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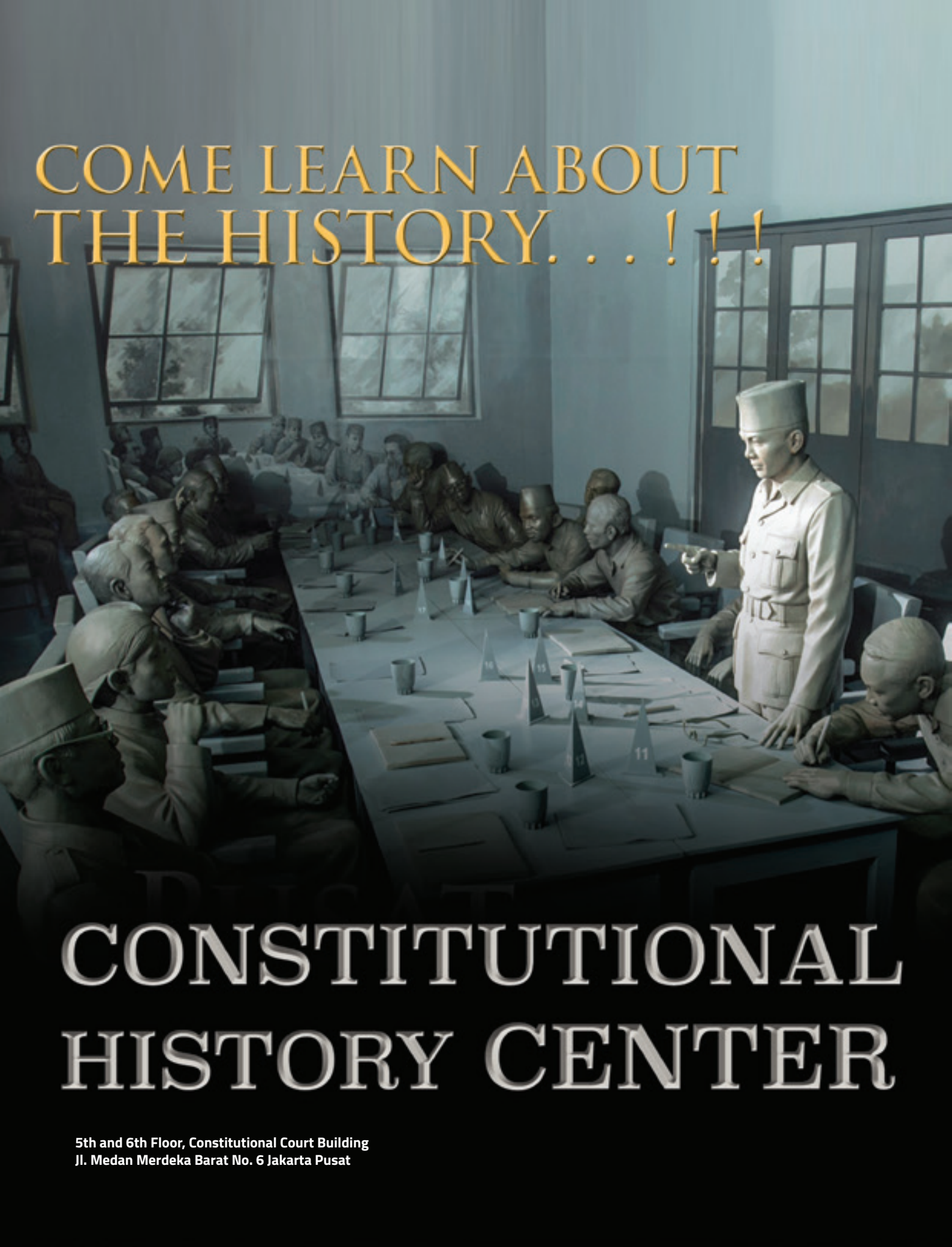
# KONSTITUSI

## Questioning the Law of Corruption Eradication Commission's Constitutionality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# KONSTITUSI

Number 160 ▪ June 2020

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# Editorial Greetings

The Constitutional Magazine released in June 2020 provides a variety of interesting information through distinctive rubrics. The news that is in our spotlight is the development of the review of Law Number 19 of 2019 concerning the Corruption Eradication Commission (KPK Law) for Cases Number 62, 70, 71, 73, 59, 77, 79 / PUU-XVII / 2019. Although it has not been decided yet, the review of this law contains various interesting and important aspects for the public. Therefore, the editorial team determined this news as the Main Report.

Petitioners for reviewing the KPK Law come from various professions. There are advocates who are of the opinion that the process of ratifying the KPK Law amendments is not in accordance with the applicable laws and regulations. Because at the plenary session the number of People's Representative Council members who attended was 80, at least less than half of the total number of People's Representative Council members. Changes to the KPK Law were carried out in secret and discussed in People's Representative Council meetings in a relatively short period of time. There was also a Petitioner from law faculty students who questioned the existence of the Commission of corruption Eradication Supervisory Board as a paradox which actually weakens the eradication of corruption. In addition, there were Petitioners who questioned the requirements to become Commission of corruption Eradication Investigators in order to provide proportional standardization for the general public without limiting certain professions, which according to the Petitioner were very discriminatory.

The latest trial for the review of the KPK Law on June 24, 2020, featured Petitioners' Experts. Constitutional law expert, Aan Eko Widiarto said that a law in its formation must follow several stages, namely planning, drafting, deliberating, ratifying and enacting. However, Aan thinks that the KPK Law has an oddity, namely the first enactment, then the ratification which lies in the closing section.

Meanwhile, the former Chief Justice of the Supreme Court, Bagir Manan, said that the new KPK Law was the result of a joint agreement between the People's Representative Council and the President. However, according to Petitioners' records, the approval of the People's Representative Council and the President did not meet the quorum because at least 50 percent were not attended, plus one People's Representative Council member. If this proves to be true, the ratification of the Commission of corruption Eradication Bill into law will not only be legally flawed but also invalid.

How will the final trial of Law Number 19 Year 2019 end? We are waiting for the verdict, which will be discussed in more depth at the Judges Consultative Meeting (RPH) at the Constitutional Court.


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# TABLE OF CONTENTS

# THE ETERNAL CHALLENGE AGAINTS CORRUPTION

Eradicating corruption is often considered a "mission imposible". Most are not very optimistic. No matter how big a stance is issued, it will be difficult to reduce corruption to its lowest point. Moreover, corruption has long been said to be a culture. In fact, including corruption is part of the culture is not very appropriate. This is because culture is related to the processing of tastes, tastes and intentions which have no negative relationship and meaning. Regarding corruption as a culture, said Mahfud MD, apathy would overshadow every effort to fight it. Therefore, corruption is not a national culture so optimism always goes hand in hand.

The fight against corruption can be achieved. The success story of Hong Kong in eradicating corruption in 1974 is an example. This happened after the Hong Kong Independent Commission Against Corruption (ICAC) was formed. Apparently Hong Kong ICAC inspired the world and returned optimism to win the war. Within three years, the ICAC successfully convicted 247 government officials, including 143 police officers. Naturally, the Hong Kong ICAC has become the 'mecca' for many countries, including Indonesia.

There are 5 things behind the Hong Kong success story. First, ICAC is an independent institution and is directly responsible to the highest position in Hong Kong. It ensures the ICAC is free from intervention and performs functions without suspicion and fear. Second, strong financial support for the work of ICAC. According to former ICAC Commissioner Bertrand de Speville, the ICAC experience requires 0.5 percent of the state budget for the fight against corruption. That said, the ICAC is the corruption eradication commission with the largest budget in the world. Third, the ICAC was given extraordinary powers to carry out investigations. Not only can they investigate criminal acts of corruption committed in state and private institutions, but all criminal acts related to corruption. However, there is a system of checks and balances to prevent the abuse of that great power. Fourth, professionalism. There are no less than 120 people who work by completing special training first. ICAC also has a number of experts related to witness protection, technology forensics, and financial investigations who are trained from the FBI National Academy. Fifth, institutions are multipurpose, so it is not only about prosecution, but also focuses on prevention and anti-corruption education so that the public can participate in fighting corruption.


Apart from these five factors, there are other things that are no less important, namely public support and inter-institutional relations which the ICAC is also seriously building. This latter factor is an important key. Eradicating corruption by ignoring ethical aspects between state institutions is counterproductive for every step and policy taken. Corruption is not just a matter for anti-racial organizations. In line with the components of other key state institutions, including the public is needed. With the executive and legislative bodies, even with the judiciary (not in the sense of intervention towards independence), a common vision of anti-corruption and solidarity is absolutely necessary. In fact, this has become a serious problem in the eradication of corruption in this country which has been spearheaded by the Corruption Eradication Commission (KPK).

Corruption eradication has become less than optimal. Yes, a number of corruption cases, both tuna and bigfish, have been successfully uncovered. The perpetrators were arrested, tried, and sent to prison. Popular support has also flowed through almost all of the Commission of corruption Eradication's steps. Unfortunately, in fact this is not enough to reduce corruption. In fact, corruption is increasingly rampant and massive. The practice of corruption in the power structure does not appear to be decreasing, instead it tends to increase in quantity. Sending the perpetrators of corruption to jail, apparently, has not had a „deterrent" effect. Today a corruption case was revealed, in the following days other cases were followed.

Facing corruption, it seems that the rhythm is not yet united. It is suspected that the aspect of building relations between state institutions has paid less attention. Fellow state institutions have not yet had one voice, each one siding with their point of view. It seems that fellow state institutions have not yet established a stable and optimal configuration of checks and balances in eradicating corruption. Often heard, the Commission of corruption Eradication's authority is considered too broad and strong, so that it has become the target of criticism. It is undeniable that there are strong nuances of weakness.

Through various routes, criticisms for improvement or steps to delegitimize the Commission of corruption Eradication are alternately or simultaneously displayed. Both of these can take the same route, including through legislation, judicial review, or other means. As long as it is in accordance with the corridors of law and the constitution, there is no problem. Goodness-oriented criticism should not be challenged. Perceiving or judging criticism as always an attempt to weaken it needs to be avoided. Meanwhile, any intention to weaken must be dealt with appropriately due to the fact that it exists. This is generally done by parties who have benefited from a corrupt system. This phenomenon is known as "corruptors fight back".

It needs to be objectively separated between criticism and attenuation. That is the challenge throughout the efforts to eradicate corruption. Therefore, to conquer the challenges in every episode of eradicating corruption, it requires collaboration of all components of the nation, no matter how difficult it is. So, building cooperative relations between state institutions needs to be put forward in eradicating corruption. This is to be able to carve out a success story, at least like the Hong Kong ICAC Hong Kong, among state institutions, there should be no mode of negating or leaving each other. It is realized that this is not an easy and simple thing. Greetings of the Constitution!

# WHEN THE CONSTITUTIONALITY OF THE REVISED CORRUPTION ERADICATION COMMISSION (KPK) LAW IS QUESTIONED

**"The revision of the law (the KPK Law) is an initiative of the People's Representative Council, not from the Government. However, I do see that the Commission of corruption Eradication needs to be monitored."**

(President Joko Widodo in an interview with BBC News Indonesia on February 21, 2020)

**Perhaps, we all remember the big demonstration of students at the end of September 2019 in front of the House of Representative Building, Jakarta. One of the combined triggers for students, workers and students to take to the streets was the discussion regarding the revision of Law Number 30 of 2020 concerning the Corruption Eradication Commission (KPK Law). The plan to revise the law that regulates anti-corruption institutions is considered to actually hinder the eradication of corruption.**

Not only that, the controversy escalated when the People's Representative Council passed the revision of the KPK Law into law on September 17, 2019. Even though the People's Representative Council only took the initiative to propose a revision of the KPK Law on Thursday, September 5, 2019 night. This means that the People's Representative Council only takes 12 days to pass the KPK Law.

The controversy also resulted in the revision of the KPK Law being tested. Even though they do not have numbers, a number of students from various universities submitted requests for judicial review of the KPK Law on September 24, or exactly a week after the law was passed. The case was registered with the Court Registrar's Office with Number 57/PUU-XVIII/2020, although in the end the case was declared unacceptable in the decision read out on November 28, 2019. This was due to the wrong object of the petition because the Petitioners had incorrectly included the law being tested. In their posita and petitum, the Petitioners tested Law Number 16 of 2019 which was referred to by the Petitioners as the Second Amendment Law to Law Number 30 of 2002 concerning the Corruption Eradication Commission. Even though Law Number 16 of 2019 is the Law on Amendments to Law Number 1 of 1974 concerning Marriage.

During the following three months, the Constitutional Court received 7 (seven) consecutive requests related to the review of the KPK Law which already had a number, namely Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. These cases, namely the case Number 59/PUU-XVII/2019 which was submitted by a number of advocates and graduate students of the

Majelis Hakim Konstitusi dalam persidangan pengujian UU KPK sebelum masa pandemi Covid-19.

As-Syafi'iyah Islamic University; case Number 62/PUU-XVII/2019 filed by Gregorius Yonathan Deowikaputra as an individual Petitioner; case Number 70/PUU-XVII/2019 submitted by academics from the Islamic University of Indonesia (UII); case Number 71/PUU-XVII/2019 submitted by students from various universities; case Number 73/PUU-XVII/2019 was filed by Ricki Martin Sidauruk and Gregorianus Agung who were students; case Number 77/PUU-XVII/2019 submitted by a student association; case Number 77/PUU-XVII/2019 was submitted by a number of Commission of corruption Eradication leaders for the 2015-2019 period as well as a number of anti-corruption activists; as well as case Number 84/PUU-XVII/2019 filed by Martinus Butarbutar and Risof Mario who are advocates. However, the case Number 84/PUU-XVII/2019 could not be accepted by the Constitutional Court because the Petitioner did not clearly describe the constitutional losses he had experienced. This decision was read out on January 15, 2020 ago.

**Formal Defects**

In general, the Petitioners took issue with the KPK Law which was deemed formally flawed in terms of its formation which was not in accordance with Law Number 12 of 2011 concerning the Establishment of Legislation (Law 12/2011). The period of time for discussion and ratification as well as the closure of the discussion process that does not involve public participation are the arguments of the Petitioners to submit a formal review of the KPK Law to the Constitutional Court. Not to mention, the People's Representative Council quorum at the time the KPK Law was ratified that was not in accordance with People's Representative Council Regulation Number 1 of 2014 concerning Rules.


Gregorius Yonathan Deowikaputra sebagai Pemohon perseorangan perkara Nomor 62/PUU-XVII/2019 dalam sidang yang digelar 19 November 2019 silam.

Meanwhile, regarding the material review, of the eight applications received by the Court's Registrar's Office, on average, the Petitioners tested almost all articles in the KPK Law with various issues. The issues questioned by the Petitioners are related to the Corruption Eradication Commission which is part of the executive branch of power; the establishment of the Supervisory Board; permission from the Supervisory Board to carry out wiretapping, search and/or confiscation; the mechanism for the appointment of the Supervisory Board by the President; limitation of SP3 authority owned by Commission of corruption Eradication; and a number of other reasons.

**Do not meet the quorum requirements**

In the inaugural trial of case Number 59/PUU-XVII/2019 which was held on October 14, 2019, as many as 25 advocates represented by Wiwin Taswin argued that Article 21 paragraph (1) letter a of the KPK Law is contrary to Article 1 paragraph (3) and Article 20 UUD 1945. According to the Petitioners, the ratification of the KPK Law by the House of Representatives (DPR) is not in accordance with the spirit of MPR Decree Number XI/MPR/1998 on State Administration that is clean and free of corruption, collusion and nepotism (KKN) and is not at all reflects the spirit of eradicating corruption. Therefore, he continued, the amendment to the KPK Law was not in accordance with efforts to clean up corruption in state administration. In addition, the Petitioners also considered that the amendment to the KPK Law was formally flawed in its formation and that the People's Representative Council's decision-making in its formation did not meet the quorum requirements.

"Thus, the formation of amendments to the Corruption Eradication Commission Law clearly violates the principle of establishing statutory regulations as stipulated in Law Number 12 of 2011," Wiwin explained in front of a hearing chaired by the Chief Justice of the Constitutional Court Anwar Usman accompanied by Constitutional Justice Wahiduddin Adams and Enny Nurbaningsih. The Petitioner argues that the Commission of corruption Eradication is a state institution established with an independent nature. With this nature, there is a guarantee against the action and prevention of corruption that can be carried out without any intervention from any party. So that prosecution and prevention of corruption can be carried out properly. With the amendment to the KPK Law, the Supervisory Board as regulated in Article 21 paragraph (1) letter a states that "the Corruption Eradication Commission consists of: a. The Supervisory Board, totaling 5 (five) people". The existence of

this council has the potential to interfere with the independence of the Commission of corruption Eradication in carrying out its duties and functions. As a result, the suppression and prevention of corruption is not optimal and has the potential to nourish corruption in Indonesia.

Meanwhile, Petitioner for case Number 70/PUU-XVII/2019 represented by Anang Zubaidi as Petitioner said that in the process of forming the KPK Law there was a problem of procedural defects. The petitioners consider the KPK Law with several provisions in it, potentially disrupting the corruption eradication agenda. Furthermore, the Petitioners also revealed that the formation of the KPK Law was not a priority for the national legislation program or the People's Representative Council's National Legislation Program. The Petitioners considered the discussion about it this year as something that was very forced.

According to the Petitioners at the hearing which was held on November 19, 2019, the KPK Law does not have legal certainty because existing Commission of corruption Eradication employees cannot possibly be appointed as civil servants because they are not fulfilled by statutory regulations. In addition to formal testing, the Petitioners also submitted a material review of Article 1 number 3, Article 3, Article 12 B, Article 24, Article 37B paragraph (1) letter b, Article 40 paragraph (1), Article 45A paragraph (3) letter a, and Article 47 of the a quo Law against the 1945 Constitution.

In the same session, Petitioner for case Number 71/PUU-XVII/2019 represented by Zico Leonard Djagardo Simanjuntak, questioned the formation of the Supervisory Board in the Commission of corruption Eradication structure by the legislators. According to him, the existence of the Supervisory Board is considered to have deviated from the supervisory system and resulted in weakening the eradication of corruption crimes committed by the Commission of

## ALASAN PENGUJIAN UU KPK KE MK

Sebanyak enam perkara pengujian Undang-Undang Nomor 19 Tahun 2019 Tentang Perubahan Kedua Atas Undang-Undang Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi (UU KPK) berlanjut proses persidangannya. Secara garis besar, berikut alasan-alasan para Pemohon mengajukan pengujian UU KPK baik secara formil maupun materiil.

### ALASAN PENGUJIAN FORMIL

UU KPK dinilai memiliki cacat formil karena dalam pembentukannya mengabaikan partisipasi masyarakat dan pembahasan dinilai tertutup serta tergesa-gesa.

### ALASAN PENGUJIAN MATERIIL

1. Keberadaan Dewan Pengawas dinilai menghalangi independensi KPK dalam melakukan penindakan dan pencegahan korupsi. Seperti:
   a. aturan proses penyadapan, penggeledahan, dan/atau penyitaan yang harus seizin Dewan Pengawas **(Pasal 12 ayat 1, Pasal 12B, Pasal 12C, Pasal 12D, Pasal 37 ayat 1 huruf b, Pasal 47,)**;
   b. Dalam mekanisme pengangkatan Dewan Pengawas, Presiden diberi kewenangan untuk mengangkat Dewan Pengawas (**Pasal 69A**).
2. Dalam UU KPK tersebut, KPK merupakan lembaga negara dalam rumpun eksekutif (**Pasal 1 Angka 3, Pasal 3**);
3. Kewenangan SP3 yang dimiliki KPK dibatasi hanya sampai 2 tahun (**Pasal 40 ayat 1 dan ayat 2**);
4. Aturan Penyelidik Komisi Pemberantasan Korupsi dapat berasal dari kepolisian, kejaksaan, instansi pemerintah lainnya bersifat diskriminatif (**Pasal 43 ayat 1**);
5. Perubahan status pegawai KPK menjadi ASN dinilai dapat mengganggu independensi pegawai KPK (**Pasal 24 ayat 3**);
6. Kewenangan KPK menindak tindak pidana pencucian uang ditiadakan.

Para Pemohon dalam sidang pengujian materiil UU KPK.

corruption Eradication. In addition, the Commission of corruption Eradication Supervisory Board has the authority to grant permits for wiretaps, searches and confiscations that have exceeded the limits of supervision. This shows that the Supervisory Board is superior and has greater authority than the Commission of corruption Eradication leadership.

Furthermore, for case Number 73/PUU-XVII/2019, the Petitioner represented by Ricki Martin Sidauruk said that Commission of corruption Eradication investigators should not have come from the police, prosecutors, Commission of corruption Eradication internal and/or other government agencies. According to Ricki, limiting the recruitment of Commission of corruption Eradication investigators who can only be followed by people from the police, prosecutors, Commission of corruption Eradication internals and/or other government agencies alone will certainly reduce the level of independence. With this provision, every citizen should be given free space to take part in efforts to improve the life of the nation, including in efforts to eradicate corruption.

**The Initiative of the People's Representative Council**

In relation to these petitions, the Government through Agus Hariadi as the Expert Staff of the Ministry of Law and Human Rights denied all of the Petitioners' arguments. During a hearing hearing statements from the President and People's Representative Council on 19 November 2019 for case Number 59/ PUU-XVII/2019, the Government emphasized that the revision of the KPK Law was an initiative of the People's Representative Council.

"The revision of the Corruption Eradication Commission Law has become an initiative of the Indonesian Parliament, which of course the process of planning, harmonizing, unifying, and consolidating the conception of the KPK Law revision Bill is carried out by the apparatus of the House of Representatives, in this case the House of Representatives legislative institution," he said in a session chaired by The Chief Justice of the Constitutional Court Anwar Usman.

The government also denied that the revision of the KPK Law was not in accordance with the procedures for establishing legislation. According to Agus, the formation of the revision of the KPK Law has been carried out with the processes and procedures for the formation of statutory regulations in accordance with correct and precise procedures. The government also submitted chronological evidence of the planning process, harmonization, unification, and consolidation of the conception of the draft revision of the KPK Law.

**An Extension of the President's Hand**

Meanwhile, regarding the position of the KPK which is in the executive sphere, Agus said that the implementation of the

KPK Law is under the authority of the president which is one part of government affairs. This is as regulated in Article 5 paragraph (2) of the 1945 Constitution. In addition, he explained that the KPK was not formed based on the 1945 Constitution, but was formed based on the KPK Law. "As an institution, the Commission of corruption Eradication is not a constitutional authority, but as a supporting institution," said Agus.

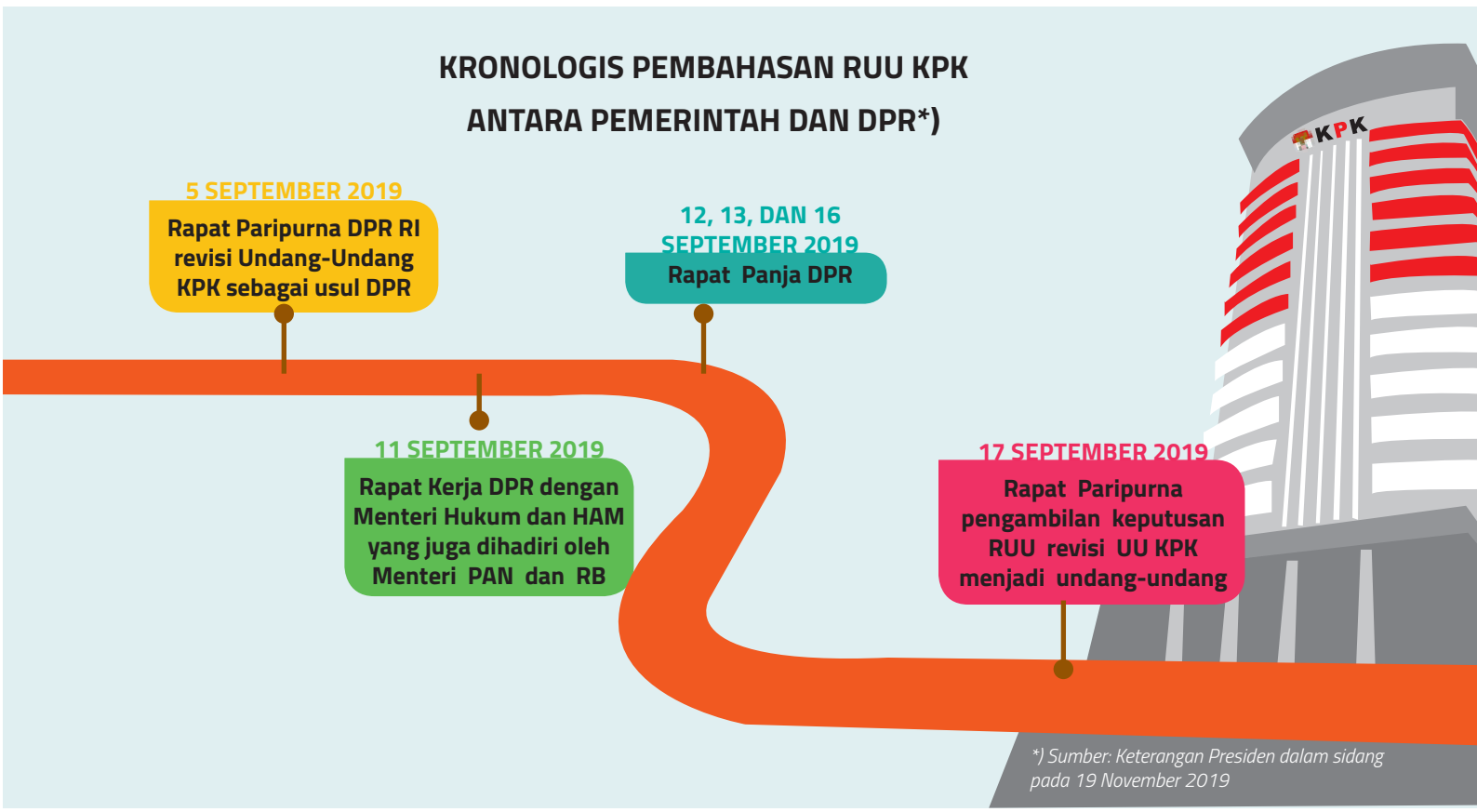
Furthermore, Agus stated that the KPK was formed based on a law which materially shows that the KPK is part of the element of the implementation of the eradication of corruption. This makes the KPK unable to stand alone. "And in terms of the function of the KPK as a state tool to take government action in the legal field as an extension of the president's authority," said Agus.

Touching on the independence of the Commission of corruption Eradication, Agus explained that the independence of the Corruption Eradication Commission (KPK) comes from the president's constitutional authority as law enforcer and as the holder of government power. The independence of the Corruption Eradication Commission, he continued, cannot be compared with the independence of state institutions that are constitutionally authorized. However, this independence is a delegation from an actual state institution, namely the constitutional independence of the president's authority.

So that in a constitutional manner, Agus continued that the KPK had the following positions; first, the KPK has the position of an institution or agency that supports government functions. Second, the KPK is the recipient of the presidential delegation of constitutional authority, so that its existence is responsible for the president, is formed by the president, appointed and dismissed by the president. Third, the KPK is positioned under the president as an extension of the government in order to carry out government actions to eradicate criminal acts of corruption as part of government affairs in the field of law. "So functionally, the position of the Corruption Eradication Commission must actually be under the coordination of the Minister of Law, as stipulated in Article 25 paragraph (2) of Law Number 39 Year 2008 concerning State Ministries," he explained.

**As Supervision**

Regarding the formation of the Supervisory Board, Agus said the existence of the Supervisory Board cannot be in conflict with each other and could constitutionally



interfere with the independence of the KPK. The Supervisory Board, he explained, was only in the framework of carrying out supervisory duties which included research or review of agencies carrying out their duties and authorities. Meanwhile, the Corruption Eradication Commission carries out the duties of preventive measures to investigate, investigate and prosecute corruption crimes.

"The Petitioners' concern to abolish Article 21 paragraph (1) letter a with the argument that the existence of the Commission of corruption Eradication Supervisory Board can weaken the Commission of corruption Eradication is very unwarranted and in this case the government emphasizes that the a quo article besides not contradicting the 1945 Constitution, also it is not meant as an article to weaken the Commission of corruption Eradication, but rather as an improvement in the corruption eradication system, "explained Agus.

Meanwhile, regarding the need for permission from the Supervisory Board to conduct wiretaps, searches and confiscations, Agus said that the authority of the Supervisory Board cannot be interpreted as superior authority, but is linked to a system of checks and balances.

"The authority of the Supervisory Board to supervise and grant permits can be justified and if directed at its goal of implementing a pattern of checks and balances as a tool to maximize efforts to better eradicate corruption," Agus explained in a hearing held on February 3, 2020 to hear statements from the President and House of Representatives related to the cases Number 62, 70, 71, 73, 77, 79/PUU-XVII/2019.

While the Petitioners' argument questioning the SP3 limitation, the Government argued that if there was no limit for 2 years as regulated in Article 40 of the Corruption Eradication Commission Law, then it would cause human rights violations. If new evidence is found, even though the SP3 has been terminated, the Commission of corruption Eradication can still carry out an investigation and prosecution.

"So that the provisions of the a quo article actually provide a guarantee of protection and just legal certainty, as well as equal treatment before the law on the principle that everyone can be convicted with evidence that can convince his crime. However, if the evidence of the crime is inconclusive, then the person can be released," he explained.

### *Check and Balances*

The House of Representatives has also denied all of the arguments expressed by the Petitioners. In a session that was held on February 3, 2020, Member of Commission III of the House of Representatives, Arteria Dahlan delivered a statement from the House of Representatives. He explained that the influence of the independence aspect in the placement of the Commission of corruption Eradication in the executive branch does not conflict with Article 24 paragraph (1), Article 24 paragraph (2), Article 24 paragraph (3) of the 1945 Constitution. According to

Feri Amsari selaku kuasa hukum Pemohon Perkara Nomor 79/PUU-XVII/2019 menyampaikan permohonan.

him, every power has a tendency to develop into arbitrary authority. Therefore, he continued, power must always be limited by separating power into branches that are checks and balances in an equal position.

"Thus, there is a need for supervision of power so that it does not become arbitrary. In the context of the Commission of corruption Eradication as a law enforcement agency, there is a need for oversight of the Commission of corruption Eradication's authority to deal with corruption, especially a fact, the Commission of corruption Eradication's special committee has found many irregularities that have occurred during the nearly 17 years the Commission of corruption Eradication was born. The existence of the Commission of corruption Eradication as a state institution in the executive realm does not mean that the Commission of corruption Eradication is not independent, "he said.

Regarding the existence of the Supervisory Board, the House of Representatives is of the opinion that its presence will not interfere with the independence and freedom of the Commission of corruption Eradication from any influence in carrying out its duties and powers. This information, he continued, refers to the legal politics of the legislators who designed the Supervisory Board as a Commission of corruption Eradication subsystem and agency. The supervisory board is not a power in the form of an agency or institution outside of the Commission of corruption Eradication that can influence the Commission of corruption Eradication in carrying out its duties and powers. However, continued Arteria, the Supervisory Board is inherently part of the Commission of corruption Eradication's internal function as a supervisor to prevent abuse of authority. The presence of the supervisory board as a subsystem within the Commission of corruption Eradication agency is also a form of concrete efforts by legislators in implementing strengthening, reforming, and maximizing the Commission of corruption Eradication supervision system.

"The existence of the supervisory board only has implications for changes in the mechanism for implementing the duties / authorities of the Commission of corruption Eradication so that the formation and granting of authority to the supervisory board in article a quo does not at all reduce the independence of the implementation of duties, 1x24 hours please request that the tap is granted or if not granted, it is mandatory to provide reasons . Until now, the tapping permit is empty, there is no wiretapping permit, "said Arteria.

Until this article was published, the trial process for the judicial review of the KPK Law was still ongoing until the 9th trial with an agenda of hearing experts from the Petitioners. ■

LULU ANJARSARI

## REQUEST FOR LEGAL TEST OF COVID-19 HANDLING WITHDRAWN

The Constitutional Court (MK) decided to grant the withdrawal of the petition for material review of Government Regulation in lieu of Law Number 1 of 2020 concerning State Financial Policy and State Financial System Stability for Handling the 2019 Corona Virus Diseases Pandemic (Perppu for Handling Covid-19). The pronunciation of Decree Number 25 / PUU-XVIII / 2020 was read by the Chief Justice of the Constitutional Court Anwar Usman on Tuesday (19/5/2020) by implementing a physical distancing pattern.

Previously, Damai Hari Lubis as the Petitioner argued that Article 27 paragraph (1), paragraph (2), and paragraph (3) of the Covid-19 Handling Perppu violates its constitutional right to obtain information on the use of state finances in handling Covid-19 and closes legal supervision efforts for state courts. Thus, this article is considered contrary to the principles of openness and responsibility in achieving the prosperity of the people. Therefore, the a quo article is deemed to have also closed the accountability of the Government in using the APBN, which indicates a setback in the law in Indonesia.

Regarding the petition, the Court held a Preliminary Examination through Panel Session on April 28, 2020. Furthermore, the Court held a Panel Session to examine the Revision of the Application on May 14, 2020 without the Petitioner's presence where the Panel of Judges read out a letter from the Petitioner regarding the Revocation of Case Number 25 / PUU- XVIII / 2020 dated 11 May 2020.

"Based on the provisions of Article 35 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court (MK Law), Deliberative Meetings The judge on May 14, 2020 has determined the revocation or withdrawal of application Number 25 / PUU-XVIII / 2020 because according to the law and the application cannot be re-filed and based on the provisions of Article 35 paragraph (1a) of the Constitutional Court Law, the application file is returned to the Petitioner, "said the Chairman. MK Anwar Usman in the Constitutional Court Decision hearing which was held in the Plenary Court Room of the Constitutional Court (Sri Pujianti)

## UNACCEPTABLE JUDICIAL ADMINISTRATION ACT

The Constitutional Court (MK) decided that the petition for reviewing Law Number 30 of 2014 concerning Government Administration (Law on Government Administration) was unacceptable. "The verdict states that the Petitioners' petition is unacceptable," said Plenary Chair Anwar Usman accompanied by constitutional judges at the pronouncement of the verdict on Tuesday (19/5/2020) by implementing health protocols related to Covid-19.

As is well known, Petitioner for Case Number 11 / PUU-XVIII / 2020 is the Indonesian Maha Bidik Association, examining Article 75 paragraph (1) of the Government Administration Law. The Petitioner argued, the provision of the phrase "disadvantaged community members" in Article 75 paragraph (1) of the Government Administration Law causes not all members of the community 5 to be able to make administrative efforts and sue the PTUN against decisions and / or actions of government officials because they are considered not to suffer losses and direct and real interests that lead to discriminatory treatment against other citizens, thereby contradicting Article 28I of the 1945 Constitution.

After examining the Petitioners' argument, especially in the posita and petitum sections of the petition, the Court found that the constitutional problem described in the posita was the phrase "aggrieved community members" which resulted in the Petitioner being prevented from contesting the Administrative Court Decision when the phrase was interpreted as a loss and had to be experienced directly and clearly. .

"However, in the petitum section, the Petitioners formulated things that are contrary to the description in the posita and in the explanation at the preliminary hearing. In the petitum section, the Petitioners stated that the phrases tested were contrary to the 1945 Constitution as long as they were not interpreted as losses and the interests experienced had to be direct and real, "said Arief.

Therefore, according to the Court, the existence of a contradiction between the formulation of the posita and the Petitioner's petitum gave rise to the confusion of the Court regarding what the Petitioner actually asked for. "The unclearness caused the Petitioners' petition to disappear, so the Court did not consider further petitions," said Arief. (Nano Tresna Arfana)

## TESTING THE CONSTITUTIONALITY OF THE POSITION OF THE COMMANDER OF THE INDONESIAN NATIONAL ARMY

The Constitutional Court (MK) held an inaugural trial for the review of Law Number 34 of 2004 concerning the Indonesian National Army (TNI Law) on Monday (18/5) in the Plenary Court Room. In the registered session Number 31 / PUU-XVIII / 2020, Aristides Verissimo de Sousa Mota as the Petitioner stated that Article 1, Article 4, Article 12, Article 13, and Article 14 of the TNI Law contradict the 1945 Constitution. In an illustration based on interpretation The Petitioner, himself stated that the existence of the TNI Commander in relation to the hierarchical system of office with the President, indirectly eliminated the position of the President as commander in chief.

As a concrete example, in the petition Aristides wrote that this discrepancy was seen at the implementation of state ceremonies for the funerals of former presidents and vice presidents. According to him, those in charge of holding the red and white flag at the tomb are the Chief of Staff of the Indonesian Army, the Chief of Staff of the Indonesian Navy, and the Chief of Staff of the Navy and the Chief of Police. Observing this matter, Aristides considered that the position of TNI Commander was invalid because it contradicts Article 10 of the 1945 Constitution which states "The President holds the highest power over the Army, Navy and Air Force."

"So it should be based on the phrase '... holding the highest power over the Army, Navy, and Air Force', the direct superior of the Army, Navy and Navy leadership is the President and not the TNI Commander. That is the basis of our authority, "said Aristides, who is active in the Community Empowerment and Regional Finance Institute (LPMKD).

For this reason, in the petitum of the petition, Aristides requests that the Court declare the provisions of Article 1, Article 4, Article 12, Article 13, and Article 14 of Law Number 34 Year 2004 concerning the Indonesian National Armed Forces contrary to the 1945 Constitution and order the posting of its decision in the State Gazette. Republic of Indonesia. (Sri Pujianti)

## LACKING A LEGAL POSITION, THE APPLICATION FOR JUDICIAL ELECTION LAW IS UNACCEPTABLE

The Constitutional Court (MK) stated that it could not accept the judicial review of Law Number 10 of 2016 concerning the Election of Governors, Regents and Mayors (Pilkada Law) against the 1945 Constitution. Decision Number 7 / PUU-XVIII / 2020 submitted by Michael and Kexia Goutama who is a student at a private university (PTS) in Jakarta, said on Tuesday (19/5/2020) at the Plenary Court Room.

In the legal considerations read out by Constitutional Justice Daniel Yusmic P. Foekh, the Court considered that no description was found regarding the impairment of the Petitioners' constitutional rights caused by the enactment of Article 176 of the Pilkada Law. The Petitioners only explained that their constitutional rights are protected by Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution, but did not describe what kind of protection that was not obtained by not filling the position of deputy governor from the concrete case presented in the petition.

Furthermore, Daniel also stated that the Petitioners felt that they did not get the same opportunity in government, especially during the election for the Governor of DKI Jakarta in 2017. However, continued Daniel, the Petitioners could not explain the constitutional losses they experienced. So

that the Court is of the opinion that the Petitioners do not have the legal position to submit the a quo petition.

In the previous session, the Petitioners manipulated Article 176 of the Pilkada Law in contradiction to Article 18 Paragraph (4), Article 28D Paragraph (1), Article 28H Paragraph (3), and Article 28I Paragraph (5) of the 1945 Constitution. According to him, if a minister is elected the president , when the minister resigns, the successor will still be elected by the president. Likewise with regional heads, when people elect a regional head, the election of a replacement must also be chosen by the community. This has happened in a concrete case in 2017 when Djarot Syaiful Hidayat was appointed as Governor of DKI Jakarta to replace Basuki Tjahja Purnama. (Sri Pujianti)

## THE CONSTITUTIONAL COURT REJECTS THE APPLICATION FOR JUDICIAL REVIEW OF THE STATE CIVIL APPARATUS

The application for judicial review of Law Number 5 of 2014 concerning State Civil Servants (ASN Law) was finally rejected by the Constitutional Court (MK). The request for judicial review of the ASN Law was submitted by Mahmudin and 18 other Petitioners as honorary staff. The Constitutional Court in its verdict stated that it rejected all requests.

"The verdict is to try, rejecting the Petitioners' petition in its entirety," said Plenary Chair Anwar Usman accompanied by other constitutional judges at the hearing for the pronouncement of the decision 9 / PUU-XVIII / 2020, Tuesday (19/5/2020) afternoon.

In its opinion, the Court revealed that the Petitioners requested that their status as honorary staff or other similar designations or Government Employees with a Work Agreement (PPPK) be upgraded to become Candidates for Civil Servants (CPNS). One of the fundamental considerations for the formation of the ASN Law is the need to build a state civil apparatus that has integrity, is professional, is neutral and is free from political intervention and is free from corruption, collusion and nepotism. According to the Petitioners, Article 6, Article 58 paragraph (1), Article 99 paragraph (1) and paragraph (2) of the ASN Law has created legal uncertainty because it tends to protect the acceptance of CPNS from the public channel and ignores the constitutional rights of honorary staff who have served and worked for several years. According to the Petitioners, this constitutes discrimination.

With regard to the Petitioners 'argument, after the Court examined carefully it turned out that the real point of the Petitioners' objection did not lie in the existence of the articles being tested, but in Permenpan 36/2018 and PP 49/2018. In addition, in the description of the arguments developed by the Petitioners in legal standing, it is also seen that the main issue questioned by the Petitioners is related to the enactment of Permenpan 36/2018 and PP 49/2018 which directly resulted in the Petitioners being unable to automatically be appointed as PNS and also become PPPK.

"Thus if the Petitioners follow the line of thought of the Petitioners, the objections of the Petitioners are aimed not at the norms of Article 6, Article 58 paragraph (1) and Article 99 paragraph (1) and paragraph (2) of the ASN Law but at the statutory regulations under the law. -A law which is not constitutionally within the authority of the Court to judge it. Moreover, such delegation is legally justified in the statutory system, "Constitutional Justice Wahiduddin Adams continued.

Therefore according to the Court, based on all the descriptions above, the arguments for the Petitioners' petition are legally groundless in their entirety. (Nano Tresna A.)

## CONCURRENT ELECTION 2019 AGAIN SUED

The holding of simultaneous elections in 2019 is back in the spotlight. Now a citizen, Aristides Verissimo de Sousa Mota, submitted a material review regarding the implementation of the simultaneous elections held on April 17, 2019. The preliminary hearing for the review of Law Number 7 of 2017 concerning General Elections (Election Law) on Monday (18/5/2020) at the Plenary Court Room. In this registered session Number 29 / PUU-XVIII / 2020, the Petitioner argues that the Election Law is inconsistent with Article 1 paragraph (2), Article 6A paragraph (1), Article 18 paragraph (3), Article 19 paragraph (1), Article 22C UUD 1945.

Aristides, who was present without a legal attorney, revealed that the simultaneous election implementation in 2019 had caused a number of casualties due to fatigue. The complexity of the methods used to elect candidates

for legislative members (House of Representatives, Provincial Regional People's Representative Assembly, and Regency / City Regional People's Representative Assembly are implemented with an open proportional system and

elections to elect Regional Representative Council members are carried out with a multi-representative district system.

"By using an electoral system that is so complex, the principles of effective and efficient election implementation as stipulated in article 3 letters j and k of Law Number 7 of 2017 are not implemented," he said in front of a hearing chaired by Constitutional Justice Enny Nurbaningsih accompanied by by Constitutional Justice Arief Hidayat and Manahan MP Sitompul.

However, according to Aristides, the system for the election of candidates for Regional Representative Council of the Republic of Indonesia members is correct because it uses a district system with people's representatives as mandated by Article 168 paragraph (2) of the Election Law. It's just that the number of candidates is not limited so that the public does not know who will be elected and after voting the people do not remember who they have voted for. He hopes that the number of candidates for Regional Representative Council of the Republic of Indonesia members for each electoral district (DAPIL) is limited to a maximum of 10 people. Thus for each province the number of candidates for Regional Representative Council of the Republic of Indonesia members is not more than 40 people. If a candidate / member of People's Representative Council, Provincial Regional People's Representative Assembly and Regency / City Regional People's Representative Assembly dies, then the winning party's Central Executive Board (DPP) in the district has the right to replace him with a new member. (Utami Argawati)


## INSURANCE MEMBER REPRESENTATIVE BODY (BPA) JOINT LIFE INSURANCE (AJB) BUMIPUTERA TEST COMPANY SETTINGS

The Constitutional Court (MK) held a preliminary trial for judicial review of Law Number 40 of 2014 concerning Insurance on Monday (18/5) afternoon in the Plenary Court Room. The case registered with Number 32 / PUU-XVIII / 2020 was filed by the Member Representative Body (BPA) of Joint Life Insurance (AJB) Bumiputera 1912. The Petitioners examined Article 6 paragraph (3) of Law Number 40 of 2014 concerning Insurance (UU Insurance) which reads "Further provisions regarding joint venture legal entities as referred to in paragraph (2) shall be regulated in a Government Regulation".

The Petitioners think that these provisions are not in accordance with the substance of the Constitutional Court Decision Number 32 / PUU-XI / 2013 dated April 3, 2014. In this decision, the Constitutional Court ordered that the provisions concerning insurance business in the form of Mutual Insurance must be further regulated by a separate law and carried out no later than two years and six months after the verdict was pronounced. As a follow-up, the President established Government Regulation Number 87 of 2019 concerning Insurance Companies in the Form of Joint Business. However, according to the Petitioner, the Government and the Parliament have made a setback by amending Law Number 2 of 1992 concerning Insurance Business to Law Number 40 of 2014 concerning Insurance, especially in Article 6 paragraph (3).

"However, what regulates the issue of mutual insurance in the sense that Bumiputera Insurance is the same is regulated in the provisions of one of the articles of Law no. 2 of 1992, "said Zul. The Petitioners are of the opinion that the existence of this PP is also contrary to and contrary to the existing Articles of Association of AJB and guarantees the existence and authority of the Petitioners.

Therefore, in their petitum, the Petitioner asked the Constitutional Court to state the phrase "regulated in a Government Regulation" in that article is contrary to the 1945 Constitution and does not have binding legal force as long as it does not mean "... regulated by law." (Utami Argawati)


HUMAS MK/GANIE

# HALALBIHALAL TO UNITE THE NATION

The extended family of the Constitutional Court held a Halalbihalal Eid al-Fitr 1441 Hijriyah event via video conference, Thursday (28/5) at the Constitutional Court Building. Public Relations Photo / Gani.

The extended family of the Constitutional Court held a Halalbihalal Eid al-Fitr 1441 Hijriyah event, on Thursday (28/5/2020). The implementation of this year's halalbihalal event is different from previous years because it is still in the Corona Virus Disease 2019 (Covid-19) pandemic situation. The event which was held on It. 11 The Constitutional Court building through the video converence channel using the Zoom application was attended by Chief Justice of the Constitutional Court Anwar Usman, Deputy Chief Justice of the Constitutional Court Aswanto, Constitutional Justice Wahiduddin Adams, Constitutional Justice Suhartoyo, Constitutional Justice Manahan MP Sitompul, Daniel Yusmic, Secretary General of the Constitutional Court M. Guntur Hamzah, Registrar MK Muhidin, and MK echelon officials. In a separate place, there were virtually Constitutional Justice Arief Hidayat, Constitutional Justice Enny Nurbaningsih, Constitutional Justice Saldi Isra, Chairman of the Ethics Council Bintan Regen Saragih, Member of the Ethics Council Ahmad Syafii Maarif, Member of the Ethics Council Achmad Sodiki, and MK employees.

„Even though we hold halalbihalal this time in a different way through the Zoom network, it does not reduce gratitude and sincerity in welcoming Victory Day, Idul Fitri 1441 Hijriyah and being able to stay in touch," said Chief Justice of the Constitutional Court Anwar Usman during his remarks.

Anwar said, the halalbihalal tradition is a very distinctive tradition of the Indonesian Muslim community. This tradition has been passed down from generation to generation and has become a culture that serves to strengthen brotherhood with others.

„If this culture is associated with our national life which is so great, then in fact this culture is the unifying medium for the nation's children," said Anwar.

Anwar explained, the tradition of gathering including sungkem has historically occurred during the time of the kings in Java. However, at that time the term halalbihalal was not known. „The term halalbihalal was initiated by KH. Abdul Wahab Hasbullah, one of the pioneers of the Nahdlatul Ulama organization. One of the objectives of halalbihalal is to unite political figures who often have different opinions at that time, „said Anwar.

The Halalbihalal which was held this year felt very different from the previous years where usually people could meet face to face, shake hands and forgive one another. „Currently, halalbihalal is practiced virtually due to the Covid-19 pandemic. Not only in Indonesia, but also in many countries, said Anwar. ■

NANO TRESNA ARFANA

HUMAS MK/IFA

Chief Justice of the Constitutional Court Anwar Usman participated in a ceremony to celebrate Pancasila Day virtually from the Constitutional Court Building on Monday (1/6/2020). Public Relations / Ifa Photo.

# PANCASILA BIRTHDAY VIRTUAL CEREMONY

Chief Justice of the Constitutional Court (MK) Anwar Usman participated in a ceremony to celebrate Pancasila's birthday virtually from the Constitutional Court Building on Monday (1/6/2020). The Pancasila Birthday commemoration ceremony is broadcast live from the Pancasila Building, Ministry of Foreign Affairs, through the Zoom application.

On this occasion, President of the Republic of Indonesia (RI) Joko Widodo as the inspector of the ceremony said that the Covid-19 pandemic that has hit currently is testing the fighting power, sacrifice, discipline and obedience of the Indonesian nation. He continued that this epidemic also tested the calm in taking a fast and precise route. "In facing these tests, we are grateful that Pancasila remains a corner star to move us all," said Jokowi.

In addition, Jokowi said that Pancasila also strengthens the brotherhood and cooperation of the nation to ease the burden on society and foster the fighting power of the Indonesian people to overcome the difficulties and challenges that are being faced. The noble values of Pancasila, Jokowi continued, must be presented in real life. In addition, Jokowi also invited all state officials to side with people who are experiencing difficulties. The Head of State also asked state officials to serve the community regardless of ethnicity, religion, race and intergroup (SARA).

To note, this ceremony is conducted virtually, preceded by the reading of the Pancasila text by the Speaker of the MPR, Bambang Soesatyo, then the Chairman of the Parliament, Puan Maharani, who reads the text of the 1945 Constitution. This ceremony is also broadcast live via electronic media and the Zoom application which must be followed by leaders of state institutions / ministries. as well as all regional heads throughout Indonesia. ■

**UTAMI**

HUMAS MK/IFA

# CONSTITUTIONAL RIGHTS AND HUMAN RIGHTS

Deputy Chief Justice of the Constitutional Court (MK) Aswanto delivered an online public lecture with the theme „Demanding Rights and Carrying Out Constitutional Obligations in the Middle of the Covid-19 Pandemic" on Tuesday (9/6/2020) afternoon through the Zoom application. Photo: Public Relations / Ifa

Deputy Chief Justice of the Constitutional Court (MK) Aswanto delivered an online public lecture with the theme „Demanding Rights and Carrying Out Constitutional Obligations in the Middle of the Covid-19 Pandemic" on Tuesday (9/6/2020) afternoon through the Zoom application. This event was held in cooperation between the Constitutional Court and Gorontalo State University.

„Are constitutional rights the same as human rights," said Aswanto when opening the lecture which was attended by Zoom participants, including the Head of Public Relations and Domestic Cooperation of the Constitutional Court Fajar Laksono, Dean of FH Gorontalo State University Fenty U. Puluhulawa, all high-ranking officials Gorontalo State University, a number of MK employees and Gorontalo State University Law Faculty students, as well as law faculty students from various universities.

Aswanto said, if you want to understand constitutional rights, you must first examine the notions of constitutional rights and human rights. „Human rights are rights that a person gets because he becomes a human being, so that the source is from Allah SWT. Human rights are regulated or not regulated by the Constitution, we must obey them. Meanwhile, constitutional rights are rights obtained by a person because he / she becomes a citizen. Thus, when we become Indonesian citizens, our constitutional rights are rights that have been regulated in the Constitution, „explained Aswanto.

In relation to constitutional rights with the Covid-19 pandemic, continued Aswanto, constitutional rights are citizens' rights that must be fulfilled by the government in a state declared a health emergency. „Meanwhile, the function of the government in relation to human rights is to guard so that what constitutes human rights can be fulfilled and can be promoted by the state. In contrast to constitutional rights which are domestic in nature, the state's obligation is to regulate, said Aswanto. ■

NANO TRESNA ARFANA

HUMAS MKIIFA

# THE SERIOUSNESS OF THE STATE TO PROTECT THE CONSTITUTIONAL RIGHTS OF THE PEOPLE

Deputy Chief Justice of the Constitutional Court Aswanto when he was the key speaker at the Webinar on Law and Society Discussion with the theme„The Role of the State in Facing the Covid-19 Pandemic Problem" held by Al Azhar Islamic University on Thursday (11/6/2020). Photo: Public Relations / Ifa

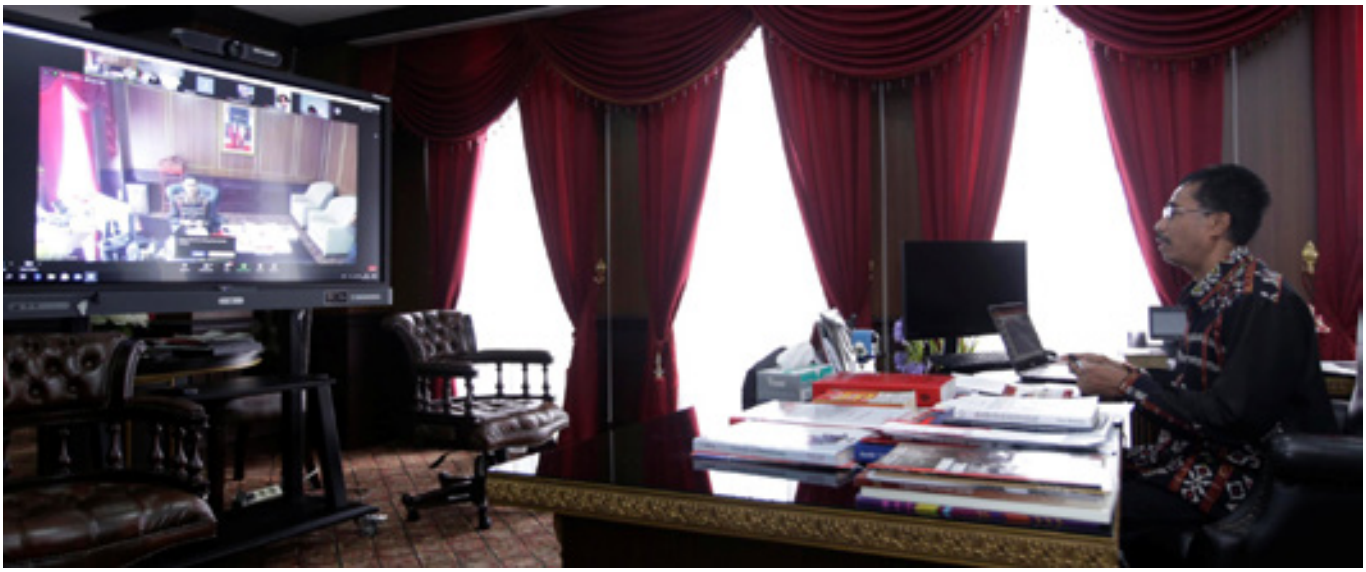
If it is guided by the norms of the constitution of the Indonesian state, then the Government is serious in guaranteeing and protecting the constitutional rights of the people. The rights stated in the constitution can be categorized as equivalent to human rights, including the right to fulfill the economy and health during the handling of the Covid-19 pandemic. This was conveyed by the Deputy Chairperson of the Constitutional Court Aswanto when he was a key speaker at the Webinar on Law and Community Discussion with the theme „The Role of the State in Facing the Covid-19 Pandemic Problem" held by Al Azhar Islamic University on Thursday (11/6/2020). This activity is carried out virtually using the Zoom application and broadcast directly on the Youtube channel of the Constitutional Court of the Republic of Indonesia.

In the activity moderated by the Lecturer at the Faculty of Law of the Islamic University of Al Azhar Suartini Supensi, Aswanto gave material entitled „Fulfillment of Constitutional Rights in the Covid-19 Pandemic". He explained that Article 27, Article 28 to Article 28 J are basic norms related to the constitutional rights of citizens which still need to be described in the regulations below. For example, regarding this pandemic, continued Aswanto, how can the constitutional rights of citizens regarding health guaranteed by the 1945 Constitution be spelled out again in a regulation of the Minister of Health.

„So in this case the country has anticipated it. This means that even though there is currently an emergency in matters of public health rights, the state must still be present to fulfill it. The state must not neglect the rights of its citizens, „Aswanto explained in the event which was also attended by the member of Bawaslu RI Rahmat Bagja as the next speaker.

In this regard, as an example, Aswanto explained the implementation of the Health Quarantine Law. According to him, the Government continues to strive to uphold human rights contained in it which are also contained in the constitution. However, what needs to be understood is that human rights are rights that have existed and are inherent in humans from birth, while constitutional rights are rights that come from the government which can be taken back at any time. This means that the Government has the authority to determine which rights can be prioritized in this health emergency, without neglecting the role and presence of the state in it. ■

SRI PUJIANTI



HUMAS MK/IFA

# THE COVID-19 PANDEMIC IS A CONSTITUTIONAL ISSUE

Constitutional Justice Daniel Yusmic Pancastaki Foekh was the key speaker at the Webinar (web seminar), Tuesday (16/6) at the Constitutional Court Building. Public Relations / Ifa Photo.

Constitutional Justice Daniel Yusmic Pancastaki Foekh was the key speaker at a Webinar (web seminar) with the theme „Law Enforcement and Human Rights (HAM) During the Covid-19 Pandemic". This activity was organized by the Central Executive for the Indonesian Christian Student Movement (GMKI), on Tuesday (16/6/2020) via virtual using the Zoom application.

On that occasion, Daniel explained that the problem of Corona Virus Disease (Covid-19), which WHO calls a pandemic, is a constitutional issue. „If you look at the constitutions in UN member countries, there are several countries whose constitutions officially state that this epidemic is a state of emergency," said Daniel.

Meanwhile in Indonesia, he said, the Basic Law explicitly contains only three articles, namely article 11, article 12 and article 22 which regulate emergencies. However, in the event of a compelling crisis like this, the President has the right to stipulate government regulations in lieu of laws (perppu). He said that a perppu can change certain norms that exist in law.

In addition, he also said that in constitutional law, there must be provisions for two different legal systems between an emergency and a normal situation. „So actually, the founding father already has a mindset about this constitutional dualism," explained Daniel.

According to Daniel, all emergency laws and perppu have existed since ancient times. It's just that the handling of emergencies is currently in command and if it is linked to emergency constitutional law, the authority given to the government in dealing with this virus is temporary. The goal is how to return the emergency to normal again.

Furthermore, Daniel said, in an emergency situation it is impossible to expect the formation of a perppu using the principle of forming legislation normally. Then, the Covid-19 outbreak that is currently happening is a condition where it is not known when it will end, but this situation has an end. Daniel also said that the role of the community was needed in dealing with emergencies. „Participation is also very important to deal with emergencies. So in a situation like this, there is an implementation of PSBB, community participation is also necessary, „he said. ■

**UTAMI**

HUMAS MK/GANIE

# DILEMMA OF REGIONAL HEAD ELECTION IN 2020

The Chief Justice of the Constitutional Court Anwar Usman was the keynote speaker in the National Tadarus event for the Regional Leadership Council of the Mataram National Movement Association (Regional Representative Council PGK), Friday (19/6) in the Meeting Room, Floor Floor. 11 The Constitutional Court Building. Public Relations Photo / Gani.

If the Covid-19 pandemic conditions are faced with the implementation of the 2020 simultaneous regional elections, then this is a very dilemma. On the one hand, the state has the obligation to fulfill the constitutional rights of citizens in democracy.

„On the other hand, the state is also faced with conditions for implementing health protocols, in order not to spread the Covid-19 pandemic in society," said Chief Justice of the Constitutional Court (MK) Anwar Usman who delivered a keynote speaker on the topic „Are We Ready to Carry Out Regional Elections Amid Covid. -19 "in the event of Nationality Tadarus Regional Leadership Council of the National Movement Association (Regional Representative Council PGK) Mataram. The activity which was held on Friday (19/6/2020) afternoon was carried out virtually through Zoom.

Anwar said that the implementation of the health protocol is part of the fulfillment of public health rights in accordance with the mandate of the Constitution. The challenges and choices in implementing the 2020 Pilkada Simultaneously are indeed heavy. There has even been a delay in the implementation of the simultaneous regional election voting which was originally to be held on September 23, 2020 and has been changed to December 9, 2020.

„If the 2020 Pilkada Simultaneously is held with due observance of health protocols, there will be many adjustments that must be made in each stage of the simultaneous regional election. The simultaneous adjustment of the pilkada implementation stage is not an easy thing to do. Although it also does not mean that it is impossible to implement, „said Anwar in the event attended by Zoom participants, including the Chairman of the DPP PGK Bursah Zarnubi and the Chairman of the Regional Representative Council PGK Mataram Arifudin, as well as the speakers, Ilham Saputra from the General Elections Commission and M. Afiduddin from general election supervisory.

Anwar continued, fulfilling democratic rights for the people is the state's obligation to implement it. Even so, the fulfillment of the constitutional rights of citizens in democracy, always experiences different tests and challenges. „We have indeed had experience since 2005 to hold direct regional head elections and we also have experience in carrying out simultaneous regional elections from 2015 to 2018," said Anwar.

Furthermore, Anwar said the success of South Korea in holding elections during the Covid-19 pandemic. Although the example is not apple to apple if you want to compare it to Indonesia, which has geographic conditions, population and voters and various other things that are not comparable to South Korea. „Even so, I still want to be kind and think about it and invite all of us to continue to strive for the best for the nation and state. As a Muslim, I believe in and adhere to the word of Allah SWT in Surah Al-Baqarah verse 286 which states that Allah does not burden a person but is in accordance with his ability. He gets rewarded for the goodness he earns and he gets tormented for the crimes he does, „explained Anwar.

Anwar believes, if every effort we do is based on the intention of fulfilling the constitutional rights of every citizen, and have been serious in working on it, then our obligation as humans to do business is over. ■

**NANO TRESNA ARFANA**

HUMAS MK/GANIE

# ELECTION ADMINISTRATION FOR THE GENERAL ELECTION SUPERVISORY AGENCY

Constitutional Justice Saldi Isra was a resource person for the Training of Basic Competency Development for Legal Advocacy in the Implementation of the 3rd Generation Election for the Election Supervisory Body (Bawaslu) on Saturday (20/6/2020) morning through the Zoom application Photo: Public Relations / Gani

Constitutional Justice Saldi Isra was a resource person for the Training of Basic Competency Development for Legal Advocacy in the Implementation of the 3rd Generation Election for the Election Supervisory Body (Bawaslu) on Saturday (20/6/2020) morning through the Zoom application which was delivered from Saldi Isra's residence in Jakarta.

Saldi started the meeting by explaining the system of government in effect in a country. „If we talk about the parliamentary system, the elections are basically meant to fill the members of parliament. In the parliamentary system there are only elections to elect members of parliament. So if for example in Malaysia, Thailand or the UK there is an election, then the election is meant to elect members of parliament. The results of the parliamentary elections will be used as calculations to win over who will become the executive. In England it is called the prime minister, in Germany it is called the chancellor, „Saldi explained to the officials of the Central Election Supervisory Board, including Fritz Edward Siregar and members of the Provincial Election Supervisory Board. Apart from that, researcher Perludem Fadli Ramadhanil and Executive Director of KoDe Initiative Very Junaidi were also present, both of whom were speakers for this event.

Unlike the presidential system, continued Saldi, elections in the presidential system are intended to fill the legislative members, in the United States it is to elect members of the senate, while in Indonesia it is to elect members of the Parliament and Regional Parliament. This is also to elect the President. „There are countries that separate legislative and executive elections, and there are countries that combine legislative and executive elections. It depends on the country's presidential system. But in general, a presidential system built with a multiple or multi-party party system is strived to ensure that elections are held simultaneously, „said Saldi, who presented material on" Election Constitutionalism. ■

NANO TRESNA A.

HUMAS MK/IFA

# THE CONCEPT OF NATIONAL RESILIENCE PRIORITIZES NATIONAL SOLIDARITY

The concept of national resilience must prioritize the principle of national and state solidarity in accordance with Indonesian geopolitics. This was the opening lecture delivered by the Deputy Chairperson of the Constitutional Court Aswanto at the National Syawalan and Gathering Forum held by the Gajah Mada University Postgraduate School National Resilience Study Program on Saturday (20/6/2020) through the Zoom Meeting application.

With the theme „National Resilience Contribution to the Nation", Aswanto explained that national solidarity is actually the estuary of the awareness and understanding of all components of the nation that national unity and regional unity are the best choices in facing the future. That is, in an effort to strengthen national unity, there must be a guarantee of equitable welfare and a guarantee of the sustainability of the existence of the identity of every citizen, including ethnic and regional groups in facing the challenges and opportunities of globalization.

„Thus, the improvement of the legal aspect in Indonesia is that if there are citizens' rights whose constitutional rights are neglected, norms are born that guarantee the sustainability of rights, which are nothing but a manifestation of national resilience in the field of law that carries out these guarantees," said the alumni. The UGM Graduate School National Resilience Study Program in 1989 from his residence in Jakarta.

On the basis of this, continued Aswanto, it is necessary to organize state institutions aimed at obtaining an efficient state administration process capable of fostering democracy or people's sovereignty. The state institutional system that meets these requirements must be based on the concept of separation of power because it guarantees the functioning of the checks and balances mechanism in a state government. Thus, law becomes a subsystem in the system of state life, according to Joseph Raz in his book entitled „The Concept of A Legal System" states that law will affect the work of other systems in state life.

Deputy Chairman of the Constitutional Court Aswanto in the National Syawalan and Gathering Forum organized by the Gajah Mada University Postgraduate School National Resilience Study Program on Saturday (20/6/2020) through the Zoom application. Photo: Public Relations / Ifa

„A country with a democratic legal system will create democratic life in all areas of life, and the democratization of law is determined by the legal development strategy adopted by a country, including our country Indonesia," explained Aswanto.

In this activity, alumni who have devoted themselves to various work areas include Regional Secretary of Banten Province Almuktabar, Dean of Semarang State University (Unnes) Rodhiyah, Director of Procurement of the Bulog Forum Wibisono Puspitohadi, and Gajah Mada University National Defense Study Program Manager Armaidy Arnawi. All of these speakers are the ones who further enliven the atmosphere of the online gathering from various parts of Indonesia which are divided into three time zones. ■

**SRI PUJIANTI**

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## Understand Your Constitutional Rights