamic Syarikat Women, on Tuesday, November 17, 2020 night at Pancasila and Constitution Education Center, Cisarua, Bogor, virtually in collaboration between the Constitutional Court and MPR.

In this event, Anwar said that every citizen doing daily activities cannot be separated nor exempted from the

prevailing statutory provisions. In fact, from birth to the last resting place, a person will never be separated from the governing laws. For example, continued Anwar, any birth or death must be recorded at birth certificate or death certificate as regulated in Law Number 24 of 2013 concerning Population Administration. Likewise, the organizational association and its activity are also regulated by the state in Law Number 16 of 2016 concerning Community Organizations.

Anwar believes almost none of the activities or events were untouched and not regulated by law. Legal arrangements in every aspects of human life can be said to be natural. The absence of governing law will certainly cause disorder, because everyone will

put forward his own interests, leading to chaos and vigilantism.

### ***Four Pillars of Citizen's Life***

The second day of the Socialization of the 4 Pillars of the People's Consultative Assembly of the Republic of Indonesia (MPR RI) and the Improvement of Citizens' Constitutional Rights for Muslimat Nahdatul Ulama (NU) and Islamic Syarikat Women organized by the Constitutional Court (MK) at Pancasila and Constitution Education Center, Cisarua on Wednesday, November 18, has various material sessions virtually.

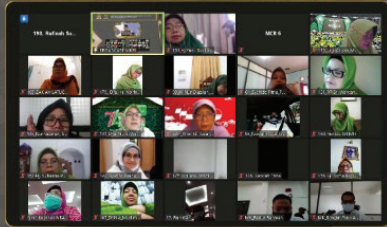
Chief Justice of the Constitutional Court of 2003-2008 Jimly Asshiddiqie talked about Constitution and Constitutionalism. He said that the



**SOSIALISASI 4 PILAR MPR RI DAN PENINGKATAN PEMAHAMAN HAK KONSTITUSIONAL  
WARGA NEGARA BAGI ORGANISASI PEREMPUAN ISLAM**  
Bogor, 17 s.d. 19 November 2020



**PROF. DR. JIMLY ASSHIDDIQIE, S.H., M.H.**  
Narasumber



Jimly Asshiddiqie Chief Justice of the Constitutional Court of 2003-2008 delivered material virtually in the 4 pillars Socialization, Wednesday, November 18, at Pancasila and Constitution Education Center, Cisarua. Photo: PR/Hendy.

socialization is crucial to unify the people's perspective of national and state life in order to provide understanding to the people on citizens' constitutional rights. "Citizens must also understand the state life because constitutionally they implement the principles of state life established by the founding father," he said in front of the participants both offline and online.

**Four Pillars**

On the same occasion, Deputy Chief of MPR, Coordinator for Socialization of 4 Pillars, Ahmad Basarah explained that the 4 pillars of MPR are Pancasila as the foundation, the 1945 Constitution as the constitution and MPR Decree. He said that the Unitary State of the Republic of Indonesia (NKRI) is the form of state while *Bhineka Tunggal Ika* (unity in diversity) is the state's motto. Ahmad further explained that the socialization of the four pillars of national and state life is the socialization of Pancasila as

the state foundation and ideology, the 1945 Constitution of the Republic of Indonesia as the state constitution. NKRI is the final form of state and *Bhineka Tunggal Ika* is the social system for the Indonesian people. He also said that the four pillars of national and state life does not mean that the four pillars are equal, as each pillar has a different level, function and context.

**History of Amendment to the 1945 Constitution**

In the next session, Member of DPR (House of Representatives) Commission XI Agun Gunandjar Sudarsa delivered material on the History of Amendments to the 1945 Constitution of the Republic of Indonesia. Agun explained the amendments is aimed to improve the basic rules regarding state order, people's sovereignty, human rights, power sharing, social welfare, and the existence of the democratic state and law-based state. The changes

were made in a comprehensive manner, making understanding the Constitution difficult.

Agun further explained that before the establishment of the Constitutional Court, the constitutional supremacy was in Article 1 paragraph (2) where the people's sovereignty was fully implemented by MPR. However, MPR was not authorized to review the laws under the Constitution, leading to those laws often conflicting with the Constitution itself.

**Human Rights Guarantee**

The last speaker, Amzulian Rifai, Ombudsman Chairman, in his presentation on Guarantee of Citizens' Constitutional Rights in the Spirit of



Wakil Ketua MK Aswanto menutup kegiatan Sosialisasi 4 Pilar secara virtual, pada Kamis (20/11) di Jakarta. Foto Humas/lfa.

*Bhineka Tunggal Ika* (Unity in Diversity), said human rights in Indonesia are based on the Constitution and several laws. The state has made efforts to guarantee the citizens' rights. In addition, Amzulian explained that there are global and regional mechanisms in human rights protection. In addition, Indonesia has statutory regulations and institutions that provide protection against human rights violations.

### ***The Constitution Guarantees Constitutional Rights***

Deputy Chief Justice of the Constitutional Court Aswanto closed the 4 Pillar Socialization virtually, on Thursday, November 20, in Jakarta. Photo: PR/lfa.

Deputy Chief Justice of the Constitutional Court Aswanto officially

closed the Socialization of 4 Pillars of People's Consultative Assembly of the Republic of Indonesia (MPR RI) and the Improvement of Citizens' Constitutional Rights for Muslimat Nahdatul Ulama (NU) and Islamic Syarikat Women, on Thursday, November 20, 2020 virtually. In his remarks, Aswanto said that the Constitution guarantees the citizens' rights, and the essence of human right is freedom, but freedom has limits. "The state and government will provide what the people want. The state will benefit its citizens. Because the constitution has guaranteed the citizens' rights, certainly the citizens' rights as guaranteed by the constitution must be implemented. The guarantee of constitutional rights is actually human rights transforming into constitutional rights," explained Aswanto.

Aswanto believes the existence of Constitutional Court is to guarantee the citizens' constitutional rights impaired. "Thus, the Constitutional Court will guard any laws that negate the citizens' constitutional rights guaranteed in the Constitution, therefore those who feel their constitutional rights have been violated by the law can submit petition for judicial review to the Constitutional Court," explained Aswanto.

Thus, the nation adequately intends to protect, guarantee and advance the citizens' constitutional rights. In addition, Aswanto also advised the participants that Islamic women's organizations carry out their responsibilities as citizens, saying the state is similar to organization. ■

UTAMI ARGAWATI/LULU ANJARSARI



Constitutional Justice Saldi Isra became resource person at Technical Assistance for Simultaneous Regional Head Election Result Dispute 2020 organized by East Java Bawaslu, on Sunday, November 8, in Jakarta. Photo: PR/Ifa.

## TECHNICAL ASSISTANCE FOR EAST JAVA BAWASLU

### **Constitutional Court Reduces Complexity of Petition Registration**

Constitutional Justice Saldi Isra became Resource Person at Technical Assistance on Procedural Law of Dispute over the Results of Simultaneous Election of Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor in East Java Phase 2. The event entitled "Drafting Written Statement for the Constitutional Court" was organized by the East Java Province Bawaslu (Election Supervisory Agency) on Sunday, November 8, 2020 morning through Zoom Meeting application.

At the event, Saldi said that the Constitutional Court (MK) has made preparations no less than the same made by general election or regional head elections organizers. Saldi said learning from previous election result dispute, the Constitutional Court made several improvements, especially in terms of ongoing pandemic, where the numbers of people at the Constitutional

Court would be limited. "We are preparing so that not many people gather at the Constitutional Court," said Saldi.

Saldi said, to anticipate this issue, the Constitutional Court made improvements or additions to the Constitutional Court Regulation (PMK), such as setting a new standard operating procedure (SOP) for the implementation of the hearings. He said that the Constitutional Court has also been working to reduce the complexity of election result dispute case registration.

In PMK, Bawaslu acts as the party giving statement in election result dispute hearing. "Thus, it is explicitly one of the parties aside from the petitioner, the respondent in this case KPU (General Election Commission), related parties and Bawaslu. The 4 parties are regulated in more details in PMK Number 5 which is then revised into PMK Number 6 of 2020," explained Saldi.

Saldi added that in Indonesia, Bawaslu has constitutional authority to oversee general and regional head elections, so Bawaslu must understand the material to be provided. "It is better not to provide information such as district/city Bawaslu reports to provincial Bawaslu. It has no association with the resolution in the Constitutional Court. So, don't describe that all 19 cities holding regent elections in East Java have held technical assistance on Sundays and Mondays with resource person and so on," he explained.

Saldi said such information is irrelevant. Bawaslu must be able to elaborate on what they note during the process that is related to the result dispute. That is what Bawaslu must prepare better. Saldi added that Bawaslu also must observe any potential evidence of the elected candidate to be submitted to the Constitutional Court. ■

UTAMI ARGAWATI/NUR R



Chief Justice of the Constitutional Court, Anwar Usman, attended the 92nd Youth Pledge Day virtually, on Wednesday, October 28, at the Constitutional Court Building. Photo: PR/Ifa.

## CONSTITUTIONAL COURT IN RELATIONS AND THE CONSTITUTION

Constitutional Court, as state judiciary institution overseeing the implementation of citizens' constitutional rights, is not limited to holding discussions and socializing citizens' constitutional rights. In its 17th year of work, the Constitutional Court continuously actively engage in cooperation with various parties in supporting the performance of the institution.

### The 92nd Youth Pledge Day Commemoration Ceremony

Chief Justice of the Constitutional Court, Anwar Usman, attended the 92nd Youth Pledge Day virtually on Wednesday, October 28, 2020 afternoon in Jakarta. Leaders of high state institutions, ministers of the Advanced Indonesia Cabinet, governors, and the youth generation from all over Indonesia attended the event, including

President Joko Widodo who delivered his remarks.

"The Youth Pledge spirit must continue to burn. In the mainstream of globalization, fierce competition between countries and individuals often occurs. It is not uncommon for the competition to end in efforts to defeat one another, destroy one another. This has become negative energy that is detrimental to all of us," said President Jokowi.

According to President Jokowi, the Youth Pledge actually brings unifying positive energy. Competition and differences do not have to make the Indonesian people forget about common problems, common interests or common goals. Everything can be solved by unifying and working together.

Meanwhile, the Minister of Youth and Sports, Zainudin Amali, said that Youth Pledge Day 2020 commemoration

was held in extraordinary situations and conditions, there was no flag ceremony, no gathering activity such as the Youth Pledge Day Commemoration in previous years. "This year, the Indonesian people are facing a tough test with the Covid-19 pandemic. The pandemic has widely impacted all aspects of life, including young people in Indonesia. Therefore, it takes the shared spirit to revive Indonesia in the eyes of the world," said Zainudin.

Meanwhile, the President Director of LPP TVRI Iman Brotoseno said, "In line with the Youth Pledge Commemoration initiated on October 28, 1928, the inauguration moment of TVRI West Papua Station became historical moment carved as concrete fulfillment of the mandate of existing Laws and regulations. The spirit of One Country, One Nation and One Language is our passion in working. ■

NANO TRESNA ARFANA/LULU ANJARSARI



Ambassador of the Republic of Kazakhstan to Indonesia Daniyar Sarekenov pinning the Medal in commemoration of the 25th Anniversary of Kazakhstan Constitution Referendum to Chief Justice of the Constitutional Court Anwar Usman, Tuesday, October 27, in the Delegation Room, 15th Floor of the Constitutional Court Building. Photo PR/Gani.

## 25 YEARS OF THE KAZAKHSTAN CONSTITUTION REFERENDUM

Chief Justice of the Constitutional Court (MK) Anwar Usman alongside Constitutional Justice Arief Hidayat received a Medal in commemoration of the 25th Anniversary of Kazakhstan Constitution Referendum, on Tuesday, October 27, 2020 in the Delegation Room of the Constitutional Court Building. The medal was handed by the Ambassador of the Republic of Kazakhstan to Indonesia Daniyar Sarekenov, as a token of gratitude from the President of the Republic of Kazakhstan for continuous

support from the Constitutional Court of the Republic of Indonesia to the Constitutional Council of the Republic of Kazakhstan.

During the event, Anwar expressed his gratitude for the commemorative medals, cooperation and hospitality during the AACC event in August 2020. "We would also like to express our gratitude for the support of the Kazakhstan Constitutional Council. Actually we intended to attend the commemoration. But yesterday we attended virtually," he said.

Anwar praised the event saying it was very good and memorable regardless of being held virtually. He hopes that next year he can attend the live event in Kazakhstan. Kazakhstan Constitutional Council is the President of AACC since 2019. In August 2020, the Council held the 4th AACC Congress attended virtually by member countries including Indonesia. ■

UTAMI ARGAWATI/LULU ANJARSARI



Chief Justice of the Constitutional Court Anwar Usman speaking at Technical Working Meeting of the Legal Division of Indonesian Police, on Thursday, November 5, in Jakarta. Photo: PR/lfa.

## JUDICIAL POWER ENFORCE LAW AND JUSTICE

Chief Justice of the Constitutional Court (MK) Anwar Usman became keynote speaker at Technical Working Meeting of the Legal Division of Indonesian Police (Rakernis Divkum Polri) held on Thursday, November 5, 2020 in Jakarta. In this activity, Anwar said the judicial power was an independent power in administering the judiciary to enforce law and justice. Before the 1945 Constitution Amendment, the phrase "enforcing law and justice" was not included in the 1945 Constitution. "Thus

the point is that judicial power is not only enforcing the law but also justice," said Anwar in front of the meeting participants and other resource persons.

Anwar quoted Article 24 Paragraph (2) of the 1945 Constitution which states, "Judicial power is exercised by Supreme Court and judicial bodies under it in the general court, religious court, military court, state administrative court, and by an Constitutional Court. This article is the antecedent to the establishment of an institution called the Constitutional Court," said Anwar.

Furthermore, Anwar emphasized that based on the Article 24 Paragraph (2) of the 1945 Constitution, the Constitutional Court is one of the actors of judicial power apart from the Supreme Court. Thus, the Constitutional Court is a judicial institution, as a branch of judicial power, which adjudicates certain cases under its authority based on the provisions of the 1945 Constitution. ■

UTAMI ARGAWATI/NUR R



Deputy Chief Justice of the Constitutional Court Aswanto delivered speech at the closing of Focus Group Discussion (FGD) entitled "Urgency of Constitutional Complain for the Promotion and Protection of Constitutional Rights of Citizens in Indonesia", Tuesday, November 17, 2020 in Jakarta. Photo: PR/lfa.

## THE IMPORTANCE OF CONSTITUTIONAL COMPLAINTS FOR THE PROMOTION OF HUMAN RIGHTS

Talking about times, human rights (HAM) transforming into constitutional rights is one of the reasons for continuous changes in the long history of the constitution in Indonesia. Discussions on constitutional complaints in philosophical perspective, comparisons with other countries, regulations, and institutions, will provide enrichment that constitutional complaints are a means in realizing the fulfillment and promotion of human rights. Deputy Chief Justice of the Constitutional Court Aswanto said the statement in the closing of Focus Group Discussion (FGD) entitled "Urgency of Constitutional Complain for the Promotion and

Protection of Constitutional Rights of Citizens in Indonesia", on Tuesday, November 17, 2020 afternoon.

Aswanto stated that as legal state from the constitution historical perspective, from the formation of the 1945 Constitution and then amended into 1949 RIS Constitution, the 1950 Provisional Constitution, and returned to the 1945 Constitution, these changes aimed for, one of which, the constitution could sufficiently provide protection for the human rights fulfillment. He said that the constitution drafters originally intended the constitution to ultimately guarantee the human rights. However, Aswanto emphasized that this should not only be guaranteed but also be

enforced resulting in the fulfillment and promotion of the said human rights.

It is often stated that the Constitutional Court was born as one of the biological children of reform, with duties and authorities set in Article 24C of the 1945 Constitution. In the context of fulfilling and advancing such rights, the practice of judicial review petition at the Constitutional Court is actually classified as citizens' constitutional complaints. However, the rules that guarantee the Constitutional Court authorized to adjudicate, examine and decide need to be discussed further. Therefore, discussions on various perspectives about the importance of this constitutional complaint hopefully

will make Indonesia, as Germany, Turkey and South Korea, can realize this protection more concretely and clearly.

"Thus the Constitutional Court is now ready to carry out the law mandate. If later the Court receives mandate as its authority in Article 24C of the 1945 Constitution and other additional tasks such as the regional election result dispute settlement, the Constitutional Court is ready and impossibly refuse the assigned task," said Aswanto.

At the end of his remarks, Aswanto expressed his appreciation for the speakers and responders for the willingness to attend the FGD held by the Constitutional Court. Aswanto hopes that this FGD will build the same understanding and perception of many parties about the importance of constitutional complaint authorities in order to maximize protection, fulfillment and promotion of human rights in Indonesia.

### **Ready to Adopt the Constitutional Complaint Authority**

The Constitutional Court will make plans and hold discussion and meetings that are increasingly focused to find common ground regarding the constitutional complaint authority, so that it will be ready if it is instructed to exercise such authority, said the Secretary General of the Constitutional Court M. Guntur Hamzah in a Focus Group Discussion (FGD) entitled "Urgency of Constitutional Complaint for the Promotion and Protection of Constitutional Rights of Citizens in Indonesia", Tuesday, November 17, 2020.

Guntur, the speaker at FGD session 4 with the sub-theme "Constitutional Complaint (Institutional Perspective)" further stated, this constitutional complaint authority can be adopted in several ways, namely through amendments to the 1945 Constitution, revision of the Constitutional Court Law, and constitution interpretation

by the Constitutional Court through Constitutional Court Regulation.

Guntur said that the Constitutional Court would not find it a burden because in order to handle high number of cases lodged in the Court, it has prepared to accommodate it with or without a change of its Organizational Structure and Work Procedure (SOTK).

### **Adequate and qualified human resources**

With nine constitutional justices, any change of SOTK would need the support from the Registrar's Office and Secretariat General. Therefore, the Court would prepare enough number of qualified, experienced Substitute Registrars and Researchers. They would research and review the implementation of constitutional complaints, from the beginning to the constitutional complaint case reaches the Constitutional Justice .

"By making changes to the supporting capacity in handling constitutional complaints cases, we are not worried of case load submitted to the Court," said Guntur in discussion moderated by the Constitutional Court Researcher Bisariyadi.

Guntur explained that no change in SOTK would lead the Court to define the scope of this authority in its procedural law by issuing Constitutional Court Regulation (PMK), containing procedural law which technically can filter cases classified as constitutional complaints, such as applying more rigorous requirements for the Petitioner's legal standing.

Guntur continued that the Constitutional Court's Secretariat General would utilize information communication and technology (ICT), to encourage the filing of online petitions and online publication of verdict whenever possible. This hopefully can facilitate swift and effective handling of constitutional complaints. "the use of ICT in the Court would cut costs and time, minimize KKN (corruption, collusion, and nepotism), and realize swift performance," explained Guntur.

### **High Number of Case**

The next speaker at FGD 4th session, Member of Commission III of DPR RI (Indonesian House of Representatives), Habiburakhman, was one of the council members proposing the authority to rule on constitutional complaint for the Constitutional Court. He said that Article 24 of the 1945 Constitution expressly stated that the constitutional basis of this authority can be mandated concretely in Constitutional Court Law and Constitutional Court Regulation.

Regarding the concern of the high number of potential cases, the parties who can litigate to the Court can be screened by the provisions on the category of the citizens' constitutional rights violated by the policies/actions of state administrators. "Actually, this constitutional complaint is related to individual and group problems. Categorization will reduce the high number of cases," explained Habiburakhman.

In addition, Habiburakhman hoped that the Constitutional Court would add 1 (one) specific chapter in its regulation regarding the authority to rule on constitutional complaint. He is optimistic that this foundation will facilitate the discussion in the upcoming prolegnas (national legislation program).

"Because factions welcome the inclusion of constitutional complaint in the Constitutional Court Law. The important thing is that the concept is clear. This FGD will gather perspectives on constitutional complaint being included in the Constitutional Court Law," said Habiburakhman.

The virtual FGD discussed four perspectives on constitutional complaint. First, constitutional complaint in philosophical perspective. Second, constitutional complaint in comparison with other countries. Third, constitutional complaint in regulatory perspective. Fourth, constitutional complaint in organizational perspective. ■

SRI PUJANTI/NUR R



Ketua MK Anwar Usman bersama Sekjen MK M Guntur Hamzah membuka kegiatan Rapat Koordinasi Dekan dan Pengelola Vicon 42 Perguruan Tinggi se-Indonesia Tahun 2020, Rabu (18/11) Chief Justice of the Constitutional Court Anwar Usman alongside the Secretary General of the Constitutional Court M Guntur Hamzah opened the Coordination Meeting of Deans and Managers of Video conference facilities in 42 Universities throughout Indonesia, Wednesday, November 18, at the Constitutional Court Building. Photo: PR/Ifa.

## UNIVERSITIES STRATEGIC PARTNERS TO INSTILL THE CONSTITUTION

Chief Justice of the Constitutional Court (MK) Anwar Usman said, since the establishment of the Constitutional Court on August 13, 2003, the collaboration between the Registrar's Office and the Secretariat General of the Constitutional Court and universities has been well established and implemented. This collaboration was originally the Court's effort to instill the Constitution after the amendments to the 1945 Constitution, said Anwar when delivering keynote speech before opening the event "Coordination Meeting of Deans and Managers of Video conference facilities in 42 Universities throughout Indonesia 2020" virtually on Wednesday, November 18, 2020.

"The selection of universities as strategic partners to instill the Constitution is inevitable. Amendments to the 1945 Constitution were the fruit of labor of universities, its commitment to the administration system, which at the time was seen to have needed a reform. It is appropriate that the universities, which in fact is an agent of change, becomes strategic partners to the Constitutional Court," said Anwar.

### **Facilitate Access to Justice**

Meanwhile, Deputy Chief Justice of the Constitutional Court Aswanto stated that the Constitutional Court was a greenhouse. The public will know whatever happens in it. Nothing is hidden there. "Through IT support, we hope public participation, especially academics, in improving the institutions, will be improved. We are not constrained by a great distance. We have started video conferencing from Aceh to Merauke. With technology, information on the administration of our country can be accessed speedily," said Aswanto in the "Coordination Meeting of Deans and Managers of Video conference facilities in 42 Universities throughout Indonesia 2020".

Aswanto added that the Constitutional Court constantly strived to facilitate access to justice in its duties and functions, in accordance with its mission to be modern judiciary. Therefore, it prepared various applications, for example to facilitate online petitions of judicial review and election disputes.

During the Covid-19 pandemic, the Constitutional Court has implemented

online judicial review which has received positive respond from the public. The managers of video conference facilities hopefully would offer suggestions to improve the institution. "We hope that in such situation, the manager of video conference facilities as our partners can support us optimally in protecting the people's constitutional rights through modern and reliable judiciary," explained Aswanto.

### **Transparency**

The Secretary General of the Constitutional Court M Guntur Hamzah conveyed the importance of transparency in an institution, including the Constitutional Court. Guntur, quoting Jeremy Bentham, a German philosopher, said that where there is no publicity, there is no justice. Publicity is the very soul of justice.

"If we want to be modern, this philosophy must be upheld by every staffs of the Constitutional Court in order to realize transparent judiciary," said Guntur as a resource person in the "Coordination Meeting of Deans and Managers of Video conference facilities 2020".

Guntur said, transparency in judiciary is inevitable. Facing the latest developments, an expert named Amelia Mary Earhart said, "The most effective way to do it, is to do it". This means that if there is something needs to be done, do it well and that very time. ■

NANO TRESNA ARFANA/NUR R.



Secretary General of the Constitutional Court, M. Guntur Hamzah, alongside Head of Public Relations and Domestic Cooperation, Fajar Laksono, and Head of Foreign Cooperation Sub-division, Immanuel Hutasoit, speaking at Max Panck webinar, Monday, November 9, at the Constitutional Court Building. Photo: PR/Gani.

## Maintain Judicial Independence, Need Proof

**TO** the Constitutional Court of the Republic of Indonesia (MKRI), independence is imperative in every case in producing virtuous ruling based on the just law. The judiciary shows independence by freeing itself from interference of any parties, including public opinion. Thus, the public trust is undeniably the main pillar and inseparable from MKRI credibility. To maintain its independence, the Constitutional Court does need rhetoric but real actions. This was stated by Secretary General of the Constitutional Court M. Guntur Hamzah when opening

the seminar held by Max Planck Foundation (MPF) and the Maldives Supreme Court virtually on Monday, November 9, 2020.

At the seminar on “Public Relation Strategy to Maintain and Ensure the Independence of the Constitutional Court”, Guntur said that transparency is a measured and systematic effort in maintaining the independence of the judiciary. The Court’s independence is strongly related to the public relations function by the Court’s Public Relations and Protocol Bureau, whose main duty is to collect and provide information to meet public information needs; deliver accurate information to the public in timely manner and to manage and work with the press to show the Court’s image and credibility.

In his presentation entitled “Practice and Experience of the Constitutional Court of the Republic of Indonesia”, Guntur said, in the era of democracy, transparency and independence, judicial institutions are required to constantly maintain the transparency. The Constitutional Court realizes that the transparency is also part of fulfilling the public demands and expectations for the right to information. “Therefore, the Constitutional Court believes that transparency is not only an obligation, but also a need,” explained Guntur alongside the Head of Public Relations and Domestic Cooperation, Fajar Laksono and Head of Foreign Cooperation Subdivision, Immanuel Hutasoit from The Constitutional Court Building. (Sri Pujianti/Lulu Anjarsari)

## Secretary General of the Constitutional Court Attends BSSN FGD

**SECRETARY** General of the Constitutional Court (MK) M. Guntur Hamzah attended the 2020 Government Sector Focus Group Discussion (FGD) held by the National Cyber and Encryption Agency (BSSN) on Monday, November 9, 2020 morning. The event took place for 5 days, November 9-13, 2020, virtually.

This FGD, entitled "Synergy of Government Sector Information Security Readiness to Face the Era of Digital Transformation and Achieve the Maturity Level of National Cyber Security" is intended to improve coordination and communication between BSSN and all stakeholders in the Government Sector.



In this event, BSSN Chief Secretary Syahrul Mubarak said that human beings are adaptive to their surroundings, and this created the human habits leading to diverse customs and cultures. In the process, continued Syahrul, humans needed leaders which brought about various types of government. Religions then came about, their values used to achieve harmony and synergy among

humans as well as between humans and their environments and their creator. He believes these values develop and influence what we have today, including advances in science and technology. "Thanks to advances in technology, information and communication, now we are in a cyberspace," he said. (Utami Argawati/Nur R.

## Constitutional Court Commemorates National Heroes Day

**THE** National Heroes Day commemoration was held by the Constitutional Court (MK) on Tuesday, November 10, 2020 morning in the front yard of the Constitutional Court Building amid the Covid-19 pandemic, attended by officials and staff members, both offline and online.

"Let us give thanks to Allah SWT, for His abundant grace, today throughout the country and representatives of the

Republic of Indonesia overseas can solemnly hold flag ceremonies and moment of silence simultaneously for 60 seconds to commemorate National Heroes Day November 10, 2020, amid the Covid pandemic, regardless of the limited number of participants and health protocols," said the Head of Legal and Registrar Administrative Bureau of the Constitutional Court Tatang Garjito leading the ceremony.

Tatang said the public should not only remember the Heroes Day on November 10, but to all the time remember the heroes' fight and sacrifice risking their lives to defend the sovereignty of the Unitary State of

the Republic of Indonesia, as the theme of the 2020 National Heroes Day "My Heroes All Time".

"What the heroes did hopefully can inspire and motivate all of us to continue their fight. In the past we fought by taking up arms, now we are fighting against various national issues such as poverty, natural disasters, drugs, radical ideologies, and against the Covid-19 pandemic currently engulfing around the world," explained Tatang.

Regardless of the Covid-19 pandemic, said Tatang, the Commemoration of National Heroes Day 2020 can take place solemnly without losing its meaning. It can even provide additional energy to arouse awareness of all elements of the nation to continue to unite, prioritizing national unity and integrity. Heroic values such as belief in God Almighty, willing to sacrifice, never giving up, helpfulness, mutual assistance need to be continuously maintained and nurtured so that they can grow in the heart and soul of every Indonesian. (Nano Tresna Arfana / Lulu Anjarsari)





Staff members of the Constitutional Court's (MK) Public Relation Bureau, Rizki Kurnia Chesario reported on her study before the Secretary General of the Constitutional Court M. Guntur Hamzah and several staff members, Thursday, November 12, at the Constitutional Court Building. Photo: PR/Gani.

## Non-Intervention Foreign Policy

**STAFF** member of Constitutional Court's (MK) Public Relation Bureau, Rizki Kurnia Chesario, who recently completed her postgraduate education at the University of Glasgow, England, reported on her study before the Secretary General of the Constitutional Court M. Guntur Hamzah and several staff members on Thursday, November 12, 2020, afternoon.

Rizki reported that she had written a thesis entitled Indonesia's foreign policy in the Rohingya case in Myanmar, of which background is regarding Indonesia's involvement in

the conflict that occurred in Myanmar. She believes Indonesia took a lenient approach to the Myanmar government in the Rohingya case. Rizki further explained that many advised to not turn Indonesia's approach as Islam-Buddhism conflict. However, many also believe that Indonesian government received pressure for seemingly being indifferent to Muslim groups.

However, according to Rizki, the lenient approach has weaknesses because it relies on the good faith of the Myanmar government to accept ethnic Rohingya as part of the country. In addition, the Myanmar Government is also very secretive in the issue of the Rohingya ethnicity. Myanmar always voiced its rejection of proposals on the issue discussion in various international forums.

Rizki also shared her experiences studying in Glasgow. She felt surprised when she had to read dozens of papers before entering class. In addition, different language accents also had caused some difficulties. However, international journals can be accessed for free. In writing the paper, the emphasis is on showing critical thinking and her stance in a certain issue. Regarding the question of what Indonesia could do through the Association of Asian Constitutional Court and Equivalent Institution (AACC), Rizki said that the Constitutional Court of the Republic of Indonesia as the permanent secretariat of AACC could start a discussion about the issue in a tactful way. (Utami Argawati/Lulu Anjarsari)

## Decision Implementation is important for the Constitutional Court

**SECRETARY** General of the Constitutional Court M. Guntur Hamzah spoke at Focus Group Discussion (FGD) entitled "Monitoring and Evaluation of the Implementation of the Constitutional Court Decisions", on Saturday, November 14, 2020 afternoon. The event taking place for 3 days, Saturday-Monday, November 14-16, 2020 was organized by Surakarta Public University (UNS) in collaboration with the Constitutional Court, Ministry of Law and Human Rights and Ministry of National Development Planning of the Republic of Indonesia / National Development Planning Agency (Bappenas).

In the event, Guntur conveyed that the Constitutional Court's decision is final, binding, and *erga omnes* (applies to all). Therefore, the implementation of the Constitutional Court decision



is the concern of all parties. The Constitution expressly states that sovereignty is vested in the people and is implemented according to the 1945 Constitution. "This means that all state activities, including judicial, such as the Constitutional Court decisions should be carried out with enthusiasm and in constitutional supremacy context," said Guntur.

Guntur added that enforcing the constitution is a collective effort. In this context, the existence of the Constitutional Court must be viewed from how the Constitutional Court

and all citizens or society implement the Court's decision. The FGD entitled "Monitoring and Evaluation of the Implementation of the Constitutional Court Decisions" has been carried out several times. The FGD formulated the monitoring indicators or criteria for implementing the Constitutional Court decisions. Guntur hoped that the FGD can provide perspective on monitoring and evaluation issue, especially the discussion of various issues related to the Constitutional Court decision needed to know. (Utami Argawati/Nur R.)

## Contribution of Judiciary amid Pandemic

**DESPITE** of the pandemic, the judiciary cannot cease its services to citizens. The Constitutional Court (MK), as a constitutional judicial institution, should proactively enforce law and justice. Using technology in its trial increasingly becomes the option to optimally provide its services for citizens. By virtual trials, the judiciary continues to strive to contribute in maintaining the constitution and enforcing the justice.

That was conveyed by the Secretary General of the Constitutional Court M. Guntur Hamzah in the National Seminar and Call for Paper held by the Institute for Research and Community Development (LPPM), University of Lampung on Thursday, November 19, 2020 virtually.

In this event "Constitutionalism Amid the Pandemic", Guntur said that the pandemic undeniably has created new challenges to state governance. Many countries have taken emergency law measures to immediately overcome emergency situations. In this case, continued Guntur, it can possibly deviate from constitutional provisions, such as

establishing laws that limit the rights of citizens to travel, to gather in large numbers, and others. This also does not rule out the potential problems arising from state management practices that shift from democratic values.

Before 135 participants who attended virtually, Guntur also reviewed the judiciary role in maintaining the constitution, constitutionalism and enforcing justice which are the essence of maintaining constitutional democracy. The judiciary monitors the state power by ensuring the checks and balances run effectively. The judiciary interacts with the legislative and executive bodies while maximizing the duties of each institution. Quoting an expert opinion, Guntur stated that the judiciary is the capital of the legal empire as well as the referee who protects the citizens' rights. "So the judiciary role in many countries has received great demands to enforce justice during this pandemic," said Guntur from the Constitutional Court Building, Jakarta in the event attended by the Dean of the Faculty of Law, University of Lampung M. Faqih and several other presenters from leading universities in Indonesia. (Sri Pujianti/Lulu Anjarsari)



## Prospective Petitioners Challenging Job Creation Law Visit the Court

**AFTER** voicing their aspirations related to the Job Creation Law, workers represented by Confederation of Indonesian Labor Unions (KSPI), Confederation of All-Indonesia Labor Unions (KSPSI), and National Welfare Movement (Gekanas) came to the Constitutional Court on Monday, November 2, 2020 afternoon. On this occasion, KSPI President, Andi Gani Nena Wea and KSPI President, Said Iqbal and their entourage were welcomed by Secretary General of the Constitutional Court M. Guntur Hamzah, Junior Registrar I Triyono Edy Budhiarto, Head of Public Relations and Domestic Cooperation Fajar Laksono, Researcher of the Court Pan M. Faiz and officials from the Jakarta Military Command, Major General TNI Dudung Abdurachman, as well as Bareskrim (National Police's Criminal Investigation Department) officials.



Said Iqbal conveyed that they came to consult the Court regarding the judicial review petition they intended to file. On this occasion, Said said that they have not filed the petition because the norms to be challenged have not yet received a statute number. Therefore, they came to the Constitutional Court to express their stance on the protests on October 6-8, 2020. In this statement, he said they will fight for their constitutional rights through the constitutional court, which they believed to be the bastion of justice for the Indonesian people.

Secretary General of the Constitutional Court M. Guntur Hamzah

welcomed the workers' efforts in expressing their aspirations peacefully, orderly, and without violence. The Constitutional Court welcomes every citizen visiting the Constitutional Court to convey their aspirations. "As guests, [you] colleagues will be welcomed with open arms and hearts. This peaceful, orderly expression can be used as model on how to express aspirations properly and in accordance with the constitution," said Guntur. (Sri Pujianti/Lulu Anjarsari)

## Labor Union Register the Petition

**THE** Job Creation Law enactment received reactions from a number of labor union organizations. They filed

judicial review petition on Job Creation Law to the Constitutional Court. The petitioners include Confederation of All-Indonesian Labor Unions (KSPSI) and Confederation of Indonesian Labor Unions (KSPI). According to the Court's website, the petition was received

at the Court's Registrar's Office on Monday, November 2, 2020 at 22:45 WIB.

In their *petitum* the petitioners asked the Constitutional Court to declare "a semicolon punctuation mark (;)" and the word "or" after the phrase "private job training agencies" in the provisions of Article 13 paragraph (1) letter b contained in Article 81 number 1 of the Job Creation Law, and the phrase "...and the company job training agencies as referred to in paragraph (1) letter c" ... as referred to in Article 13 paragraph (4) contained in Article 81 number 1 of the Job Creation Law, to be contradictory with the constitution. (Ilham WM./ Nur R.)



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## Understand Your Constitutional Rights

